



the Office of the Comptroller, Department of Banking and Finance, the Department of Children and Families, the Department of Legal Affairs, and the Agency for Health Care Administration (hereafter collectively referred to as the "State of Florida"); Nova Southeastern University, Inc., (hereafter referred to as "NOVA"), and Alan Kent (hereafter referred to as the "relator"), through their authorized representatives. Collectively, all of the above will be referred to as "the Parties."

## II. PREAMBLE

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

A. NOVA is a private multi-disciplined university that operates community-based mental health facilities that provide psychiatric and psychological counseling and other services to members of the public. It is a Medicare, Medicaid, TRICARE and private insurance health care provider, and receives additional state funding from the State of Florida's Department of Children and Families for its operation of community-based mental health facilities.

B. Alan Kent is an individual resident of the State of Washington. In March 1998, the relator filed a qui tam action in the United States District Court for the Southern District of Florida styled United States ex rel. Alan Kent and State of Florida ex rel. Alan Kent v. Nova Southeastern University, hereafter the "Civil Action"). From October 1985 until December 1989, and from

August 1992 until December 1997, relator was employed by Nova in various clinical capacities, and as an Assistant Professor and an Associate Professor of Psychology.

C. The United States and State of Florida contend that NOVA submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd(1997), the TRICARE Program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1106, and the Medicaid Program ("Medicaid"), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (1997).

D. The United States contends that it has certain civil claims against NOVA under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, for engaging in the following conduct during the period from January 1, 1992 through December 31, 1997: NOVA, in its operation of mental health clinics, provided psychological and psychiatric services through non-paid, unsupervised students. Nova submitted bills, and received reimbursement from the Medicare, Medicaid, and TRICARE programs for such services as if a qualified mental health provider, e.g. a psychologist or psychiatrist, had rendered the service. Hereinafter this is referred to as the "federal Covered Conduct."

E. The United States also contends that it has certain administrative claims against NOVA under the provisions for

permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the federal Covered Conduct.

F. The State of Florida contends that it has certain civil claims against NOVA under the False Claims Act, F.S. 68.081 et seq., other state statutes and/or common law doctrines, for engaging in the following conduct during the period January 1, 1992 through December 31, 1997: NOVA, in its operation of mental health clinics, provided psychological and psychiatric services through non-paid students. NOVA submitted bills and received reimbursement from the Medicaid program for such services as if a qualified paid employee had rendered the service. NOVA further billed and received payment from Medicaid for mental health services to ineligible recipients: namely, those who did not meet the Global Assessment of Functioning (GAF) score requirement. Additionally, NOVA billed and received payment from Medicaid for services that had been paid by a third party, Broward County, even though Medicaid is a payor of last resort. Furthermore, NOVA, because of computer problems which had not been adequately corrected, billed and received payment from the Department of Children and Families for multiple units of service when these services had not been provided. Hereinafter, this is referred to as the "state Covered Conduct."

G. NOVA disputes and does not admit the contentions of the United States and State of Florida as set forth in Paragraphs

D, E and F, above. NOVA specifically contends that it did not act purposefully or willfully with respect to the allegations set forth in Paragraphs D, E, and F, above.

H. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

### III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

A. NOVA agrees to reimburse the total sum of four million, one hundred forty nine thousand, five hundred fifty five dollars (\$4,149,555) (hereafter the "Settlement Amount"). The Settlement Amount to be paid is allocated as follows:

1) To the Department of Children and Families, State of Florida, the sum of \$1,982,427. NOVA and the State of Florida have agreed that this sum shall be paid over time by delivery of mutually agreed upon services of like value to the Department of Children and Families;

2) To the United States, the sum of \$2,167,128.

B. The United States and relator agree that, pursuant to 31 U.S.C. § 3730(d)(1), the realtor's share of the total federal settlement amount is seventeen percent (17%), or the amount of \$368,411.76. The State of Florida and relator agree that, pursuant

to Florida Statutes § 68.085(1), the relator's share of the state settlement amount is \$170,369.

C. NOVA agrees to pay \$2,167,128 to the United States of America by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office. NOVA agrees to make this electronic funds transfer by no later than the effective date of this Agreement. The United States agrees to pay the federal relator's share by electronic funds transfer to relator's counsel, no later than thirty days from receipt of such funds.

D. NOVA agrees to pay the total amount of the state relator's share of \$170,369 directly to the State of Florida, by certified check, cashier's check or attorney's trust account check, by no later than the effective date of this Agreement. The State of Florida agrees to make payment to the relator's counsel no later than thirty days from receipt of such funds.

E. NOVA and the State of Florida have agreed to make payment to the Department of Children and Families, through the provision of services, in a separate agreement, attached hereto as Exhibit A.

