SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Western District of New York, and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively, the "United States"), Independent Health Association, Inc. and Independent Health Corporation (hereafter collectively referred to as "Independent Health"), DxID LLC, and Betsy Gaffney (Independent Health, DxID, and Gaffney are hereafter collectively referred to as "the Settling Parties"), and Teresa Ross ("Relator"), through their authorized representatives. The United States, Settling Parties, and Relator are hereafter collectively referred to as "the Parties."

RECITALS

A. Independent Health Association, Inc., (IHA), is a non-profit corporation with headquarters in Buffalo, New York. IHA is a Medicare Advantage ("MA") organization that offers two MA Plans in New York State, Contract H3344 and Contract H3362.

B. Independent Health Corporation (IHC) is a for-profit subsidiary of IHA. IHA controls IHC, including through overlapping corporate governance boards and executive officers.

C. DxID was a New York Limited Liability Company. DxID was a subsidiary of IHC. Among other things, DxID provided risk adjustment and retrospective chart review services to MA Plans, including those managed by IHA. IHA shut down DxID in June 2021.

D. Betsy Gaffney was the founder and Chief Executive Officer of DxID.

E. Medicare beneficiaries may enroll in managed healthcare insurance plans called MA Plans that are owned and operated by private insurance companies or MA organizations. Under the MA Program, MA organizations agree to provide Medicare coverage to Medicare beneficiaries in exchange for capitated payments (i.e., fixed monthly payments for each enrollee)

from the Centers for Medicare & Medicaid Services (CMS), which is the component within HHS that administers the program. CMS adjusts these payments for various "risk" factors that affect expected healthcare expenditures to ensure that MA organizations are paid more money for less healthy enrollees for whom the MA organization is expected to incur higher healthcare costs and paid less money for healthier enrollees expected to incur lower costs.

F. To obtain these payment adjustments, MA organizations submit "risk adjustment" data, including risk-adjusting medical diagnosis codes for their enrollees, to CMS. Federal regulations require that the codes submitted by MA organizations be supported by the medical records of the beneficiaries enrolled in their MA plans, and that the submissions are accurate, complete, and truthful. Federal regulations further require that the chief executive officer, chief financial officer, or a delegate of the MA organization "certifies (based on best knowledge, information, and belief) the accuracy, completeness, and truthfulness of the relevant data" submitted, including "encounter data." 42 C.F.R. § 422.504(l). It also requires that they "certify . . . that the data [the MA organization] submits under § 422.310 are accurate, complete, and truthful," as well as certify that the data "generated by a related entity, contractor, or subcontractor of an MA organization" for "accuracy, completeness, and truthfulness of the data." 42 C.F.R. §§ 422.504 (l)(2) (citing 42 C.F.R. § 422.310 (regarding risk adjustment data)) & (l)(3).

G. On April 11, 2012, Relator Teresa Ross filed a *qui tam* action in the United States District Court for the Western District of New York captioned *United States ex rel. Ross v. Group Health Cooperative, Independent Health Corporation, DxID LLC, Dr. John Haughton, Betsy Gaffney, and Independent Health Association*, 12-cv-0299(S) (W.D.N.Y.), pursuant to the *qui tam* provisions of the False Claims Act ("FCA"), 31 U.S.C. § 3730(b) (the Civil Action). The Civil Action was kept under seal by the Court pursuant to the provisions of the False Claims Act

("FCA"). Relator filed an amended complaint on February 5, 2016. This amended complaint was also under seal pursuant to the FCA. In her complaints, Relator alleged, *inter alia*, that for dates of services from January 1, 2011 to January 31, 2017, DxID knowingly captured diagnosis codes and Independent Health knowingly submitted the diagnosis codes to CMS that were not supported by medical records and, thus, were not eligible for risk adjustment payment. The Civil Action was unsealed by the Court on July 18, 2019.

H. The United States moved to intervene for good cause on January 23, 2020. The Court granted the United States' motion on August 9, 2021. The United States filed its Complaint-in-Intervention on September 13, 2021. *See United States ex rel. Ross v. Independent Health Assoc. et al.*, No. 12-cv-00299-WMS (W.D.N.Y. filed Sept. 13, 2021) (Dkt. No. 142).

