

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between and among the State of New York (the "State"), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"), Deborah Yannicelli ("Yannicelli"), and Extended Nursing Personnel CHHA, LLC, doing business as and also sued herein as Extended Home Care (collectively referred to hereinafter as "Extended HC"), a New York limited liability company (collectively, the "Parties").

WHEREAS, Extended HC is a Certified Home Health Agency as defined in Article 36 of the New York Public Health Law Section 3602(3) ("CHHA"), with its principal place of business located at 360 W. 31<sup>st</sup> Street, 3<sup>rd</sup> Floor, New York, New York, and provides home health aide services, nursing services and rehabilitation therapy services in New York; and

WHEREAS, Telford Home Assistance, Inc., doing business as and also sued herein as Extended Health Care Services ("Extended LHCSA"), a New York business corporation, is a Licensed Home Care Agency ("LHCSA") as defined in Article 36 of the New York Public Health Law, Section 3602(13), with its principal place of business located at 1 Rabro Drive, Suite 104, Hauppauge, New York, and provides nursing, home health aide and other paraprofessional services in New York; and

WHEREAS, B&H Healthcare Services, Inc., doing business as Nursing Personnel Home Care ("Nursing Personnel"), is a LHCSA as defined in Article 36 of the New York Public Health Law, Section 3602(13), with its principal place of business located at 175 South Ninth Street, Brooklyn, New York, and provides home health aide services in New York; and

WHEREAS, on November 5, 2007, Relator Deborah Yannicelli filed a complaint under the qui tam provisions of the federal False Claims Act, 31 U.S.C. §§ 3729-3733, and the New York State False Claims Act, N.Y. Fin. Law § 190(6), captioned United States of America and the State of New York ex rel. Deborah Yannicelli v. Extended Nursing Personnel CCHA, LLC, et al., in the United States District Court for the Eastern District of New York (Civil Action No. 07-4621) (Bloch, J.) (the "Yannicelli Action"); and

WHEREAS, Extended HC submitted and/or caused to be submitted Medical Assistance Program ("Medicaid") claims for home health aide services ("Medicaid Claims") to fiscal agents of the State of New York pursuant to the Social Services Law and the Public Health Law of the State of New York during the period from at least March 1, 2004 through February 28, 2007 ("Claims Period"); and

WHEREAS, the aforesaid Medicaid Claims were relied upon by the State to pay Extended HC during the Claims Period; and

WHEREAS, MFCU has conducted an industry-wide investigation into the provision of services by home health aides in New York during the Claims Period ("the MFCU Investigation") and the United States and New York State have jointly investigated the allegations in the Yannicelli Action; and

WHEREAS, as a result of the MFCU Investigation, MFCU determined that certain home health aide training schools ("Suspect Training Schools") furnished to certain individuals false certificates that certified that those individuals were qualified to provide home health aide services to Medicaid recipients, when in fact the individuals were not given the required training or valid certification and therefore such services were not reimbursable by Medicaid; and

WHEREAS, MFCU determined that home health aides who received certificates from Suspect Training Schools were subsequently employed by LHCSAs, including, but not limited to, Nursing Personnel, and assigned to Medicaid recipients; and

WHEREAS, Extended HC entered into contracts with LHCSAs, including, but not limited to, Nursing Personnel, to furnish home health aides to Medicaid recipients, and thereafter billed Medicaid for services provided by these home health aides; and

WHEREAS, New York State contends that it has certain civil claims against Extended HC under the New York State False

Claims Act (N.Y. Fin. Law §§ 189 et seq.), other New York statutes and the common law, as specified in Paragraph 6 below, for engaging in the following conduct during the Claims Period:

(a) Extended HC submitted, or caused to be submitted, claims to Medicaid, and received payment thereon, for home health aide services purportedly provided by individuals who presented certificates from Suspect Training Schools that falsely indicated satisfactory completion of a home health aide training course, when, in fact, such individuals had never received the required training or valid certification;

(b) Extended HC submitted, or caused to be submitted, claims to Medicaid for reimbursement for home health aide services, all or a portion of which were not rendered as claimed; and

(c) Extended HC violated Medicaid cost reporting requirements to the extent that certain contract payments made to Nursing Personnel and Friendly Home Care during any of the calendar years within the Claims Period were not properly reported in accordance with applicable related-party rules on Extended HC's cost reports submitted to the State for such years.

