

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), (collectively, the “United States”); Douglas K. Mittleider; Julie D. Mittleider; Hyperion Foundation, Inc. (“Hyperion”); AltaCare Corporation (“AltaCare”); Long Term Care Services, Inc. (“LTCS”); Sentry Healthcare Acquirors, Inc. (“Sentry”); and Academy Health Center, Inc. (“Academy” or “Relator”) (all of the above hereinafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. In October 2005, Hyperion, a Georgia not-for-profit entity, leased from Academy a 120-bed skilled nursing facility (“SNF”) in Lumberton, Mississippi (“the Facility”), and thereafter conducted business at the Facility as Oxford Health & Rehabilitation Center. At various times, Julie Mittleider and/or Douglas Mittleider served as a Director and the President of Hyperion. Hyperion contracted with AltaCare, a Georgia corporation of which Douglas Mittleider is a Director and the President, to manage the Facility. LTCS, a Georgia corporation of which Douglas Mittleider is a Director and the President, purchased certain goods and services on behalf of Hyperion and advanced funds to Hyperion. Sentry is a Georgia corporation owned by Julie Mittleider to which Hyperion transferred certain funds.

B. From February 13, 2006 through May 2, 2012, Hyperion was enrolled as a provider in the Mississippi Medicaid (“Medicaid”) program, a joint federal-state program established pursuant to 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”), and in the federal Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”), as a provider of SNF services to Medicaid and Medicare beneficiaries, among others. During this

time, Hyperion made claims and received payment for skilled nursing services to Medicaid and Medicare.

C. On September 30, 2009, Relator Academy filed an action pursuant to the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3730(b), captioned *United States ex rel. Academy Health Center, Inc. f/k/a Adventist Health Center, Inc. v. Hyperion Foundation, Inc. d/b/a Oxford Health and Rehabilitation Center; AltaCare Corporation; HP/Ancillaries, Inc.; Long Term Care Services, Inc.; HP/Management Group, Inc.; Harry McD. Clark; Julie Mittleider; Douglas K. Mittleider, et al.*, Adversary Action No. 09-69500 (“Relator’s *qui tam* action”). Relator’s *qui tam* action was filed under seal in the bankruptcy proceeding captioned *In re: Hyperion Foundation, Inc. d/b/a/ Oxford Health & Rehabilitation Center*, Case No. 08-51288-NPO (Bankr. S.D. Miss.). On October 4, 2010, Relator’s *qui tam* action was transferred to the United States District Court for the Southern District of Mississippi and assigned Case No. 3:10-cv-00552-CWR-LRA (S.D. Miss.), and Relator filed an Amended Complaint. On February 11, 2011, Relator filed a Second Amended Complaint (“the SAC”). On December 3, 2012, the United States elected to intervene in Relator’s *qui tam* action as to certain claims against Douglas Mittleider, Hyperion, AltaCare and LTCS, and on February 28, 2013, the United States filed its Complaint in Intervention (“the Lawsuit”). Relator continued to pursue its *qui tam* action against Julie Mittleider, Sentry, HP/Ancillaries, Inc., HP/Management Group, Inc. and Harry McD. Clark. On August 8, 2013, Relator, with the consent of the United States, voluntarily dismissed its *qui tam* action as against Harry McD. Clark. On August 7, 2017, the Court, on motion by HP/Ancillaries, Inc. and HP/Management Group, Inc., dismissed Relator’s *qui tam* action as against those entities.

D. The United States and Relator contend that they have certain civil claims against Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry arising from: (1) Hyperion's knowing submission of false claims, and false statements material to such claims, to Medicaid and Medicare, between October 1, 2005 and May 1, 2102, for non-existent, grossly inadequate, materially substandard, and/or worthless skilled nursing services to residents at the Facility; and (2) AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry knowingly causing Hyperion, or conspiring with Hyperion and each other, to submit such false claims and statements. The conduct in this paragraph is referred to below as the "Covered Conduct."

E. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry deny the allegations of Paragraph D. This Agreement is made in compromise of such disputed claims and is neither an admission of liability by Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider or Sentry, nor a concession by the United States or Relator, that their claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement.

To avoid the delay, uncertainty, inconvenience, and expense of further 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. As set forth below, Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree to pay the United States, as set forth in Paragraphs 2 through 4 below, the total sum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Settlement Amount"), plus interest which shall accrue at 2.25% per annum. All payments toward the Settlement Amount and interest shall be paid by electronic funds transfer pursuant to

written instructions to be provided by the Civil Division of the United States Department of Justice.

