



## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is effective as of \_\_\_\_\_, 2011 ("Effective Date") by and between PBH, a Managed Behavioral Healthcare Organization, having its principal place of business at 245 LePhillip Court, Concord, North Carolina 28025 ("PBH"), and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ ("LME").

In consideration of the mutual covenants and agreements hereafter set forth, the parties agree as follows:

**1. Relationship of the Parties.** LME desires to operate North Carolina's 1915(b) and 1915(c) Medicaid waivers and to contract with the North Carolina Division of Medical Assistance to manage behavioral health benefits for Medicaid consumers. PBH has operated the 1915(b) and 1915(c) waivers since 2005. PBH has agreed to share with LME Proprietary Information which PBH has developed during its six years of operating the waivers. LME will contract with various contractors who may have access to and utilize PBH's Proprietary Information as part of the business relationship between LME and its contractors. This agreement addresses the desire that Proprietary Information shared with LME will be used exclusively to prepare LME to operate the waivers and for no other purpose. Specifically, PBH and LME desire that Proprietary Information which is shared may not be used, sold, licensed, or in any way offered for the benefit of any party other than LME. LME agrees to require any contractor who may have access to the Proprietary Information to be bound by the terms of this Agreement.

**2. Term/Termination.** This Agreement will commence on the Effective Date and continue, unless terminated earlier pursuant to this Section 2, until 5 (five) years thereafter. This Agreement may be terminated by either party at any time by giving written notice of termination to the other party. In the event of such termination, LME will be obligated to return to PBH all Proprietary Information and to destroy any copies of the Proprietary Information, whether it is in hard copy, electronic, or any other form, whether in the possession of LME or a LME contractor, within 7 (seven) days of the date of the written notice of termination.

**3. Confidentiality.**

a. Proprietary Information. LME understands that PBH possesses and will possess Proprietary Information that is important to its business. For purposes of this Agreement, "Proprietary Information" is all information that is disclosed to LME by, or on behalf of, PBH and has value in PBH's business, or that is developed at PBH's facilities or with use of PBH's equipment and/or personnel. Proprietary Information includes, but is not limited to, know-how, techniques, processes, plans, ideas, documents, and all other information that has been or will be given to LME by PBH.

b. Non-Disclosure. LME understands that this Agreement creates a relationship of confidence and trust between LME and PBH with regard to Proprietary Information. LME will at all times, both during and after the term of this Agreement, keep the Proprietary Information securely in confidence and trust. LME will not, without the prior written consent of an authorized representative of PBH (i) copy, use or disclose any Proprietary Information, (ii) remove any Proprietary Information from the business premises of LME, or (iii) deliver any Proprietary Information to any person or entity outside LME. Notwithstanding the foregoing, LME may use the Proprietary Information (and disclose and deliver same to LME's contractors, if applicable, who have a need to know, provided such contractors have previously entered into written agreements protecting third-party proprietary information received by LME and containing provisions at least as restrictive as those set forth in this Agreement) as may be necessary and appropriate for LME to operate North Carolina's 1915(b) and 1915(c) Medicaid waivers and to contract with the North Carolina Division of Medical Assistance to manage behavioral health benefits for Medicaid consumers.

**4. Ownership and License.**

a. Assignment of Proprietary Information. All intellectual and proprietary rights of any kind that currently exist or may exist in the future (collectively, the "Rights") in connection the Proprietary Information shall be the sole property of PBH. LME hereby irrevocably assigns and agrees to assign to PBH, without further consideration, any and all Rights that LME may have or acquire in the Proprietary Information.

b. Cooperation. LME agrees to perform, during and after the term of this Agreement, all acts deemed necessary or desirable by PBH to permit and assist it, at LME's expense, in evidencing, perfecting, obtaining, maintaining, defending and enforcing Rights and/or LME's assignments herein. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings. LME hereby irrevocably designates and appoints PBH and its duly authorized officers and agents, as LME's agents and attorneys-in-fact, with full power of substitution, to act for and in behalf and instead of LME, to execute and file any documents and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by LME.

**5. Representations and Warranties.** LME represents and warrants that, as of the Effective Date and at all times during the term of this Agreement all of LME's employees and contractors, as applicable, have executed written non-disclosure, assignment of rights and other appropriate agreements sufficient to protect the confidentiality of the Proprietary Information, and sufficient to allow LME to grant the assignments and licenses to PBH as provided herein.

**6. Indemnity.** LME will defend, indemnify and hold PBH and its affiliates (and their respective employees, directors and representatives) harmless against any and all losses, liabilities, damages, claims, demands and suits and related costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising or resulting, directly or indirectly, from (i) any act or omission of LME (its employees or contractors) or LME's (its employees' or independent contractors') breach of any representation, warranty or covenant of this Agreement.

**7. Limit of Liability.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEITHER LME NOR PBH WILL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

**8. Miscellaneous.**

a. Governing Law. LME agrees that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of North Carolina without regard to the conflict of laws provisions thereof. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or excluded from this Agreement to the minimum extent required, and the balance of the Agreement shall be interpreted as if such provision was so limited or excluded and shall be enforceable in accordance with its terms.

b. Assignment. This Agreement (together with all attached exhibits) shall be binding upon LME, and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, and personal representatives; provided, however, that LME shall not assign any of its rights or delegate any of its duties hereunder without PBH's prior written consent and any attempted assignment or delegation will be void.

c. Entire Agreement/Modifications. This Agreement (together with all executed Work Statements and attached exhibits) contains the entire understanding of the parties regarding its subject matter. This Agreement may only be modified by a subsequent written agreement executed by authorized representatives of both parties.

d. Notices. All notices required or given under this Agreement shall be deemed given upon receipt or upon deposit in the U.S. mail, postage pre-paid; by facsimile; or by commercial overnight delivery service with tracking capabilities.

e. Remedies. LME recognizes that a violation of this Agreement could cause PBH irreparable harm, the amount of which may be extremely difficult to estimate, thus, making any remedy at law inadequate. Therefore, LME agrees that PBH shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Agreement and for any other relief PBH deems appropriate without being

required to post any bond or other security. This right shall be in addition to any other remedy available to PBH in law or equity.

f. Survival. The provisions of this Agreement that may be reasonably interpreted as surviving its termination shall continue in effect after termination of this Agreement. PBH is entitled to communicate LME's obligations under this Agreement to any customers, clients, vendors, or contractors of LME.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the first day above written.

For PBH,

By: \_\_\_\_\_

For LME,

By: \_\_\_\_\_