

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 Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) and the Food and Nutrition Service (FNS) of the Department of Agriculture (USDA) (collectively the “United States”), and the Commonwealth of Pennsylvania on behalf of the Department of Human Services (DHS) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. The DHS is a public agency established by the Commonwealth of Pennsylvania to administer the Commonwealth’s programs that provide services and support to Pennsylvanians.

B. The United States contends that it has certain claims against DHS that arose from DHS use of federal funds to provide means-tested public benefits through the Medicaid Program, Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance to Needy Families (TANF) Program to non-citizens in violation of 8 U.S.C. §§ 1611(a) and 1613(a) during the period from January 1, 2004 through December 31, 2010, as identified by DHS. That conduct is referred to below as the Covered Conduct.

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

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 Commonwealth of Pennsylvania, through DHS, shall pay to the United States \$48,827,991.00 (Settlement Amount) with non-Federal funds. DHS agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions provided by the United States Attorney's Office for the Middle District of Pennsylvania. DHS agrees to pay the Settlement amount over a five (5) year period of time with equal quarterly payments of \$2,441,399.50 to be made over consecutive twenty (20) quarters. The first quarterly payment of \$2,441,399.50 is to be made no later than March 31, 2015 and the final quarterly payment of \$2,441,399.50 is to be made no later than December 31, 2019.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon DHS's full payment of the Settlement Amount, the United States releases DHS from any civil or administrative obligation or monetary claim the United States has for the Covered Conduct under 42 U.S.C. § 1396b(d); 42 U.S.C. § 609 (a)(1)(A); 45 C.F.R. § 262.1(a)(1); 7 U.S.C. § 2016(e); 7 U.S.C. §§ 2020(g) & (h); 7 U.S.C. § 2022(b); or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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;
- 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 for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- i. Any liability of individuals.

4. DHS waives and shall not assert any defenses DHS may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. DHS fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and

expenses of every kind and however denominated) that DHS has asserted, could have asserted, or may assert in the future against the United States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. In the event that DHS fails to pay any amount as provided in paragraph 1 within five (5) business days of the date on which such payment is due, DHS shall be in default of its payment obligations ("Default"). The United States will provide written notice of the Default to DHS and DHS shall have the opportunity to cure such Default within thirty (30) calendar days from the date of receipt of the notice. Notice of Default will be delivered to Secretary, Department of Human Services, Health and Welfare Building 3rd Fl. East, 625 Forster St., Harrisburg, PA 17120 or to such other representative as DHS shall designate in advance in writing. If DHS fails to cure such Default within thirty (30) calendar days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). DHS shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to DHS by any department, agency, or agent of the United States at the time of Default; (b) deduct the remaining unpaid balance at any time from future financial participation and grant awards, including but not limited to Medicaid Federal Financial Participation (FFP) awards, TANF grant awards and SNAP Federal Financial Participation; (c) collect the entire unpaid balance of the Settlement Amount, plus

interest, including interest of 12% from the date of Default, and all other amounts due upon the event of Default as specified in this paragraph; (d) file a civil action for the Covered Conduct; or (e) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a complaint is filed pursuant to subsection (d) of this paragraph, DHS agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the allegations in the complaint, except to the extent such defenses were available to DHS on the Effective Date. If the United States elects to pursue an administrative action for the Covered Conduct, DHS agrees not to contest any consent judgment, disallowance, offset, or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court. DHS shall pay United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment related to the Covered Conduct; and DHS agrees not to resubmit any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. DHS agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and in 7 U.S.C. § 2025; and the regulations and official program directives promulgated thereunder) incurred by

or on behalf of DHS, 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) DHS'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 attorney's fees);
- (4) the negotiation and performance of this Agreement ;
- (5) the payment DHS makes to the United States pursuant to this Agreement

are unallowable costs for government contracting purposes and under SNAP, the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by DHS, and DHS shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any Form FNS-778, Form CMS-64, cost report, cost statement, information statement, or payment request submitted by DHS or any of its subsidiaries or affiliates to the SNAP, Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: DHS further agrees that within 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 Form CMS-64s, cost reports, cost statements, information reports, or payment requests already submitted by DHS or any of its subsidiaries or affiliates, and shall request, and agree, that such Form CMS-64s, 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. Additionally, DHS agrees that within 90 days of the Effective Date of this Agreement it shall identify to FNS any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from FNS, including, but not limited to, payments sought in any Form FNS-778, or payment requests already submitted by DHS or any of its subsidiaries or affiliates, and shall request, and agree, that such Form FNS-778s, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. DHS agrees that the United States, at a minimum, shall be entitled to recoup from DHS 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.

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 DHS or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on DHS or any of its subsidiaries or affiliates' Form CMS-64s, Form FNS-778s, cost reports, cost statements, or information reports.

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

9. This Agreement is intended to be for the benefit of the Parties only.

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

12. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Middle District of Pennsylvania. 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.

13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

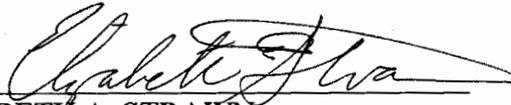
16. This Agreement is binding on DHS's successors, transferees, heirs, and assigns.

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

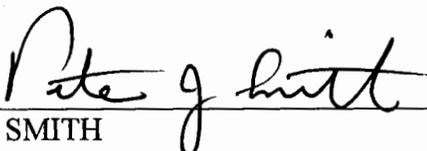
18. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 1/15/2015

BY: 
ELIZABETH A. STRAWN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 1/15/2015

BY: 
PETER J. SMITH
United States Attorney
United States Attorney's Office for the
Middle District of Pennsylvania

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DATED: _____

BY: _____
AUDREY ROWE
Administrator
Food and Nutrition Service
United State Department of Agriculture

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
ELIZABETH A. STRAWN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____
PETER J. SMITH
United States Attorney
United States Attorney's Office for the
Middle District of Pennsylvania

DATED: 1/15/15

BY: Robert K. DeConti
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DATED: _____

BY: _____
AUDREY ROWE
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Food and Nutrition Service
United State Department of Agriculture

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ELIZABETH A. STRAWN
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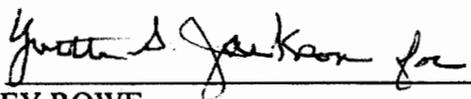
DATED: _____

BY: _____
PETER J. SMITH
United States Attorney
United States Attorney's Office for the
Middle District of Pennsylvania

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DATED: JAN 15 2015

BY: 
AUDREY ROWE
Administrator
Food and Nutrition Service
United State Department of Agriculture

COMMONWEALTH OF PENNSYLVANIA

DATED: 01-15-2015 BY: Beverly Mackereth
BEVERLY MACKERETH,
Secretary, Department of Human Services