2. On the Effective Date of this Agreement, as that term is defined in Paragraph 36 of this Agreement: (a) Douglas Mittleider will pay the United States One Hundred Thousand Dollars (\$100,000); and (b) Julie Mittleider will pay the United States Fifty Thousand Dollars (\$50,000).

3. Hyperion, AltaCare, LTCS and/or Douglas Mittleider, as joint and several obligors, will pay the remainder of the Settlement Amount, with interest, as follows:

- (a) One Hundred Twenty-Five Thousand dollars (\$125,000) plus interest shall be paid on or before six (6) months after the Effective Date of the Agreement;
- (b) One Hundred Twenty-Five Thousand dollars (\$125,000) plus interest shall be paid on or before nine (9) months after the Effective Date;
- (c) One Hundred Fifteen Thousand dollars (\$115,000) plus interest shall be paid on or before twelve (12) months after the Effective Date;
- (d) One Hundred Fifteen Thousand dollars (\$115,000) plus interest shall be paid on or before eighteen (18) months after the Effective Date;
- (e) One Hundred Fifteen Thousand dollars (\$115,000) plus interest shall be paid on or before twenty-four (24) months after the Effective Date;
- (f) One Hundred Fifteen Thousand dollars (\$115,000) plus interest shall be paid on or before thirty (30) months after the Effective Date;
- (g) One Hundred Fifteen Thousand dollars (\$115,000) plus interest shall be paid on or before thirty-six (36) months after the Effective Date;
- (h) One Hundred Twenty-Five Thousand dollars (\$125,000) plus interest shall be paid on or before forty-two (42) months after the Effective Date; and

- (i) One Hundred Fifty Thousand dollars (\$150,000) plus interest shall be paid on or before forty-eight (48) months after the Effective Date.

4. In the event Hyperion, AltaCare, LTCS and/or Douglas Mittleider fail to pay the full amounts called for by Paragraph 3(e) through 3(i) above, after the notice and cure period set forth in Paragraph 5 below, Julie Mittleider and/or Sentry, as joint and several obligors, will pay:

- (a) Forty-Five thousand dollars (\$45,000) of any unpaid payment called for in Paragraph 3(e) above; and (b) all of any unpaid payments called for by Paragraphs 3(f) through 3(i) above.

Hyperion, AltaCare, LTCS and Douglas Mittleider shall remain jointly and severally liable as to all unpaid amounts under this Agreement. Julie Mittleider's and Sentry Healthcare Acquirors, Inc.'s liability for these settlement payments will be capped at \$550,000, after the Initial Settlement Payment is made.

5. In the event Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider or Sentry fail to pay any amount as to which they are obligated in accordance with Paragraphs 3 and 4 above, within five (5) business days of the date upon which such payment is due, then such failure shall constitute an Event of Default under this Agreement. The United States will provide written notice of an Event of Default to Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry by overnight mail, certified mail or hand delivery and Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry shall have the opportunity to cure such Default within five (5) business days of receiving the notice of an Event of Default. Notice of an Event of Default will be delivered to:

AltaCare Corporation
3050 Royal Blvd. South, Suite #190
Alpharetta, GA 30022

With a copy to:

Wise Carter Child & Caraway, P.A.
600 Heritage Building

401 East Capitol Street
Jackson, MS 39201

or to such other address or representative as Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry shall designate in advance in writing. If Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider or Sentry fail to cure an Event of Default, then:

- (a) the entire remaining unpaid balance of the Settlement Amount shall become immediately due and payable, with interest, except that the liability of Julie Mittleider and/or Sentry shall be limited to the amounts specified in Paragraph 4 above.
- (b) the United States can offset the remaining unpaid balance from any amounts due and owing to Hyperion, AltaCare, LTCS, Douglas Mittleider, or to Julie Mittleider or Sentry (limited to the amounts specified in Paragraph 4), by any department, agency, or agent of the United States at the time of Event of Default, after notice and opportunity to cure as provided above;
- (c) Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree not to contest any offset, recoupment and/or collection action undertaken by the United States for the unpaid amount due, either administratively or in any state or federal court; provided, however, that Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry expressly reserve the right to challenge whether the United States has correctly calculated the amount of any such offset, recoupment and/or collection;
- (d) the United States, in its sole discretion, shall have the right to retain the payments previously made, rescind the Agreement, and reinstitute the Lawsuit, with any recovery under such reinstated Lawsuit reduced by the amount of any payments

previously made by Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry to the United States under this Agreement; and

- (e) the United States shall be entitled to any other rights granted by law or in equity by reason of an Event of Default, including referral of this matter for private collection. In the event that the United States reinstates the Lawsuit, Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such reinstated Lawsuit brought by the United States within sixty (60) calendar days of notice to Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry that the Agreement has been rescinded pursuant to this Paragraph, except to the extent such defenses were available in the underlying litigation in this matter.

