

# SETTLEMENT AGREEMENT

## I. PARTIES

This Settlement Agreement (Agreement) is entered into among the following (hereinafter “the Parties”): the United States of America, acting through the United States Department of Justice, on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), and the Centers for Medicare & Medicaid Services (CMS) (collectively the “United States”); Hedy Cirrincione (the Relator); and the State of New York, the City of New York, and the Board of Education of the City School District of the City of New York, also known as the New York City Department of Education (the Defendants), through their authorized representatives.

## II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. The School Supportive Health Services Program and the Preschool Supportive Health Services Program are New York State Medicaid programs under which the Federal Government reimburses New York State for a portion of the State’s expenditures. Through these programs, school districts and counties within the State of New York, including the New York City Board of Education, provide a variety of health care services to Medicaid-eligible school children. These services are known as “school-based health services.” The State

of New York administers these programs and submits claims to CMS for reimbursement for services provided under the programs. Since 1993, the Defendants have received hundreds of millions of dollars under these two programs.

B. The Relator is a resident of the State of North Carolina. In 1998 and 1999, she filed two *qui tam* actions in the United States District Court for the Northern District of New York captioned *United States ex rel. Cirrincione v. Tingley, et al.*, 98-CV-1929 (N.D.N.Y.), and *United States ex rel. Cirrincione v. Hamel, et al.*, 99-CV-2082 (N.D.N.Y.) (hereinafter “the Civil Actions”). In these actions, the Relator alleged that New York State, a number of localities within the State, and certain named individuals violated program requirements governing the provision of speech therapy services under the School Supportive Health Services Program and the Preschool Supportive Health Services Program.

C. The United States contends that the Defendants submitted or caused to be submitted claims for payment to the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, which violated program requirements governing the School Supportive Health Services Program and the Preschool Supportive Health Services Program as follows (the Covered Conduct):

(i) The United States contends that between June 1, 1993 and June 30, 1996, the Defendants submitted or caused to be submitted to the Federal Government claims for speech therapy, physical therapy, occupational therapy, psychological counseling, and transportation services rendered under the School Supportive Health Services Program and the

Preschool Supportive Health Services Program between April 1, 1990 and August 31, 1993, when in fact many of those services had not been rendered in accordance with program requirements.

(ii) The United States contends that the Defendants submitted or caused to be submitted to the Federal Government claims for speech therapy and transportation services rendered under the School Supportive Health Services Program and the Preschool Supportive Health Services Program from September 1, 1993 to June 30, 2001, when in fact many of those services had not been rendered in accordance with program requirements.

D. The State of New York has submitted claims via Form CMS-64 for services rendered under the School Supportive Health Services Program and the Preschool Supportive Health Services Program. Since the quarter ending September 30, 2001, CMS has deferred payment of a portion of the claimed amount for these services based on concerns that the Defendants may have continued to violate program requirements after June 30, 2001. These payments (“the Deferred Payments”) cover claims submitted and certified by March 31, 2009, on Form CMS-64 by the State of New York for the quarters beginning July 1, 2001 and ending December 31, 2008 under the School Supportive Health Services Program and the Preschool Supportive Health Services Program (“the Deferred Payment Claims”). The amount of the Deferred Payments is \$302,896,782.

E. The United States contends that it has certain civil claims, as specified in Paragraph 4, below, against the Defendants for engaging in the Covered Conduct.

F. The United States also contends that it has certain administrative claims, as specified in Paragraphs 6 and 7, below, against the Defendants for engaging in the Covered

Conduct and for violating program requirements in connection with the Deferred Payment Claims.

G. The Defendants deny that they engaged in any wrongdoing. The State of New York has also challenged the right of the United States to continue to retain the Deferred Payments.

H. This Agreement is neither an admission of liability by the Defendants nor a concession by the United States that its claims are not well founded.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

J. The State of New York is entering into a Program Compliance Agreement (PCA) with CMS concurrently with this Agreement.