(collectively, the "Covered Conduct"); and

WHEREAS, this Agreement is neither an admission of facts or liability by Extended HC, nor a concession by the State that its claims are not well founded; and

WHEREAS, Extended HC denies the contentions of the State and Yannicelli as set forth herein and in the Yannicelli Action; and

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties mutually desire to reach a full and final settlement pursuant to the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

**A. SETTLEMENT PAYMENTS**

1. Extended HC agrees to pay to the United States and the State a total of Nine Million Four Hundred Eighty Thousand Six Hundred dollars (\$9,480,600.00) with interest at three percent (3%) per annum compounded annually commencing January 5, 2010 through the date of payment (the "Total Medicaid Settlement Amount"). In accordance with 42 U.S.C. § 1396b(d)(2)(C) and 42 C.F.R. § 433.316, payment to the State shall be made as specified in Paragraph 2 herein, and the balance of the Total Medicaid Settlement Amount, after deduction of the Extended HC New York Settlement Amount (as defined below), shall be distributed to the United States as agreed upon between Extended HC and the United States (the "Federal Distribution").

2. Extended HC shall pay the State the sum of Two Million Seven Hundred Thirty-Two Thousand Four Hundred dollars (\$2,732,400.00) plus three percent (3%) interest per annum compounded annually on the outstanding balance ("Extended HC New

York Settlement Amount"), beginning January 5, 2010, to be paid as follows:

(i) Extended HC consents to the transfer and payment to MFCU for credit to the State of all valid currently withheld Medicaid reimbursement claims due to Extended HC under an existing New York State Department of Health administrative claims withholding procedure, up to One Million Two Hundred Fifty-One Thousand Eight Hundred dollars (\$1,251,800.00). To the extent that the aggregate amount of any valid claims withheld as a result of the MFCU investigation from Medicaid reimbursements (and not previously refunded to Extended HC) exceeds the sum of the payment due under this subparagraph and the amount required to fund the Federal Distribution, the Attorney General shall release the amount of such claims payments to Extended HC within thirty (30) days of the Effective Date of this Agreement.

(ii) Commencing January 5, 2010, the New York State Department of Health shall institute a new administrative claims withholding procedure, and shall withhold a percentage of current and future Medicaid reimbursement payments validly due and payable to Extended HC at a rate reasonably calculated to ensure payment to the State of One Million Four Hundred Eighty Thousand Six Hundred dollars (\$1,480,600.00) plus interest by January 5, 2012 ("Withheld Claims") and pay or transfer said

Withheld Claims to MFCU beginning April 5, 2010 pursuant to the following schedule ("Minimum Periodic Payments"):

Payment	Due on or Before
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Eleven Thousand One Hundred Four dollars and Fifty cents(\$11,104.50)	April 5, 2010
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Nine Thousand Seven Hundred Sixteen dollars and Forty-four cents (\$9,716.44)	July 5, 2010
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Eight Thousand Three Hundred Twenty-Eight dollars and Thirty-Eight cents (\$8,328.38)	October 5, 2010
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Six Thousand Nine Hundred Forty dollars and Thirty-One cents (\$6,940.31)	January 5, 2011
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Five Thousand Five Hundred Fifty-Two dollars and Twenty-Five cents (\$5,552.25)	April 5, 2011