F. Subject to the exceptions in Paragraph L below, in consideration of the obligations of NOVA set forth in this Agreement, and conditioned upon NOVA's payment in full of the Settlement Amount, the United States (on behalf of itself, and its officers, agents, agencies and departments), agrees to release NOVA

(its Board of Trustees, officers, directors and employees) from any civil or administrative monetary claim the United States has or may have 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, breach of contract and fraud, for the federal Covered Conduct.

G. Subject to the exceptions in Paragraph L below, in consideration of the obligations of NOVA set forth in this Agreement, and conditioned upon NOVA's payment in full of the Settlement Amount, the State of Florida, (on behalf of itself, and its officers, agents, agencies and departments) agree to release NOVA (its Board of Trustees, officers, directors, and employees) from any civil or administrative monetary claim the State of Florida has or may have under the Florida False Claims Act, §§68.081 - 68.89 for the state Covered Conduct.

H. In consideration of the obligations of NOVA set forth in this Agreement, and conditioned upon NOVA's payment in full of the Settlement Amount, the relator and his attorney, for themselves, their heirs, successors and assigns, will 1) release NOVA, with prejudice, from any claims the relator or his attorney have or may have that arise under or relate to any of the allegations in the Civil Action and/or the federal or state Covered Conduct, including all claims pursuant to 31 U.S.C. §3730, including those for attorneys' fees, expenses and costs, and 2)

release the United States, the State of Florida, and NOVA, with prejudice, from any claims arising from or relating to the filing of the Civil Action, or, pursuant to 31 U.S.C. §3730(d)(1) and Florida Statutes § 68.085(1), for a share of the proceeds of the Settlement Agreement.

I. In consideration of the obligations of NOVA set forth in this Agreement, and conditioned upon NOVA's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against NOVA under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the federal Covered Conduct, except as reserved in Paragraph L, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude NOVA from the Medicare, Medicaid and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based on the federal Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph L, below.

J. In consideration of the obligations of NOVA set forth in this Agreement, and conditioned upon NOVA's payment in

full of the Settlement Amount, the TMA agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the TRICARE Program against NOVA under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph L, below, and as reserved in this Paragraph. The TMA expressly reserves authority to exclude NOVA, from the TRICARE program under 32 C.F.R. §§ 199.9(f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(D), and (f)(1)(iii), based on the federal Covered Conduct. Nothing in this Paragraph precludes the TRICARE program from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph L, below.

K. In consideration of the obligations of NOVA set forth in this Agreement, and conditioned upon NOVA's performance in full of the terms of this Settlement Agreement, the State of Florida agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the Medicaid Program against NOVA under F.S. §§ 409.913(14)(e) and 409.913(15)(b) for the state Covered Conduct, except as reserved in Paragraph L, below. Nothing in this Paragraph precludes the State of Florida from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph L, below.

L. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this

Agreement as to any entity or person (including NOVA) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States and the State of Florida (or its agencies) for any conduct other than the federal and state Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement;

(6) Any claims against any individual health care provider employed by NOVA arising out of claims made to the Medicare, Medicaid and TRICARE programs, where such claims were not billed by, or on behalf of NOVA;

(7) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods or services, provided by NOVA; provided however, that the mere fact that a product or service was provided by a student rather than a qualified mental health provider, when the product or service was not otherwise medically defective or deficient, does not render the product or service "defective or deficient" for purposes of this subparagraph;

(8) Any civil or administrative claims against individuals, including current or former directors, officers, employees, or agents of NOVA who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

M. NOVA has entered into a Corporate Integrity Agreement with the OIG-HHS, attached as Exhibit B, which is incorporated into this Agreement by reference. NOVA will immediately upon execution of this Agreement implement its obligations under the Corporate Integrity Agreement.

N. NOVA has also agreed to enter into a separate agreement with the State of Florida which will govern the delivery of services of like value to be provided to the Department of Children and Families.

O. NOVA waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the federal and state Covered Conduct, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. NOVA agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of

the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

P. NOVA fully and finally releases the United States and State of Florida, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which NOVA has asserted, could have asserted, or may assert in the future against the United States and the State of Florida, their agencies, employees, servants, and agents, related to the federal and state Covered Conduct and the United States' and State of Florida's investigation and prosecution thereof.

Q. The Amount that NOVA must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph III.A above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare or TRICARE carrier or intermediary or any State payer, related to the Covered Conduct; and NOVA agrees not to resubmit to any Medicare or TRICARE carrier or intermediary or any State payer any previously denied claims related to the federal and state Covered Conduct, and agrees not to appeal any such denials of claims.