### **III. TERMS AND CONDITIONS**

1. The Defendants agree to pay the United States \$539,756,349.67 (the Settlement Amount), as allocated below. The State of New York further agrees to pay Relator \$210,950 in settlement of Relator's claims for attorney's fees and costs. The foregoing payments shall be made as follows:

a. Except as provided in Paragraph 2, below, the State of New York releases any claim it has or may have to the Deferred Payments, including, but not limited to, any claim or right to have an overpayment or disallowance determined under 42 C.F.R. §§ 430.35, 430.40, and 430.42; and any claim or right to appeal, whether formally or informally and

whether administratively or judicially, the rights of the United States and/or CMS to disallow and/or retain those funds. The release will be made pursuant to written instructions to be provided by CMS.

b. The State of New York will pay the United States an additional \$331,878,568.67, inclusive of interest, in ten installments of \$33,187,856.87 each. The first payment of \$33,187,856.87 will be due within five days of the Effective Date of this Settlement Agreement. The second payment will be due exactly eighteen months thereafter. Additional payments will be due every six months thereafter, until a total of \$331,878,568.67 has been paid. Payment will be made by electronic funds transfer pursuant to written instructions to be provided by the Department of Justice.

c. The City of New York, on behalf of itself and the New York City Board of Education, will pay the United States \$100,000,000, inclusive of interest, in ten installments of \$10,000,000 each. The first payment of \$10,000,000 will be due within five days of the Effective Date of this Settlement Agreement. Additional payments will be due every six months thereafter, until a total of \$100,000,000 has been paid. Payment will be made by electronic funds transfer pursuant to written instructions to be provided by the Department of Justice.

d. The State of New York will pay \$210,950 in settlement of Relator's claim for attorney's fees and costs to Relator within five (5) days of the Effective Date of this Settlement Agreement, either by electronic funds transfer or in the form of a check, in accordance with written instructions to be provided by counsel for the Relator.

2. The United States agrees to release \$195,019,001 of the Deferred Payments to the State of New York through its deferral resolution process for the quarter in which this Agreement is signed. CMS will update the existing deferrals in the Medicaid Budget and Expenditure System/Children's Health Insurance Program Budget and Expenditure System to show the above amount of deferrals as being resolved, and will process a grant award to restore the funds to the State's Payment Management System Medicaid account. CMS will retain the remaining \$107,877,781 of the Deferred Payments.

3. The United States will pay the Relator up to \$10,000,000, pursuant to 31 U.S.C. § 3730(d). Upon receiving the first payments of the Settlement Amount as prescribed above, and as soon as feasible after receipt, the United States agrees to pay \$2,800,000 to Relator by electronic funds transfer. As soon as feasible after receipt of each additional payment pursuant to Paragraph 1(b), the United States will pay the Relator an additional 8 per cent of each payment received, until the Relator has received her full \$10,000,000.

4. Subject to the exceptions in Paragraph 8, below, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Defendants and their predecessors, successors, agencies, and current and former officials, agents and employees, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, disgorgement, restitution, recoupment, constructive trust, misrepresentation, and fraud. The release of each Defendant under this paragraph is made in consideration of the obligations of that

Defendant under this Agreement, and is conditioned upon that Defendant's fulfillment of its payment obligations as described in Paragraph 1, above.

5. The Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, hereby fully and finally releases the Defendants and their predecessors, successors, agencies, and current and former officials, agents, and employees, from any and all claims that the Relator could assert arising from or relating to any claims for services provided under the School Supportive Health Services Program or the Preschool Supportive Health Services Program from 1990 to the present, including but not limited to, any claim under the False Claims Act, 31 U.S.C. §§ 3729-3733; the New York State False Claims Act, New York State Finance Law, § 187, *et seq.*; or the common law. The release of the State of New York in this paragraph does not release any claims asserted by Relator against Jefferson County and/or Larry Tingley in the action entitled *Hedy Cirrincione and Crest Mainstream, Inc. v. Jefferson County and Larry D. Tingley, Individually and as Director of Jefferson County Community Services*, Index No. 99-1614 (Supreme Court, State of New York, Jefferson County). The release of each Defendant under this paragraph is made in consideration of the obligations of that Defendant under this Agreement, and is conditioned upon that Defendant's fulfillment of its payment obligations as described in Paragraph 1, above.

