

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Defense Health Agency (“DHA”) (collectively the “United States”), and Kennell & Associates, Inc. (“Kennell”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Kennell is a research and consulting firm located in Falls Church, Virginia, that provides actuarial consulting services to DHA. Since 1995, Kennell has assisted DHA (formerly known as the Tricare Management Activity (“TMA”)) in the operation and monitoring of the Uniformed Services Family Health Plan (“USFHP”) program. Among other things, Kennell has been responsible for developing and annually updating the capitation rate-setting methodology used to determine the payments TMA made to the six Designated Providers (“DPs”) in the USFHP program pursuant to the DPs’ contracts with TMA.

B. The United States contends that it has certain civil claims against Kennell arising from errors Kennell made in executing the capitation rate-setting methodology that was used to determine the payments TMA made to the DPs between October 1, 2008 and November 30, 2012 and, once Kennell became aware of those errors in 2012 and thereafter, from Kennell’s failure to notify TMA of Kennell’s past errors or the impact those past errors had on payments from TMA to the DPs. Specifically, Kennell made errors in calculating the Health Status Adjustments (“HSAs”) that were used to determine the payments TMA made to the DPs in Base Period, Option Period (“OP”) 1, OP2, and OP3 of the DPs’ 2008 contracts with TMA (the “HSA Errors”). Although Kennell became aware of the HSA Errors in April 2012 and thereafter,

Kennell did not disclose to TMA that it had made the HSA Errors in Base Period, OP1, OP2 and OP3, nor did Kennell notify TMA that, as a result of the HSA Errors, TMA paid more to the DPs than TMA would have paid had the errors not been made (and more than was permitted by law or contract). That conduct is referred to below as the Covered 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Kennell agrees to make each of the payments described below, which are also set forth in Exhibit A, to the United States (collectively, the “Settlement Amount”):

a. Kennell will pay the United States the sum of \$479,951 (the “Lump Sum Payment”) and interest at a rate of 1.875% per annum from February 7, 2022 within ten (10) days of the Effective Date of this Agreement;

b. Kennell will pay the United States \$100,000, and interest at a rate of 1.875% per annum from February 7, 2022, for each of the calendar years 2023, 2024, and 2025, no later than May 15 of the subsequent calendar year (the “Fixed Payments”) (i.e., a payment of \$100,000, and interest at a rate of 1.875% per annum from February 7, 2022, shall be made no later than May 15, 2024; a payment of \$100,000, and interest at a rate of 1.875% per annum from February 7, 2022, shall be made no later than May 15, 2025; and a payment of \$100,000, and interest at a rate of 1.875% per annum from February 7, 2022, shall be made no later than May 15, 2026);

c. Kennell will pay the United States 2.0% of its annual contract revenues (as demonstrated by submission to the United States of Kennell’s Financial Statements and

Compilation Reports or other comparable reports prepared by its outside accountant) for each of calendar years 2023, 2024, and 2025 (the “Contingent Payments”), no later than May 15 of the subsequent calendar year (e.g., the Contingent Payment for calendar year 2023 is due no later than May 15, 2024);

d. No later than ten (10) days after the Effective Date of this Agreement, Kennell will segregate the sum of [REDACTED] in a separate interest-bearing account (the “Segregated Amount”). On May 15, 2025, Kennell will pay the Segregated Amount, plus any interest received by Kennell on the Segregated Amount through the date of payment, to the United States [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e. Kennell will generally continue its practice of maintaining a cash reserve in which it places any revenue it receives in excess of its expenses for the year (the “Reserve”); however, during the term of this Agreement (and until Kennell fully satisfies its obligations hereunder), Kennell represents and agrees that it will not (a) make payments or distributions to David Kennell or Geoffrey Hileman that arise solely from their equity ownership interests in Kennell (e.g., profit distributions), excluding the tax withholding related to any transfers of existing shares of the Company from David Kennell to Geoffrey Hileman and excluding any