6. The amounts due under this Agreement shall be secured pursuant to Security Agreement in the form of Exhibit A, which Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry shall cause to be executed contemporaneously with this Agreement, by:

- (a) Franklin Cambridge Operations, LLC, a Medicare and Medicaid provider operating a SNF in Bristol, Tennessee, doing business as The Cambridge House;
- (b) Franklin Healthcare of Lynchburg, LLC, a Medicare and Medicaid provider operating a SNF in Lynchburg, Virginia, doing business as The Carrington;
- (c) The Stratford House LLC, a Medicare and Medicaid provider operating a SNF in Chattanooga, Tennessee, doing business as Woodland Terrace Care and Rehab; and
- (d) Franklin Healthcare of Peabody, LLC, a Medicaid provider operating a nursing facility (NF) in Peabody, Kansas, doing business as Westview Manor of Peabody,

(the entities listed in (a) through (d) above hereinafter collectively referred to as “Pledgors”).

The Pledgors shall pledge their current and future Medicaid and Medicare receivables as security for payment of the Settlement Amount, plus interest, by Hyperion, AltaCare, LTCS and Douglas Mittleider, and by Julie Mittleider and Sentry (limited to the amounts specified in Paragraph 4 above).

7. In the event that any Pledgor sells, transfers, or terminates its SNF or NF lease, or its enrollment as a Medicare or Medicaid provider terminates, the United States will be immediately entitled to demand the remaining outstanding total payments, with interest, then due under this Agreement. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry will give the United States reasonable notice in advance of any such ownership change, transfer or termination event, and during the interim period prior to closing the United States agrees to discuss in good faith a substitution of collateral or other remedy short of full acceleration such that the sale, transfer, termination of a SNF or NF lease, or termination of Medicare or Medicaid enrollment, would not constitute an occasion for acceleration, so long as the aggregate pledged Medicare and Medicaid receivables of the Pledgors and/or of substitute pledgors acceptable to the United States, as set forth in writing, total at least 125% of the remaining outstanding amounts due under this Agreement on the date of any ownership change, transfer or termination event.

8. Pursuant to 31 U.S.C. § 3730(d), Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry shall be jointly and severally obligated to Relator and its counsel in the amount of Three Hundred Ten Thousand dollars (\$310,000), representing a negotiated amount for Relator’s expenses, attorney’s fees and costs in connection with the Relator’s *qui tam* action and the Lawsuit, until such amount is paid.

Such payments shall be made by electronic funds transfer to the Trust Account of Mitchell Day Health Law Firm, PLLC, pursuant to written instructions to be provided by Relator's counsel to counsel for Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry 48 hours prior to the anticipated funds transfer. The funds will be transferred roughly contemporaneously with the execution of this Agreement by Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry, with the understanding that Relator's counsel will hold such funds in the designated Trust Account and will not disburse any portion of the funds until this Agreement and the Stipulation of Dismissal have been executed by Relator and Relator's counsel and executed copies have been provided to counsel for Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry.

9. Subject to the exceptions in Paragraph 11 (concerning excluded claims) below, conditioned upon full payment of the Settlement Amount, with interest, by Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry as set forth in Paragraphs 2, 3 and 4 above, and subject to the provision of Paragraph 24 below, the United States releases Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry from any civil or administrative monetary claim the United States has for the Covered Conduct under the FCA, 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.

10. Subject to the exceptions in Paragraph 11 below, conditioned upon full payment of the Settlement Amount, with interest, by Hyperion, AltaCare, LTCS and/or Douglas Mittleider, Julie Mittleider and/or Sentry as set forth in Paragraphs 2, 3 and 4 above, and payment of Relator's expenses, attorney's fees and costs as set forth in Paragraph 8 above, and subject to the provision of Paragraph 24 below, the Relator, for itself and its predecessors,

successors and assigns, releases Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the FCA, and for any further claim pursuant to 31 U.S.C. §§ 3730(d)(1) and (2) for the Relator's expenses, attorney's fees and costs.