I. The United States contends that it has certain civil claims against the Settling Parties arising from their submission or causing the submission of false claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll ("Medicare"), and making or causing to be made false attestations and certification material to Medicare's payments of false claims. Specifically, the United States contends that the Settling Parties knowingly submitted or caused to be submitted false claims to Medicare for risk adjustment payments, as specified in the United States' Complaint-in-Intervention, Dkt. No. 142. That conduct is referred to herein as the "Covered Conduct."

J. This Settlement Agreement is neither an admission of liability by the Settling Parties or a concession by the United States that its claims are not well founded.

K. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

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

TERMS AND CONDITIONS

1. The Settling Parties shall pay to the United States up to one hundred million dollars ($100,000,000), as the amount is further described in Paragraph 2 ("Settlement Payments"), plus interest due under Paragraph 3, and a share of the insurance proceeds, as described in Paragraph 5 ("Insurance Payments") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of New York. The sum of Settlement Payments and Insurance Payments received by the United States shall be the Settlement Amounts.

2. The Settlement Payments to be paid to the United States shall be due as set forth below.

A. Gaffney shall pay two million dollars ($2,000,000) within ten (10) business days of the Effective Date of this Agreement.

B. Independent Health shall make total "Guaranteed Payment(s)" of thirty-four million and five hundred thousand dollars ($34,500,000), plus interest due under Paragraph 3, to the United States in up to five annual installments, in the years 2024 to 2028.

i. The first Guaranteed Payment of six million one hundred thousand ($6,100,000) shall be made no later than ten (10) business days after the Effective Date of this Agreement.

ii. Each subsequent Guaranteed Payment of no less than seven million one hundred thousand ($7,100,000) shall be made no later than the anniversary date of the first Guaranteed Payment.

iii. Independent Health agrees to secure any balance on the Guaranteed Payments, including any accrued interest, with a line or letter of credit until the Guaranteed Payments and accrued interests are paid in full. Independent Health agrees that it will maintain an amount in the line or letter of credit sufficient to cover the balance due on the Guaranteed Payments until the Guaranteed Payments and accrued interests are paid in full.

C. Independent Health shall make "Annual Contingent Payment(s)," to be based on Independent Health's "Consolidated Net Asset Ratio," which is the consolidated net asset ratios of IHA and Independent Health Benefits Corp. (IHBC), in each year beginning in 2025 and ending in 2029, of:

i. Up to two million and five hundred thousand dollars ($2,500,000), plus interest due under Paragraph 3, if the Consolidated Net Asset Ratio for the prior year exceeds ten percent (10%) but is less than thirteen and a half percent (13.5%). For the purpose of calculating the amount due under this subparagraph, Independent Health will not owe any portion of the Annual Contingent Payment that would cause the Consolidated Net Asset Ratio to fall below ten percent (10%) after the Annual Contingent Payment is made.

ii. Up to six million dollars ($6,000,000), plus interest due under Paragraph 3, if the Consolidated Net Asset Ratio for the prior year exceeds thirteen and a half percent (13.5%), less payments made pursuant to subparagraph 2.C.i. For the purpose of calculating the amount due under this subparagraph

2.C.ii, Independent Health will not owe any portion of the Annual Contingent Payment that would cause the Consolidated Net Asset Ratio to fall below thirteen and a half percent (13.5%) after the Annual Contingent Payment is made.

iii. Consolidated Net Asset Ratio shall be the calculation of the net asset ratio derived from regulatory filings that Independent Health and IHBC are required to submit to the New York State Department of Financial Services (DFS) on an annual basis. The calculation of Independent Health's consolidated assets for purposes of calculating net asset ratio may include the amounts owed under subparagraphs 2.C.i and 2.C.ii.

iv. The total sum of Annual Contingent Payments under this subparagraph shall not exceed thirty million dollars ($30,000,000), excluding any accrued interest.