One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Four Thousand One Hundred Sixty-Four dollars and Nineteen cents (\$4,164.19)	July 5, 2011
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of Two Thousand Seven Hundred Seventy-Six dollars and Thirteen cents (\$2,776.13)	October 5, 2011
One Hundred Eighty-Five Thousand Seventy-Five dollars (\$185,075.00), plus interest in the amount of One Thousand Three Hundred and Eighty-Eight dollars and Six cents (\$1,388.06)	January 5, 2012

(iii) In the event that Extended HC does not accrue sufficient valid Withheld Claims to satisfy any Minimum Periodic Payment, or the New York State Department of Health is otherwise unable to administer such Withheld Claims, then Extended HC shall pay to the State the difference between said Minimum Periodic Payment and the amount of the Withheld Claims within thirty (30) days of demand by MFCU. In the event that the State determines, in its sole discretion, that Extended HC is unlikely to accrue sufficient valid reimbursement claims to satisfy any Minimum Periodic Payment, or in the event that the



Department of Health does not implement a procedure to withhold such claims, then Extended HC shall pay the Minimum Periodic Payment in full within thirty (30) days after demand for such payment by the State. In the event that Extended HC withdraws from, or is disqualified from participation in, the Medicaid Program, or in the event that Extended HC is the subject of a bankruptcy filing, the entire unpaid balance of the Extended HC New York Settlement Amount shall become immediately due and payable to the State. Extended HC hereby consents to payment of Withheld Claims by the Department of Health to MFCU for further application to the payments due hereunder and shall execute any writing required by the Department of Health to facilitate such payment.

(iv) Notwithstanding these provisions that allow for periodic payment, Extended HC shall at all times have the right to prepay the outstanding amount, in whole or in part, without penalty but with interest through the date of the payment.

**B. PAYMENTS TO RELATOR**

3. Contingent upon the State receiving the Extended HC New York Settlement Amount as set forth in Paragraph 2 above, within thirty (30) days after the State's receipt of each of the installment payments, the State agrees to pay Yannicelli a sum of money equal to twenty percent (20%) of each of the installment payments. The State's obligation to pay Yannicelli pursuant to

this paragraph is conditioned upon the State's actual receipt of each payment due from Extended HC, as set forth in Paragraph 2. Each such payment shall be made by check payable to Deborah Yannicelli and Tim McInnes, Attorney.

4. Under no circumstances shall the State have any liability to Yannicelli or Yannicelli's attorneys except as set forth in Paragraph 3. The State in no way promises or guarantees Yannicelli, nor is liable to Yannicelli for, the collection or payment of any funds pursuant to this Agreement or the payment of any relator's share except as provided herein for funds actually collected and received by the State. Under no circumstances shall the State be required to exercise any authority under this Agreement or any other power or authority for the benefit of Relator.

**C. PROHIBITION AGAINST VIOLATING THIS AGREEMENT**

5. Extended HC shall comply fully with the terms of this Agreement. The Attorney General may make any appropriate application to enforce or interpret the provisions of this Agreement or, in the Attorney General's sole discretion, commence any action or proceeding, for such other and further relief as the Attorney General deems proper and necessary for the enforcement of this Agreement or to remedy any breach thereof. Prior to bringing any action to enforce or to interpret the provisions of this Agreement, the Attorney General will provide

Extended HC with written notice of the alleged failure and a reasonable opportunity to cure the alleged failure or to otherwise respond. However, should the Attorney General deem that immediate action is necessary to protect the State's interest, the Attorney General may act to preserve the status quo without providing notice and an opportunity to cure, provided that the Attorney General give Extended HC timely notice of the action.