R. NOVA agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of NOVA in connection with: (1) the

matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) NOVA's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees), e.g. including the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement, (4) the negotiation of this Agreement, and (5) the payments made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, the Veterans Affairs Program (VA) and the Federal Employee Health Benefits Program (FEHBP), (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by NOVA, and NOVA will 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 NOVA or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

NOVA further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA, 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 NOVA or any of its subsidiaries, and will 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. NOVA agrees that the United States will be entitled to recoup from NOVA any overpayment as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by NOVA or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on NOVA or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

S. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

T. NOVA agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. NOVA waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

U. NOVA expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. Section 547(b)(3), and will remain solvent following its payment to the United States hereunder, and has the financial ability to fulfill its obligations to the State of Florida for in kind services. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (1) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to NOVA, within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

V. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Relator and his attorney waive any entitlement to attorney's fees, costs and expenses, pursuant to 31 U.S.C. § 3730 and Fla. Stat. § 68.086. NOVA fully and finally releases the Relator and his attorney from

any claims which NOVA has asserted, could have asserted, or may assert in the future against the Relator and his attorney, related to the Civil Action, and any matters arising from, or related thereto. The relator and his attorney fully and finally release NOVA from any claims which the Relator and his attorney have asserted, could have asserted, or may assert in the future against NOVA, related to the Civil Action, and any matters arising from, or related thereto.

W. NOVA and the relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatever. Pursuant to 31 U.S.C. §3730(c)(2)(B) and F.S. §68.085(1), the relator agrees that the settlement of the allegations as set forth in the complaint in the Civil Action is fair, adequate and reasonable under all circumstances.

X. This Agreement is governed by the laws of the United States and to the extent relating to the Florida False Claims Act, the laws of the State of Florida. 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 Southern District of Florida, except that all disputes regarding the Corporate Integrity Agreement incorporated herein by reference will be resolved according to the dispute resolution provisions of that Corporate Integrity Agreement.

Y. This Agreement, Corporate Integrity Agreement, the Settlement Agreement between NOVA and the State of Florida attached as Exhibit A, and any addenda thereto, and the agreement between the relator and NOVA constitute the complete agreement between the Parties relating to the Covered Conduct. This Agreement may not be amended except by written consent of the Parties, except that only NOVA and the OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement.

Z. The undersigned individuals signing this Agreement on behalf of NOVA and the relator represent and warrant that they are authorized by those parties to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement. The undersigned State of Florida signatory represents that he is signing this Agreement in his official capacity and is authorized to execute this Agreement.

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

BB. This Agreement is effective on the date of signature of the last signatory to the Agreement.

CC. NOVA hereby consents to the disclosure of this Agreement, and information about this Agreement, to the public.

DD. Promptly after this Agreement is executed, the Parties will notify the Court in the Civil Action, simultaneously,

that (a) the United States and State of Florida are intervening in the Civil Action, (b) notwithstanding such intervention, the Parties have reached a settlement, and pursuant to this settlement, all Parties have stipulated that the Civil Action be dismissed with prejudice and with no additional costs.

EE. This Agreement is binding on successors, transferees, and assigns.

FOR THE UNITED STATES OF AMERICA

DAVID W. OGDEN  
Acting Assistant Attorney General

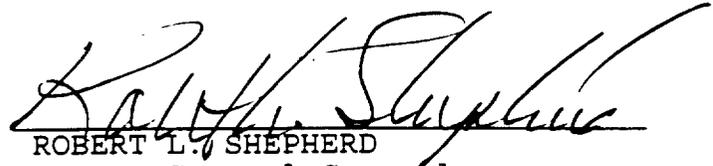
THOMAS E. SCOTT  
United States Attorney  
Southern District of Florida

Dated: 8/20/99 By: Laurie E. Rucoba  
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Dated: 8/20/99 By: Laurie E. Rucoba  
for DANIEL A. SPIRO  
Trial Attorney, Civil Division  
Commercial Litigation Branch  
United States Department of Justice

Dated: 8-17-99

By:



ROBERT L. SHEPHERD  
Deputy General Counsel  
TRICARE Management Activity  
United States Department  
of Defense  
Aurora, Colorado

FOR THE STATE OF FLORIDA

Dated: 8/19/99

By: 

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Dated: 8/19/99

By: 

RICHARD E. DORAN  
Deputy Attorney General, State of Florida

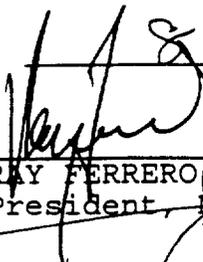
Dated: 8/19/99

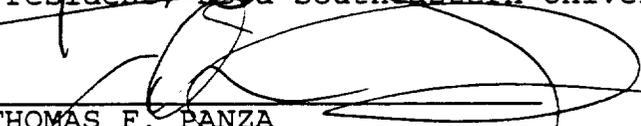
By: 

LEWIS MORRIS  
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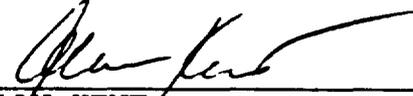
FOR THE DEFENDANT NOVA SOUTHEASTERN UNIVERSITY

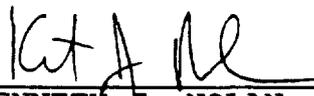
Dated: 8-19-1999

By:   
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President, ~~Nova Southeastern University~~

By:   
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Relator

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