D. Independent Health shall make "Supplemental Annual Contingent Payment(s)," in each year beginning in 2025 and ending in 2029.

i. A Supplemental Annual Contingent Payment is due on an annual basis if the Consolidated Net Asset Ratio for the prior year exceeds eighteen percent (18%), as determined under Paragraph 2.C.iii. For the purpose of calculating the amount due under this subparagraph 2.D.i, Independent Health will not owe any portion of the Supplemental Annual Contingent Payment that would cause the Consolidated Net Asset Ratio to fall below eighteen percent (18%) after the Supplemental Annual Contingent Payment is made.

ii. The total amount of Supplemental Annual Contingent Payments that are due each year shall not exceed fifteen million dollars ($15,000,000), plus interest due under Paragraph 3.

iii. The total amounts under Paragraph 2, shall not exceed one hundred million dollars ($100,000,000).

3. Independent Health shall owe interest, to be assessed at the statutory interest rate as set forth by the Medicare Trust Fund on payment due pursuant to Paragraph 2, as set forth below:

A. **Guaranteed Payment**: interest shall begin to accrue on any remaining balances from May 11, 2024, at four and three quarters percent (4.750%), which was the statutory interest rate for May 2024, until fully paid.

B. **Annual Contingent Payment**: for payments due for a particular year, interest shall begin to accrue thirty (30) days from Independent Health's submission of their final regulatory annual report to DFS for the prior year, or by October 1 of the payment year, whichever is earliest. For example, the regulatory annual report for fiscal year 2024 is filed in the year 2025 (typically by June). As such, contingent payment for the year 2025 will be based on the annual report filed for fiscal year 2024 and due by June 2025. Interest will begin to accrue thirty (30) days from the filing of the annual report.

C. **Supplemental Annual Contingent Payment**: for payments due in a particular year interest shall begin to accrue thirty (30) days from Independent Health's submission of its final regulatory annual report for the prior year or by October 1 of the following year, whichever is earliest.

4. Nothing in this Agreement precludes Independent Health from accelerating and paying ahead of schedule any and all payments due to the United States under Paragraphs 1, 2, and 3 of this Agreement.

5. Independent Health represents that it may be entitled to indemnification from Homeland Insurance Company of Delaware, Policy No.: MCR-7357-14 and ACE American Insurance Company, Policy No.: XMS G21816413008 for liability arising under the United States' Complaint-in-Intervention, Dkt. No. 142.

A. Independent Health represents that it has not undertaken actions or inaction since it became aware of the *qui tam* action to waive or forfeit its right of indemnification, subject to the usual and customary defenses that the insurers may have.

B. In the event of a monetary judgment or settlement in favor of Independent Health in its claims against indemnifying insurers, Independent Health agrees to pay the United States half of the judgment or settlement as Insurance Payments, after reasonable attorneys' fees are deducted.

C. For the purposes of subparagraph 5.B, reasonable attorneys' fees are limited to attorneys' fees incurred for the purpose of obtaining the insurance coverage and/or attorneys' fees incurred in defense of this action from January 23, 2020 and forward. In no event shall the total sum of allowable attorneys' fees deducted under sub-paragraph B exceed twenty five percent (25%) of the proceeds from the judgment or settlement.

6. For the purposes of calculating its Consolidated Net Asset Ratio and triggering Annual Contingent Payments or Supplemental Annual Contingent Payments to the United States under this Agreement, Independent Health agrees to limit Independent Health's administrative expenses (including discretionary expenses) to its administrative expense ratio for 2023, after adjusting for the impact of regulatory reclassifications of expenses that would have been classified as non-administrative in 2023.

A. If Independent Health's administrative expenses exceed the administrative expense ratio for fiscal year 2023, after the adjustment set forth above, Independent Health shall owe to the United States the amount it would have owed to the United States for that year had its administrative expense ratio equaled the administrative expense ratio for 2023.

B. The requirements under this paragraph may be suspended or waived upon the written consent of the United States, which consent shall not be unreasonably withheld in the event that the administrative expense ratio is exceeded as a result of unforeseeable new legal or regulatory requirements, accidents or acts of god requiring repairs or other expenditures, or other unforeseen circumstances beyond Independent Health's control.