6. The OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the City of New York and the New York City Board of Education and its predecessors, successors, agencies, and current and former officials, agents and employees, under 42 U.S.C. § 1320a-7a (Civil Monetary

Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 8, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the City of New York and the New York City Board of Education from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below. The release of the City of New York and the New York City Board of Education under this paragraph is made in consideration of the obligations of the City of New York and the New York City Board of Education under this Agreement, and is conditioned upon the City of New York's fulfillment of its payment obligations as described in Paragraph 1(c), above.

7. CMS agrees to release the Defendants and their predecessors, successors, agencies, and current and former officials, agents and employees, from any administrative monetary claim that CMS has or may have under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, *et seq.*, and the regulations thereunder, to disallow, withhold, or defer, and from any other form of monetary recovery within its authority with respect to, any claims submitted and certified by March 31, 2009, on Form CMS-64 by the State of New York for the quarters beginning April 1, 1990 and ending December 31, 2008, including any claims submitted by the New York City Board of Education that were incorporated in such Form CMS-64's, under the School Supportive Health Services Program and the Preschool Supportive Health Services Program, except to the extent of the Deferred Payments retained in Paragraph 2, above, and the

Excluded Claims. The Excluded Claims are any claims that are the subject of a matter identified in a letter sent by the Department of Justice to the Defendants concurrent with the signing of this Agreement, but only to the extent of the allegations raised in that matter. Nothing in this paragraph precludes CMS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below. The release of each Defendant under this paragraph is made in consideration of the obligations of that Defendant under this Agreement, and is conditioned upon that Defendant's fulfillment of its payment obligations as described in Paragraph 1, above.

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including the Defendants and Relator) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Except as explicitly stated in this Agreement, any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

- g. Any liability for failure to deliver goods or services due; or
- h. Any liability of individuals, except as specified in paragraphs 4, 5,

6, and 7 above.

9. Relator and her heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B), and, conditioned upon receipt of Relator's share, Relator, for herself individually, and for her heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Actions; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

10. Conditioned upon receipt of the payment described in Paragraph 1(d), Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, agrees to release the Defendants from any liability to Relator arising from the filing of the Civil Actions, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

11. The Defendants waive and shall not assert any defenses they 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.

12. The Defendants fully and finally release (a) the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof; (b) CMS, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Defendants have asserted, could have asserted, or may assert in the future against CMS, its agencies, employees, servants, and agents, related to the Deferred Payment Claims and CMS' review and related administrative actions thereof, except for the Excluded Claims as defined in Paragraph 7, above; and (c) the Relator and her heirs, successors, attorneys, agents and assigns, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Defendants have asserted, could have asserted, or may assert in the future against the Relator, her heirs, successors, attorneys, agents and assigns, related to the Covered Conduct or the Deferred Payment Claims, and the United States' investigation and prosecution thereof.

13. The Defendants agree not to resubmit any claims that were previously deferred or denied related to the Covered Conduct or related to the Deferred Payment Claims, except for the Excluded Claims, and agree not to appeal any such denials of claims.

14. There is no term in this Agreement which serves as a waiver of the two-year claiming limit imposed upon a State's ability to claim federal financial participation in expenditures under an approved State Plan as set forth in 45 C.F.R. § 95.