**D. RELEASES**

6. Subject to the exceptions in Paragraph 9 below (concerning excluded claims), in consideration of the obligations of Extended HC set forth in this Agreement, conditioned upon payment in full by Extended HC of the Extended HC New York Settlement Amount, and subject to Paragraph 24 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State agrees to release Extended HC and all of its current and former officers, employees, attorneys, members, managers, and shareholders (collectively, the "Individual Extended Releasees") from (i) any civil or administrative monetary claim arising from the Covered Conduct that the State has or may have against Extended HC or any of the Individual Extended Releasees under the New York State False Claims Act, N.Y. Fin. Law § 189 et seq., Executive Law § 63(12), Social Services Law § 145-b, or any other

state law, or common law or equity, including equitable theories of payment by mistake, disgorgement, unjust enrichment, breach of contract and fraud; and (ii) any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the State has asserted, could have asserted, or may assert in the future against Extended HC or any of the Individual Extended Releasees in the State's capacity as an assignee of Immediate Home Care, Inc. ("Immediate") or in any capacity whatsoever relating to the collection of Immediate's accounts receivable, the disposition of its assets and the wind-up of its affairs.

7. Subject to the exceptions in Paragraph 9 below (concerning excluded claims), in consideration of the obligations of Extended HC set forth in this Agreement, conditioned upon payment in full by Extended HC of the Extended HC New York Settlement Amount, and subject to Paragraph 24 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the Attorney General will not prosecute (i) Extended HC, (ii) its current officers, attorneys, members, managers and shareholders, or (iii) such of its current employees as were classified at any point during the Claims Period as exempt under the federal Fair Labor Standards Act (the "Exempt Employees") for violations of law arising from the Covered Conduct. Nothing in this paragraph

shall be construed to release any individual from criminal liability for any act relating to the creation, presentation or possession of a false training certificate or other misrepresentation as to personal qualification as a home health aide, or any act of physical harm, neglect, abuse, or injury to any person.

8. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of Extended HC in this Agreement, conditioned upon payment in full by Extended HC of the Extended HC New York Settlement Amount, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Extended HC and all of its current and former officers, employees, attorneys, members, managers, or shareholders from any civil monetary claim (including attorneys' fees, costs, and expenses of every kind and however denominated) the State and Yannicelli may have for the Covered Conduct against Extended HC or any of the Individual Extended Releasees under the New York State False Claims Act, N.Y. Fin. Law § 189 et seq.

9. Notwithstanding any term of this Agreement, including the releases provided in Paragraphs 6-8 above, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are the following claims of the State:

(a) Any civil, criminal or administrative claims arising under the State tax laws;

(b) Any civil, criminal, or administrative claims against current or former employees of Extended HC who do not qualify as Exempt Employees and who have been criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement on any offense related to the Covered Conduct;

(c) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and

(d) Any claims based upon such obligations as are created by this Agreement.

10. Extended HC fully and finally releases the State, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Extended HC has asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the matters covered by the Yannicelli Action, the MFCU Investigation, any prosecution related thereto, and this Agreement.

11. Extended HC fully and finally releases Yannicelli 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 Extended HC has asserted, could have asserted, or may assert in the future

against Yannicelli or her heirs, successors, attorneys, agents, and assigns related to the Yannicelli Action and Yannicelli's investigation and prosecution thereof.

12. Yannicelli 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 N.Y. Fin. Law § 190(5)(b)(ii). Conditioned upon receipt of the payments described in Paragraph 3, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the State, its officers, agents, and employees, from any claims arising from or relating to N.Y. Fin. Law § 190; from any claims arising from the filing of the Yannicelli Action against Extended HC; from any other claims for a share of the Settlement Amount; and in full settlement of any claims Yannicelli may have against the State under this Agreement. This Agreement does not resolve or in any manner affect any claims that the State has or may have against Yannicelli arising under the State's tax laws, or any claims arising under this Agreement.

**E. OTHER PROVISIONS**

13. Unless and until the Extended HC New York Settlement Amount is paid in full, whether pursuant to the schedule set forth in Paragraph 2 or by prepayment, Extended HC

hereby agrees not to sell or accept an offer to sell all or any part of its business operations without giving prior notice to the Attorney General, who, in his sole discretion, may require a security mechanism to ensure payments of any amounts still due under this Agreement. Should all or any portion of Extended HC's business be sold on or before full payment to the State of the Extended HC New York Settlement Amount pursuant to Paragraph 2 above, payment of the balance of the Extended HC New York Settlement Amount shall be accelerated and paid upon closing of such sale. Further, no officer, employee, member, manager or shareholder of Extended HC may accept or receive any remuneration relating to any such sale, including, but not limited to, any portion of the proceeds of such sale, directly or indirectly, until the Extended HC New York Settlement Amount is paid in full.