7. In the event that Independent Health or a substantial asset belonging to Independent Health is sold, or there is an investment of cash, assets, or capital into Independent Health, within ninety (90) days of the closing of such a transaction, Independent Health shall calculate its Consolidated Net Asset Ratio, using the same methodology that it would be required to use in preparing its regulatory filings. If the Consolidated Net Asset Ratio exceeds the thresholds set forth in Paragraph 2.C or 2.D, Independent Health shall within thirty (30) days make a supplemental payment to the United States. This provision shall be applied as follows:

A. The payment that is due under this paragraph shall be based on the thresholds but not annual limits set forth in Paragraphs 2.C and 2.D.

B. Any payment due under this paragraph shall not be used to offset, reduce, or replace any payment that is ordinarily due under Paragraph 2 or 3.

C. Any payment made under this paragraph shall be applied towards the one hundred million dollars ($100,000,000) limit set forth in Paragraph 2.D.iii.

D. In calculating the Consolidated Net Asset Ratio under this paragraph, Independent Health shall not include any discretionary expenses made or incurred during the ninety (90) day period after closing, except as consistent with its usual and customary administrative expenses, as described in Paragraph 6.

E. Any payment due to the United States under this Agreement shall be paid in advance of any increase in administrative expenses, increase in executive compensation or bonuses, or any other payouts (including for severance or separation).

8. Guaranteed Payments, Annual Contingent Payments, and Supplemental Annual Contingent Payments are separate payment requirements under this Agreement. Nothing in this Agreement precludes the payment of any amount due on an accelerated basis. Nothing in this Agreement terminates an obligation that has accrued until the accrued obligation and any accrued interest have been paid in full.

9. Conditioned upon the United States receiving Settlement Amounts from Independent Health and as soon as feasible after each receipt, the United States shall pay twenty two and a half percent (22.5%) of any Settlement Amounts received by the United States, including any interest paid to the United States pursuant to Paragraph 3 and any amounts paid under Paragraphs 25 and 26, to Relator by electronic funds transfer ("Relator's Share").

10. Subject to the exception in Paragraph 13 (concerning reserved claims) below, and subject to Paragraph 16 (concerning disclosure of assets), Paragraph 25 (concerning default), and Paragraph 26 (concerning bankruptcy) below, and upon the United States' receipt of:

A. All Settlement Payments due from Independent Health, plus interest due under Paragraph 3, the United States releases Independent Health 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 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, and fraud;

B. The Settlement Payment in Paragraph 2.A, the United States releases Gaffney 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 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, and fraud.

11. Subject to the exceptions in Paragraph 13 (concerning reserved claims) below, and subject to Paragraph 16 (concerning disclosure of assets), Paragraph 25 (concerning default), and Paragraph 26 (concerning bankruptcy) below, and upon the United States' receipt of:

A. All Settlement Payments due from Independent Health, plus interest due under Paragraph 3, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Independent Health from any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, but, for the avoidance of doubt, does not release Relator's claims under 31 U.S.C. § 3730(d) for reasonable expenses, attorneys' fees, and costs;

B. The Settlement Payment in Paragraph 2.A, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases the Gaffney from any civil monetary claim Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

12. In consideration of IHA's obligations in this Settlement Agreement and the Corporate Integrity Agreement ("CIA") entered into between OIG-HHS and IHA, and conditioned upon Independent Health's full payment of the Settlement Amount, and except as

expressly reserved in this Paragraph and Paragraph 13 (concerning reserved claims), OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and the Federal health care programs set forth in 42 U.S.C. § 1320a-7b(f) against IHA 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. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude IHA from Medicare, Medicaid, and other Federal health care programs based upon the Covered Conduct. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 13 below.

13. Notwithstanding the releases given in Paragraph 10 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, including mandatory exclusion from Federal health care programs;

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; and

F. Any liability of individuals, except individuals party to this Agreement.

14. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but 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). Conditioned upon Relator's final

receipt of the Relator's Share set forth in Paragraph 9, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

15. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases the Settling Parties, and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, except for Relator's claims under 31 U.S.C. § 3730(d) for reasonable expenses, attorneys' fees, and costs.

16. Under penalties for false statement pursuant to 18 U.S.C. § 1001, Independent Health provided financial statements, disclosures, and supporting documents (together "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 in compromise.