15. (1) If, for any reason, the State of New York fails to make in full any payment as provided in Paragraph 1(b), above, within ten (10) business days of the date upon which such payment is due, the United States will provide written notice of the non-payment to the persons identified in Paragraph 15(2), below, and the State of New York shall have an opportunity to pay the unpaid balance within fifteen (15) business days from the date of receipt of the written notice. If the State of New York fails to pay the remaining unpaid balance of its payment obligations under Paragraph 1(b) within fifteen (15) business days of receiving the notice of non-payment, the United States, at its sole option, may either (a) deduct the remaining unpaid balance, with interest accrued at the Medicare interest rate set by CMS in accordance with 42 C.F.R. § 405.378 compounded daily from the date of non-payment on the remaining balance (including principal and interest), at any time from future grant awards, including but not limited to Medicaid grant awards, to the State of New York; or (b) void the releases of the State of New York provided in Paragraph 4, above, and pursue any or all civil and administrative remedies available, including initiation of a lawsuit under the False Claims Act for the Covered Conduct.

If the United States elects the first option, the State of New York agrees not to contest or appeal any deduction made by the United States. If the United States elects to pursue a civil or administrative action for the Covered Conduct, the State of New York shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or

similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States within sixty (60) calendar days of written notification to the State of New York that the releases have been voided pursuant to this Paragraph, except to the extent such defenses were available on December 12, 2001. In either event, the State of New York shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

(2) The United States will provide notice, as required under Paragraph 15(1), above, to the following:

Commissioner  
New York State Department of Health  
Corning Tower, 14th floor  
Empire State Plaza  
Albany, NY 12237

General Counsel  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower, 24th floor  
Empire State Plaza  
Albany, NY 12237

16. The obligations of the State of New York under this agreement shall not constitute a debt of the State within the meaning of any provisions of the New York State Constitution or any New York statute and may only be undertaken by the State of New York using funds that have been appropriated for such purpose or otherwise lawfully available as set forth in Section 41 of the State Finance Law. Nothing in this paragraph limits or voids the United States' remedies in Paragraphs 15 and 17.

17. (1) If, for any reason, the City of New York fails to make in full any payment as provided in Paragraph 1(c), above, within ten (10) business days of the date upon which such payment is due, the United States will provide written notice of the non-payment to the persons identified in Paragraph 17(2), below, and the City of New York shall have an opportunity to pay the unpaid balance due within fifteen (15) business days from the date of receipt of the written notice. If the City of New York fails to pay the remaining unpaid balance of its payment obligations under Paragraph 1(c) within fifteen (15) business days of receiving the notice of non-payment, the United States, at its sole option, may either (a) deduct the remaining unpaid balance, with interest accrued at the Medicare interest rate set by CMS in accordance with 42 C.F.R. § 405.378 compounded daily from the date of non-payment on the remaining balance (including principal and interest), at any time from future grant awards to the State of New York, including but not limited to Medicaid grant awards, in which event the State of New York may deduct an equal amount from future payments to the City of New York; or (b) void the releases provided in Paragraph 4, above, and pursue any or all civil and administrative remedies available, including initiation of a lawsuit under the False Claims Act for the Covered Conduct.

If the United States elects the first option, the Defendants agree not to contest or appeal the imposition of any of the described deductions. If the United States elects to pursue a civil or administrative action for the Covered Conduct, the City of New York and the New York City Board of Education shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States within sixty (60) calendar days of written notification to the City of New York that the releases have been voided pursuant

to this Paragraph, except to the extent such defenses were available on January 4, 2002. The City of New York shall pay the United States and the State of New York all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

(2) The United States will provide notice, as required under Paragraph 17(1), above, to the following:

Chief, General Litigation Division  
Office of the New York City Corporation Counsel  
100 Church Street  
New York, New York 10007

Director, Mayor's Office of Management and Budget  
75 Park Place, 6th floor  
New York, New York 10007

Assistant Comptroller for Accountancy  
Office of the New York City Comptroller  
One Center Street, Room 800  
New York, New York 10007

Deputy Comptroller for Claims & Adjudications  
Office of the New York City Comptroller  
One Center Street, Room 1200  
New York, New York 10007

18. The obligations of the City of New York under this agreement shall not constitute a debt of the City within the meaning of any provisions of the New York State Constitution or any New York statute or local law and may only be undertaken by the City of New York using funds that either have been appropriated for a purpose that may be construed to include such obligations or are otherwise lawfully available consistent with applicable State and local law. Nothing in this paragraph limits or voids the United States' remedies in Paragraphs 15 and 17.