14. In the event that the State seeks remedies for collection or enforcement of Extended HC's obligations hereunder, and the State substantially prevails in its collection or enforcement action, Extended HC shall be responsible for all costs and expenses incurred by the State in connection with that action.

15. In the event that Extended HC fails to pay any or all of the Extended HC New York Settlement Amount when due as set forth in Paragraph 2 above, the State, in its sole discretion, may declare any or all of the following:



(a) any dismissal as to Extended HC shall be null and void, and the State may file a confession of judgment against Extended HC in the form attached hereto as Exhibit A;

(b) rescind its agreement to this Agreement and pursue all available remedies; or

(c) pursue an appropriate action or actions against Extended HC for breach of contract.

16. In the event that the State pursues any action against Extended HC pursuant to Paragraph 15 above, Extended HC expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the State within thirty (30) calendar days of written notification to Extended HC that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent such defense was available on the date the Yannicelli Action was filed.

17. In the event that the State pursues any action against Extended HC pursuant to Paragraph 15 above, Extended HC further waives and will not assert any defenses it may have to any action relating to the Covered Conduct to the extent that such defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines

Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such action.

18. Extended HC agrees that this Agreement is not punitive in purpose or effect.

19. Extended HC agrees that all costs incurred by or on behalf of itself and any associated person or entity in connection with (i) the MFCU Investigation; (ii) Extended HC's investigation and defense of this matter (including attorneys' fees); (iii) the negotiation and performance of this Agreement; (iv) the payment pursuant to this Agreement; and (v) preparing and submitting any reports required under this Agreement, are unallowable costs on government contracts and under the Medicaid Program. Extended HC will not charge such unallowable costs directly or indirectly to the Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Extended HC to the Medicaid Program.

20. Except inasmuch as, and to the extent that, Paragraph 40 confers express third-party beneficiary rights on Extended LHCSA, this Agreement is intended to be for the benefit of the Parties to this Agreement only, and by this instrument the Parties to this Agreement do not release any claims against any other person or entity, except as expressly provided by this Agreement.

21. Extended HC agrees that it will not seek payment for any health care services covered by this Agreement from any health care beneficiaries or their parents or insurers.

22. Extended HC shall maintain custody of, or make arrangements to have maintained, all of its documents and records related to the Covered Conduct for a period of two years after completion of the payment of the Extended HC New York Settlement Amount or the period required by 18 N.Y.C.R.R. § 504.3 and any applicable provider manual, whichever is later.

23. Extended HC expressly warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and that it currently believes it will remain solvent following its payment of the Extended HC New York Settlement Amount when and as set forth in this Agreement. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, they (i) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Extended HC, within the meaning of 11 U.S.C. § 547(c)(1) and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a

reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Extended HC is or subsequently becomes indebted on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

24. If, within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Extended HC commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (i) seeking to have any order for relief of Extended HC's debts, or seeking to adjudicate Extended HC as bankrupt or insolvent; or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for Extended HC or for all or any substantial part of its assets, Extended HC agrees as follows:

a. Extended HC's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Extended HC will not argue or otherwise take the position in any such case, proceeding or other action that: (i) Extended HC's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Extended HC was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the State hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Extended HC.

b. If any of Extended HC's obligations hereunder is avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action or proceeding against Extended HC for the claims that would otherwise be covered by the releases provided in Paragraphs 6-8, above. Extended HC agrees that (i) any such claims, actions or proceedings brought by the State (including any proceedings to exclude Extended HC from participation in Medicaid) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and Extended HC shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) Extended HC 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 which are brought by the State within thirty (30) calendar days of written notification to Extended HC that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date the Yannicelli Action was filed; and (iii) the State has a valid claim against Extended HC in the amount of Three Million Seven

Hundred Eighty-Three Thousand Five Hundred Forty dollars (\$3,783,540.00), and the State may pursue its claims in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Extended HC acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

25. 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.