A. Independent Health warrants that the Financial Disclosures were complete, accurate, and current as of the dates each was provided. Independent Health shall notify the United States should Independent Health become aware of any material errors at the time its Financial Disclosures were provided.

B. If the United States learns of any asset(s) with net value greater than one hundred thousand dollars ($100,000) in which Independent Health has 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 Independent Health's obligations under this Agreement) that were knowingly, as that term is used under the False Claims Act, not disclosed in the Financial Disclosures, or if the United States learns of any knowing false statement or misrepresentation made by Independent Health on, or in connection with,

the Financial Disclosures, and if such knowing nondisclosure, false statement, or misrepresentation changes the estimated net value set forth in the Financial Disclosures by one hundred thousand dollar ($100,000) or more, the United States may at its sole option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) demand and initiate any legal process to collect the remainder of any balance on the maximum Settlement Amount in Paragraph 1, plus one hundred percent (100%) of the net value of the asset that was undisclosed assets.

C. Independent Health agrees not to contest any collection action undertaken by the United States under this paragraph 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 or collection. In the event that the United States, pursuant to this paragraph, rescinds this Agreement, Independent Health 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 one hundred twenty (120) calendar days of written notification to Independent Health that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 11, 2012.

17. The Settling Parties waive and shall not assert any defenses the Settling Parties 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.

18. The Settling Parties fully and finally release 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 the Settling Parties have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

19. The Settling Parties fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Settling Parties have asserted, could have asserted, or may assert in the future against Relator, related to the Covered Conduct and Relator's investigation and prosecution thereof.

20. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier or any state payer) related to the Covered Conduct, Independent Health agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

21. The Settlement Amount shall not be decreased, reduced, or otherwise impacted by the overpayment disclosure made by IHA in the letters of October 27, 2017, and December 12, 2017.

22. The Settling Parties agree to the following:

A. Unallowable Costs Defined: 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Settling Parties, their present or former officers, directors, employees, shareholders, and agents in connection with:

i. the matters covered by this Agreement

ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

iii. The Settling Parties' 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);

iv. the negotiation and performance of this Agreement;

v. the payments Independent Health makes to the United States pursuant to this Agreement and any payments that the Settling Parties may make to Relator, including costs and attorneys' fees; and

vi. the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in Paragraph 22.A.vi that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Independent Health.

B. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Independent Health, and Independent Health 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 cost report, cost statement, information statement, or payment request submitted by Independent Health or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

C. Treatment of Unallowable Costs Previously Submitted for Payment: Independent Health further agrees that within ninety (90) days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Independent Health or any of its subsidiaries or affiliates, and shall request, and agree, that such 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. Independent Health agrees that the United States, at a minimum, shall be entitled to recoup from Independent Health any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

D. 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

Independent Health or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Independent Health or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

23. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 24 (waiver for beneficiaries paragraph), below.

24. Independent Health agrees that it waives 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 claims defined as Covered Conduct, except that this provision does not apply to indemnification from Homeland Insurance Company of Delaware, Policy No.: MCR-7357-14 and ACE American Insurance Company, Policy No.: XMS G21816413008 for liability arising under the United States' Complaint-in-Intervention, Dkt. No. 142.

25. 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 Independent Health's financial condition as reflected in the Financial Disclosures referenced in Paragraph 16.

A. In the event that Independent Health fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraphs 2 and 3 above, Independent Health shall be in default of Independent Health's payment obligations ("Default"). The

United States will provide a written Notice of Default, and Independent Health shall have an opportunity to cure such Default within ten (10) 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 Settlement Agreement up to the date of payment. Notice of Default will be delivered to Independent Health, or to such other representative as Independent Health shall designate in advance in writing. If Independent Health fail to cure the Default within ten (10) 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 maximum Settlement Amount in Paragraph 1 shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12 percent 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, Independent Health 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 Independent Health for the claims that would otherwise be covered by the releases provided in Paragraphs 10 and 12 above, with any recovery reduced by the amount of any payments previously made by Independent Health 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 Independent Health 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, Independent Health 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, Independent Health waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that are (i) filed by the United States against Independent Health within one hundred twenty (120) days of written notification that this Agreement has been rescinded, and (ii) related to the Covered Conduct, except to the extent these defenses were available on April 11, 2012. Independent Health 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.