reimbursement by the Company for expenses related to, and tax withholding on, David Kennell's life insurance, for which Geoffrey Hileman is the policyholder; or (b) make salary or bonus payments to David Kennell or Geoffrey Hileman in excess of the projected salary and bonus payments disclosed to the United States on November 3, 2022. If, as of December 31, 2023, December 31, 2024, or December 31, 2025 (each an "Excess Calculation Date"), the amount in the Reserve exceeds two months of Kennell's revenue for that calendar year, Kennell will pay the entire amount in the Reserve in excess of two months of its revenue to the United States (the "Excess Reserve Payment"). In the event Kennell's Financial Statements, Compilation Report or other comparable report prepared by its outside accountant does not detail the amount in the Reserve as of an Excess Calculation Date, Kennell will provide the United States with a sworn statement, along with reasonable supporting financial documents and data, by January 31 of the subsequent calendar year documenting the amount of money in the Reserve as of the Excess Calculation Date. In the event an Excess Reserve Payment is due, Kennell will make that payment to the United States no later than May 15 of the subsequent calendar year.

Payment of the Settlement Amount shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. The Settlement Amount constitutes restitution to the United States.

2. If Kennell is sold, merged, or transferred, or a significant portion of the assets of Kennell is sold, merged, or transferred into another non-affiliated entity, Kennell shall promptly notify the United States, and all remaining payments owed pursuant to the Agreement shall be accelerated and become immediately due and payable.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below and subject to Paragraph 5 (concerning disclosure of assets), and Paragraph 10 (concerning default)

below, and upon the United States' receipt of the Settlement Amount due under Paragraph 1, the United States releases Kennell 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; the anti-fraud section of the Contract Disputes Act, 41 U.S.C. § 7103(c); or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights 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. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, 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 of individuals;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Kennell has provided sworn financial disclosures and supporting documents and information ("Financial Disclosures") to the United States and the United States has relied on the

accuracy and completeness of those Financial Disclosures in reaching this Agreement. Kennell warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of any asset(s) in which Kennell had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Kennell's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Kennell on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$75,000 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Kennell's previously undisclosed assets. Kennell agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph, rescinds this Agreement, Kennell waives and 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 (a) are filed by the United States within 120 calendar days of written notification to Kennell that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on August 19, 2019.

6. Kennell waives and shall not assert any defenses Kennell 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.

7. Kennell fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Kennell has 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 or the United States' investigation or prosecution thereof.

8. 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 Kennell, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Kennell'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 attorneys' fees);
- (4) the negotiation and performance of 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 Kennell, and Kennell 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, Kennell shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Kennell or any of its subsidiaries or affiliates from the United States. Kennell agrees that the United States, at a minimum, shall be entitled to recoup from Kennell 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 Kennell's books and records and to disagree with any calculations submitted by Kennell or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Kennell, or the effect of any such Unallowable Costs on the amount of such payments.

9. Kennell agrees to cooperate fully and truthfully with the United States' investigation of, and any future civil suit against, individuals and entities not released in this Agreement based on claims related to the Covered Conduct. Upon reasonable notice, Kennell shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees—including, but not limited to, David Kennell and Geoffrey Hileman—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. Kennell further agrees 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. Further, Kennell agrees to assist the United States, upon request, in other reasonable tasks or projects related to the United States' investigation of, and any potential civil suit against, individuals and entities not released in this agreement for claims related to the Covered Conduct. Kennell agrees not to charge or demand compensation from the United States in exchange for cooperating in the ways outlined above. Kennell understands and agrees that, should the United States determine in good faith that Kennell has failed to cooperate fully and truthfully as set forth in this paragraph, the United States may rescind this Agreement, and Kennell will be subject to civil suit for civil claims arising from the Covered Conduct. In the event that the United States, pursuant to this paragraph, rescinds this Agreement, Kennell waives and 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 (a) are filed by the United States within 120 calendar days of written notification to Kennell that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on August 19, 2019. In the event that the United States, pursuant to this paragraph, rescinds this Agreement, Kennell reserves the right to argue to a court that the Agreement should remain in full force and effect because Kennell complied with its obligations under the Agreement.

10. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Kennell's financial condition as reflected in the Financial Disclosures referenced in Paragraph 5.

a. In the event that Kennell fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Kennell shall be in default of Kennell's payment obligations ("Default"). The United States will provide a written Notice of Default, and Kennell shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Agreement up to the date of payment. Notice of Default will be delivered to Kennell, or to such other representative as Kennell shall designate in advance in writing. If Kennell fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Kennell agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Kennell for the claims that would otherwise be covered by the releases provided in Paragraph 3 above, with any recovery reduced by the amount of any payments previously made by Kennell to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Kennell and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or

recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Kennell agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Kennell waives and agrees 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 (i) filed by the United States against Kennell within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on August 19, 2019. Kennell agrees not to contest any offset, recoupment, and/or 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.

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 into this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of Maryland. 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. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

16. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

18. This Agreement is binding on Kennell's successors, transferees, heirs, and assigns.

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

20. 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: 12/7/23 BY: Amy D. Kossak

Amy D. Kossak
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: Dec. 7, 2023 BY: BERSHOK.RHONDA Digitally signed by
BERSHOK.RHONDA.LYNN.1174450
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Date: 2023.12.07 11:01:04 -05'00'
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Rhonda L. Bershok
Associate General Counsel
Defense Health Agency

KENNEL & ASSOCIATES, INC. - DEFENDANT

DATED: _____ BY: _____

David Kennell
President, Kennell & Associates, Inc.

DATED: _____ BY: _____

Geoffrey Hileman
Vice President, Kennell & Associates, Inc.

DATED: _____ BY: _____

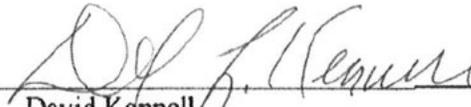
Jonathan M. Phillips
Counsel for Kennell & Associates, Inc.

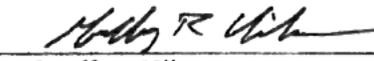
THE UNITED STATES OF AMERICA

DATED: _____ BY: _____
Amy D. Kossak
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____
Rhonda L. Bershok
Associate General Counsel
Defense Health Agency

KENNEL & ASSOCIATES, INC. - DEFENDANT

DATED: 12/7/2023 BY: 
David Kennell
President, Kennell & Associates, Inc.

DATED: 12/6/2023 BY: 
Geoffrey Hileman
Vice President, Kennell & Associates, Inc.

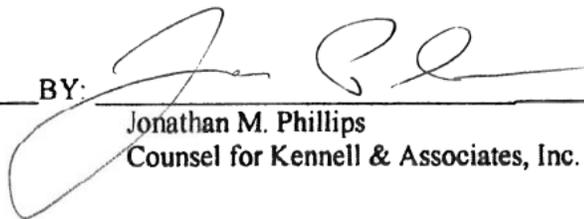
DATED: 12/7/2023 BY: 
Jonathan M. Phillips
Counsel for Kennell & Associates, Inc.

EXHIBIT A

Due Date	Lump Sum or Fixed Payment	Interest Payment	Contingent Payment	Other Payments
Within Ten Days of Effective Date of Agreement	\$479,951	\$26,804.14 ¹	None	
May 15, 2024	\$100,000	\$2,450.34 ¹	2.0% of revenues for calendar year (CY) 2023	Excess Reserve Payment ²
May 15, 2025	\$100,000	\$3,750	2.0% of revenues for CY 2024	Excess Reserve Payment & Segregated Amount ³
May 15, 2026	\$100,000	\$1,875	2.0% of revenues for CY 2025	Excess Reserve Payment

¹ Based on December 8, 2023 initial payment date.

² Pursuant to the terms set forth in Paragraph 1.e of the Agreement.

³ Pursuant to the terms set forth in Paragraph 1.d of the Agreement.