#### **Choice of Law and Venue**

26. This Agreement is governed by the laws of New York State without regard to choice of law or conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of New York. The Parties waive any objection that any of them may have now or hereafter to this venue and agree to accept and acknowledge service in any such suit, action or proceeding.

#### **No Waiver by the State; Survivability**

27. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not

be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

28. If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

29. The terms of this Agreement shall remain effective notwithstanding the death or incapacity of any person, or any appeal, collateral attack, or any challenge to any criminal charge, conviction, plea or sentencing of any person, including but not limited to the reversal, modification, or dismissal of all or any portion of such charge, conviction, plea or sentence, or the charging, conviction, plea or sentencing of any other person.

#### **Complete Agreement**

30. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended, changed, modified or waived except in writing signed by the State and Extended HC.

31. Extended HC acknowledges and represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

32. Yannicelli acknowledges and represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and that she has entered into this Agreement upon due deliberation with the advice of counsel.

33. The undersigned individuals signing this Agreement on behalf of Extended HC and Yannicelli each represent and warrant that they are authorized, respectively, by Extended HC and Yannicelli to execute this Agreement. The undersigned Deputy Attorney General represents that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement.

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

35. The captions in this Agreement are provided for reference only and are not operative terms of this Agreement.

36. The effective date of this Agreement is the date upon which the last signatory to the Agreement signs ("Effective Date of this Agreement"). Facsimiles of signatures shall



constitute acceptable, binding signatures for the purposes of this Agreement.

37. For purposes of construction, 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.

38. Extended HC agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Extended HC's: (i) testimonial obligations: or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

### **Notices**

39. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

IF TO THE ATTORNEY GENERAL and the STATE:

New York State Attorney General  
Medicaid Fraud Control Unit  
Attn: Chief, Civil Enforcement Division  
120 Broadway  
New York, New York 10271

IF TO EXTENDED HC:

Stephen A. Warnke, Esq.  
Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704

IF TO YANNICELLI:

Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038

**Dismissal of Action**

40. Within thirty (30) days after receipt of the initial payments described in Paragraph 2 above, the State and Yannicelli shall file a Joint Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a) (i) dismissing their claims for the Covered Conduct in the Yannicelli Action against Extended HC with prejudice as to the State and Yannicelli, and (ii) dismissing all remaining allegations against Extended HC and Extended LHCSA without prejudice as to the State and with prejudice as to Yannicelli.

**THE STATE OF NEW YORK**

ANDREW M. CUOMO  
Attorney General of the  
State of New York

DATED: December \_\_, 2009 By: \_\_\_\_\_

Heidi Wendel  
Special Deputy Attorney General  
Medicaid Fraud Control Unit  
120 Broadway 13<sup>th</sup> Floor  
New York, NY 10271  
Telephone: (212) 417-5300

**EXTENDED NURSING PERSONNEL CHHA, LLC**

DATED: December \_\_, 2009 By: \_\_\_\_\_  
Vincent Achilarre  
Chief Executive Officer

DATED: December \_\_, 2009 By: \_\_\_\_\_  
Stephen A. Warnke, Esq.  
Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Counsel for Extended HC  
Telephone: (212) 841-0681

**RELATOR DEBORAH YANNICELLI**

DATED: December \_\_, 2009 By: \_\_\_\_\_  
Deborah Yannicelli  
Relator

DATED: December \_\_, 2009 By: \_\_\_\_\_  
Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038  
Telephone: (212) 292-4573

DATED: December \_\_, 2009 By: \_\_\_\_\_  
Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, GA 30076