C. In the event of Uncured Default, OIG-HHS may exclude Independent Health from participating in all Federal health care programs until Independent Health pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Independent Health. Independent Health waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Independent Health wishes to apply for reinstatement, it must

submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Independent Health will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

26. In exchange for valuable consideration provided in this Agreement, Independent Health and Relator acknowledge the following:

A. Independent Health has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

B. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Independent Health, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

C. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

D. The Parties do not intend to hinder, delay, or defraud any entity to which Independent Health was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

E. If any of Independent Health's payments or obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement

Amount is paid in full, Independent Health or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Independent Health's debts, or to adjudicate Independent Health as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Independent Health or for all or any substantial part of Independent Health's assets:

i. the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Independent Health for the claims that would otherwise be covered by the releases provided in Paragraphs 10 and 12 above;

ii. the United States has an undisputed, noncontingent, and liquidated allowed claim against Independent Health in the amount of six hundred million dollars ($600,000,000), less any payments received pursuant to Paragraph 2 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Independent Health, a receiver, trustee, custodian, or other similar official for Independent Health;

iii. if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and

iv. if, notwithstanding subparagraph iii, any amounts already paid by the United States to Relator pursuant to Paragraph 9 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment

made under Paragraph 2 of this Agreement, Relator shall, within thirty (30) days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

F. Independent Health agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 26.E is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Independent Health shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Independent Health waives and 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 claim, action, or proceeding brought by the United States within one hundred twenty (120) days of written notification to Independent Health that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on April 11, 2012.

27. Upon receipt of the first Guaranteed Payment described in Paragraph 2 and any accrued interest described in Paragraph 3, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action, with prejudice to Relator, except as to her claims under 31 U.S.C. § 3730(d) for reasonable expenses, attorneys' fees, and costs, with prejudice to the United States as to Covered Conduct, but otherwise without prejudice to the United States, pursuant to Rule 41(a)(1).

28. Except as provided in 31 U.S.C. § 3730(d), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

29. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

30. 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 Western District of New York. 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.

31. 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.

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

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

34. This Agreement is binding on the Settling Parties' successors, transferees, heirs, and assigns.

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

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

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

THE UNITED STATES OF AMERICA

DATED: _____ BY: SAMSON ASIYANBI Digitally signed by SAMSON ASIYANBI Date: 2024.12.20 12:44:23 -05'00'

Samson Asiyanbi
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____

David M. Coriell
Assistant United States Attorney
United States Attorney's Office
Western District of New York

DATED: _____ BY: _____

Susan E. Gillin
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

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

Samson Asiyanbi
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/16/2024 BY: _____

David M. Coriell
Assistant United States Attorney
United States Attorney's Office
Western District of New York

DATED: _____ BY: _____

Susan E. Gillin
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

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

Samson Asiyanbi
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____

David M. Coriell
Assistant United States Attorney
United States Attorney's Office
Western District of New York

DATED: 12/13/24 BY: SUSAN GILLIN Digitally signed by SUSAN GILLIN Date: 2024.12.13 17:50:02 -05'00'

Susan E. Gillin
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

DEFENDANTS INDEPENDENT HEALTH & DXID

DATED: 12/13/24 BY: _____

Michael Cropp, MD, MBA
Chief Executive Officer
Independent Health Association, Inc.

DATED: 12/12/24 BY: _____

Daniel Meron
Latham & Watkins LLP

DATED: 12/13/24 BY: _____

Vincent E. Doyle III
Connors LLP

Counsel for Independent Health & DxID

DEFENDANT BETSY GAFFNEY

DATED: 12/13/25 BY: _____
Betsy Gaffney

DATED 12/13/2024 BY: _____
Timothy W. Hoover
Spencer L. Durland
Hoover & Durland LLP

Counsel for Betsy Gaffney

RELATOR

DATED: 12/12/24 BY: Teresa Ross
Teresa Ross

DATED: 12/12/24 BY: Michael Roniekher
Michael Roniekher
Max Voldman
Whistleblower Partners LLP

Counsel for Teresa Ross