

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice ("DOJ") and on behalf of the Federal Bureau of Prisons ("BOP") (collectively the "United States") and Professional Evaluation & Counseling Services, Incorporated ("PEC") and Frederick Presciti ("Presciti") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. On October 1, 2007, PEC was awarded contract DJBTOAT009 (cost-reimbursement) to provide drug and mental health counseling in support of the BOP Transitional Drug Abuse Treatment Program (TDAT) to inmates housed at the Salvation Army Community Corrections Center (CCC) in Palm Beach County, Florida.

B. In June, 2010, BOP learned that PEC billed for services not rendered and other billing irregularities, including the release of inmates from group sessions early without TDAT authorization. BOP advised PEC that there were major problems/concerns noted in the adherence in providing the type and frequency of treatment directed by the TDAT office, of missing documentation with bills, that PEC should develop a tracking system to ensure all required documentation was submitted to the TDAT office with the monthly bill; however, PEC failed to accomplish these. An unannounced monitoring conducted during the time period of June 14-16, 2010 prompted the issuance of a Cure Notice on June 30, 2010 and a Show Cause Letter on August 18, 2010. The unannounced visit verified PEC's practice of billing for services that were not performed. PEC's response was deemed unacceptable and on September 30, 2010,

the contract was terminated for default because PEC failed to follow the Statement of Work (SOW).

C. The TDAT contract awarded to PEC was valued at \$460,856 over the 5 year length of the term. From October 1, 2007 through September 30, 2010, PEC was paid \$195,387.50 in accordance with PEC's 57 claims to the BOP.

D. The United States contends that it has certain civil claims against PEC and Presciti arising from PEC's submission of false claims to the United States Government. Specifically, PEC falsely billed the BOP for services not rendered and that PEC counselor and contractor Elise Powell knowingly forged documentation used to substantiate PEC's billing. Of the 4,773 sessions reviewed, false claims were associated with approximately 2,148 sessions from October, 2007 through October, 2010. That conduct is referred to below as the Covered Conduct.

E. Powell informed the United States that she did not advise Presciti of her conduct and although Presciti reviewed and signed PEC's billing statements prior to their submission to BOP, Presciti denies any knowledge of Powell's conduct.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. PEC and/or Presciti shall pay to the United States \$50,000.00 ("Settlement Amount"). PEC shall pay the Settlement Amount in two installments, as follows:

a. On or before September 25, 2012, PEC shall pay \$25,000.00, and

b. On or before October 25, 2012, PEC shall pay \$25,000.00.

The Settlement Amount shall be paid by Cashier's Checks made payable to the United States Attorney's Office for the Southern District of Florida or by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida. In the event this Agreement is not executed by September 15, 2012, the Parties agree that interest on the Settlement Amount of \$50,000.00 shall thereafter accrue at the rate of 15% per annum, compounded daily from September 15, 2012 until the date of payment of the Settlement Amount plus such interest.

2. In the event that PEC and/or Presciti fails to pay any installment of the Settlement Amount as provided in Paragraph 1, by the date upon which each such payment is due, PEC and Presciti shall be in Default of their payment obligations ("Default"). The United States will provide a written Notice of Default, and PEC and Presciti shall have an opportunity to cure such Default within three (3) calendar days from the date of receipt of the Notice of Default. Notice of Default will be delivered to Presciti, individually and to Presciti as PEC's representative, at the addresses listed below, by electronic mail, or to such other PEC representative as PEC shall designate in advance in writing. If PEC and/or Presciti fails to cure the Default within three (3) calendar days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest thereon shall thereafter accrue at the rate of 15% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). PEC and Presciti shall upon execution of this Settlement Agreement enter into a Consent Judgment in the amount of the unpaid balance and in the form attached hereto as Exhibit "A", and the United States, at its sole discretion, may (a) offset the

remaining unpaid balance from any amounts due and owing to the PEC and/or Presciti by any department, agency, or agent of the United States at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. The United States shall not file the Consent Judgment as to PEC and/or Presciti if they are not in Default as defined above. PEC and Presciti agree not to contest any offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States. At its sole option, the United States alternatively may rescind this Agreement as to PEC and Presciti and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against PEC and Presciti for the claims that would otherwise be covered by the releases provided in below. In the event that the United States opts to rescind this Agreement pursuant to this Paragraph, PEC and Presciti agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (a) filed by the United States against PEC and/or Presciti within 120 days of written notification to PEC and Presciti that this Agreement has been rescinded, and (b) relate to the Covered Conduct.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon PEC's and/or Presciti's full payment of the Settlement Amount, the United States releases Presciti and PEC, together with PEC's current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, and affiliates; and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct

under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding the release given in paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient services, including quality of services;
- g. Any liability of Elise Powell; or
- h. Any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of PEC) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct.

5. PEC and Presciti waive and shall not assert any defenses PEC and/or Presciti may

have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. PEC and Presciti fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that PEC and/or Presciti have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Unallowable Costs:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of PEC, and its present or former officers, directors, employees, shareholders, and agents, including but not limited to Presciti, in connection with:
- i. the matters covered by this Agreement;
 - ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

- iii. PEC's and/or Presciti's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement;
- v. the payment PEC and/or Presciti makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

- b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by PEC and/or Presciti, and PEC and/or Presciti shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, PEC and/or Presciti shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by PEC or any of PEC's subsidiaries or affiliates from the United States. PEC and Presciti agree that the United States, at a minimum, shall be entitled to recoup from PEC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the

affected agencies, reserves its rights to audit, examine, or re-examine PECs books and records and to disagree with any calculations submitted by PEC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by PEC, or the effect of any such Unallowable Costs on the amount of such payments.

8. PEC and Presciti agree to cooperate fully and truthfully with the United States' investigation of Elise Powell and other individuals and entities not released in this Agreement. Upon reasonable notice, PEC and Presciti shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. PEC and Presciti further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

9. PEC and Presciti further agree that PEC and/or Presciti's failure to comply with this Agreement, including but not limited to the payment terms in paragraphs 1 above 2, is not excused by the commencement of the bankruptcy by or against PEC and/or Presciti, and will be considered a default on the Agreement for purposes of paragraph 2 notwithstanding the commencement of the bankruptcy.

10. In the event any part or parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as

though the void parts were deleted.

11. This Agreement is intended to be for the benefit of the Parties only.
12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
13. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.
14. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Florida. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.
15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
16. PEC and Presciti have had the right to consult with legal counsel of their choice and freely and voluntarily enter in to this Agreement, acknowledge that it is fair and reasonable, and understand each and every provision of this Agreement.
17. The undersigned individuals and counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
19. This Agreement is binding on PEC's and Presciti's successors, transferees, heirs, and assigns.

20. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 9/20/2012

BY: 

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Counsel for United States of America

**PROFESSIONAL EVALUATION & COUNSELING SERVICES, INCORPORATED
("PEC")**

DATED: 9/17/12

BY: 
Frederick Presciti, Vice President

FREDERICK PRESCITI

DATED: 9/17/12

BY: 
Frederick Presciti