19. The Defendants agree to the following:

a. *Unallowable Costs Defined:* that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Defendants or their present or former employees and agents in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement;
- (2) the United States’ audits and civil investigations of the matters covered by this Agreement;
- (3) the Defendants’ investigation, defense, and corrective actions undertaken in response to the United States’ audits and civil investigations in connection with the matters covered by this Agreement (including attorney’s fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payments the Defendants make to the United States or the Relator pursuant to this Agreement, including costs and attorney’s fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the PCA to:

(i) retain an independent review organization to perform annual reviews as described in the PCA;

(ii) prepare and submit reports to CMS.

However, nothing in this paragraph 19(a)(6) that may apply to the obligations undertaken pursuant to the PCA affects the status of costs that are not allowable based on any other authority applicable to the Defendants. (All costs described or set forth in this Paragraph 19(a) are hereafter “Unallowable Costs.”)

These amounts shall be separately accounted for by identification of costs incurred:

(a) through accounting records to the extent that is possible; (b) through memorandum records, including diaries and informal logs, regardless of whether such records are part of official documentation, where accounting records are not available; or (c) through itemized estimates where no other accounting basis is available.

b. *Future Treatment of Unallowable Costs:* These Unallowable Costs shall be separately determined and accounted for by the Defendants, and the Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any Form CMS-64, cost report, cost statement, information statement, or payment request submitted by the Defendants to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. *Treatment of Unallowable Costs Previously Submitted for Payment:* The Defendants further agree that within 90 days of the Effective Date of this Agreement, they shall identify to CMS any Unallowable Costs (as defined in this Paragraph)

included in payments previously sought from the United States, including, but not limited to, payments sought in any Form CMS-64's, cost reports, cost statements, information reports, or payment requests already submitted by the Defendants, and shall request, and agree, that such Form CMS-64's, cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. The Defendants agree that the United States, at a minimum, shall be entitled to recoup from the Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted Form CMS-64's, cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the Defendants on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the Defendants' Form CMS-64's, cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

20. This Agreement is intended to be for the benefit only of the Parties. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 21, below.

21. The Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the Deferred Payment Claims and the claims defined as the Covered Conduct.

22. Upon receipt of the initial payments described in Paragraphs 1(b), 1(c), and 1(d) above, the United States shall promptly file Notices of Intervention, and the United States and Relator shall promptly sign and file Joint Notices of Dismissal of the Civil Actions pursuant to the terms of the Agreement. The dismissal shall be with prejudice as to the Relator as to all claims, with prejudice to the United States with respect to claims that are released in this Agreement, and without prejudice to the United States with respect to claims that are not released in this Agreement.

23. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

24. The Defendants and the Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

25. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Northern District of New York, except that disputes arising under the PCA shall be resolved exclusively under the dispute resolution provisions in the PCA.

26. For purposes of construction, this Agreement shall be deemed to have been drafted by all of the Parties and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

27. This Agreement, the PCA entered into between CMS and the State of New York, and the Release Agreement entered into between the State of New York and the City of New York and the New York City Board of Education, constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

28. The individuals signing this Agreement on behalf of the Defendants represent and warrant that they are authorized by the Defendants to execute this Agreement. The individual signing this Agreement on behalf of Relator represents and warrants that he is authorized by Relator to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

29. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

30. This Agreement is binding on the Defendants' successors, transferees, heirs, and assigns.

31. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

33. 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.

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THE UNITED STATES OF AMERICA

DATED: 7/20/09

BY: David T. Cohen

David T. Cohen  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Gregory E. Demske  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Charlene Frizzera  
Acting Administrator  
Centers for Medicare & Medicaid Services

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

David T. Cohen  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 7/17/09

BY:  \_\_\_\_\_

Gregory E. Demske  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Charlene Frizzera  
Acting Administrator  
Centers for Medicare & Medicaid Services

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

David T. Cohen  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Gregory E. Demske  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: 7/17/09

BY: Charlene Frizzera

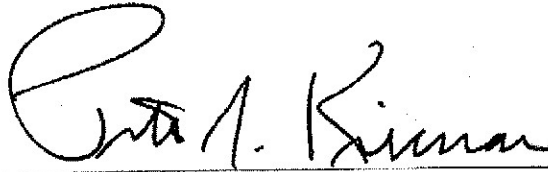
Charlene Frizzera  
Acting Administrator  
Centers for Medicare & Medicaid Services

STATE OF NEW YORK

DATED:

7/20/09

BY:



Peter Kiernan  
Counsel to the Governor

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Gregor N. Macmillan  
Director, Bureau of Health Insurance Programs  
Division of Legal Affairs  
New York State Department of Health

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Erin M. O'Grady-Parent  
Acting General Counsel  
New York State Department of Education

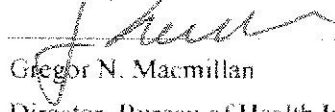
DATED: \_\_\_\_\_

BY: \_\_\_\_\_


Jeffrey Dvorin  
Deputy Bureau Chief  
Office of the New York State Attorney General

STATE OF NEW YORK

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Peter Kiernan  
Counsel to the Governor

DATED: July 17, 2009 BY:   
Gregor N. Macmillan  
Director, Bureau of Health Insurance Programs  
Division of Legal Affairs  
New York State Department of Health

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Erin M. O'Grady-Parent  
Acting General Counsel  
New York State Department of Education

DATED: July 17, 2009 BY:   
Jeffrey Dvorin  
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STATE OF NEW YORK

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BY: \_\_\_\_\_

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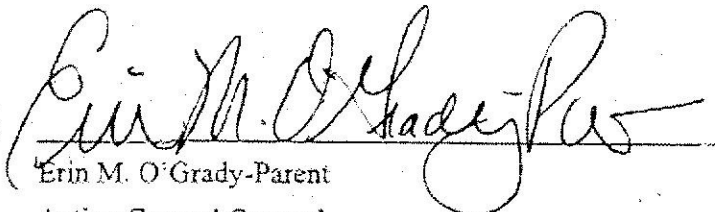
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Erin M. O'Grady-Parent  
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DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Jeffrey Dvorin  
Deputy Bureau Chief  
Office of the New York State Attorney General

**CITY OF NEW YORK**

DATED: July 20 2009 BY: 

Michael A. Cardozo  
Corporation Counsel  
City of New York

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Joel I. Klein  
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DATED: \_\_\_\_\_

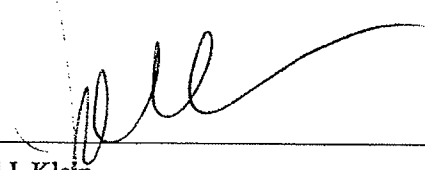
BY: \_\_\_\_\_

Michael A. Cardozo  
Corporation Counsel  
City of New York

**BOARD OF EDUCATION  
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DATED: 7/17/09

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City School District of the City of New York

**HEDY CIRRINCIONE**

DATED: 7/16/09

BY: Hedy Cirrincione  
Hedy Cirrincione

DATED: 7/16/09

BY: David A. Koenigsberg  
David A. Koenigsberg  
Menz Bonner & Komar LLP  
Counsel for Hedy Cirrincione