11. Notwithstanding the releases given in Paragraphs 9 and 10 above, 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, including mandatory or permissive 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;
- (f) Any liability of individuals other than Douglas Mittleider and Julie Mittleider; or
- (g) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

12. Relator and its predecessors, 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). The United States and Relator, and its predecessors, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the FCA on the issue of the share percentage that Relator should receive of the Settlement Amount.

13. Relators represent that that they have not filed, or caused to be filed, any action against Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider or Sentry, not previously disclosed through service of process, and that as of the Effective Date, no such action is pending in any court within the United States, whether under seal or otherwise.

14. In or about February and March of 2017, Hyperion, AltaCare, LTCS, Douglas Mittleider (with Julie Mittleider's knowledge and consent regarding any disclosure that pertains to her), and Sentry provided sworn financial disclosure statements ("Financial Statements"), and provided additional financial information through counsel, to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements and such additional financial information in reaching this Agreement. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry each warrant that his, her or its Financial Statements and financial information were complete and accurate at the time submitted. If the United States learns of asset(s) in which Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry had an interest at the time of this Agreement that were not disclosed in the Financial Statements or financial information, or if the United States learns of any misrepresentation on, or in connection with, the Financial Statements and financial information, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the above-described Financial Statements and financial information by One Hundred Thousand dollars (\$100,000) or more, the United States may at its option: (a) rescind this Agreement, retain all payments made to date by Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry, and reinstate the Lawsuit, or (b) let the Agreement stand and collect the full Settlement Amount, plus interest, plus one hundred percent (100%) of the net asset value of the asset not previously disclosed or the asset misrepresented.

15. In the event that the United States, pursuant to Paragraph 14 (concerning disclosure of assets) above, opts to rescind this Agreement, Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree 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 sixty (60) calendar days of written notification to Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available in the underlying litigation in this matter.

16. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry waive and shall not assert any defenses they 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.

17. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry fully and finally release 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 Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry 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 and the United States' investigation and prosecution thereof.

18. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry fully and finally release the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry have asserted, could have asserted, or may assert in the future against the Relator, related to the Relator *qui tam* action and the Relator's investigation and prosecution thereof.

19. 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; and Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

20. Hyperion, AltaCare, LTCS and Douglas Mittleider 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Hyperion, AltaCare, LTCS and Douglas Mittleider, or their 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) Hyperion, AltaCare, LTCS and Douglas Mittleider'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 payments Hyperion, AltaCare, LTCS or Douglas Mittleider make to the United States pursuant to this Agreement and any payments that Hyperion, AltaCare, LTCS or Douglas Mittleider make to Relator under this Agreement, including costs and attorney's fees; and

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").

- (b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Hyperion, AltaCare, LTCS and Douglas Mittleider, and Hyperion, AltaCare, LTCS and Douglas Mittleider 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 Hyperion, AltaCare, LTCS or Douglas Mittleider, or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- (c) Treatment of Unallowable Costs Previously Submitted for Payment: Hyperion, AltaCare, LTCS and Douglas Mittleider further agree that within ninety (90) days of the Effective Date of this Agreement they 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 Hyperion, AltaCare, LTCS or Douglas Mittleider, or any of their 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.

Hyperion, AltaCare, LTCS and Douglas Mittleider agree that the United States, at a minimum, shall be entitled to recoup from Hyperion, AltaCare, LTCS and Douglas Mittleider 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 Hyperion, AltaCare, LTCS and Douglas Mittleider, or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Hyperion, AltaCare, LTCS or Douglas Mittleider, or any of their subsidiaries' or affiliates' 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 Hyperion, AltaCare, LTCS or Douglas

Mittleider's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

21. Julie Mittleider and Sentry 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Julie Mittleider and/or Sentry, or their 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) Julie Mittleider's and Sentry'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 payments Julie Mittleider or Sentry make to the United States pursuant to this Agreement and any payments that Julie Mittleider or Sentry make to Relator under this Agreement, including costs and attorney's fees; and
- 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").

- (b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Julie Mittleider and/or Sentry, and Julie Mittleider and Sentry 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 Julie Mittleider and/or Sentry or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- (c) Treatment of Unallowable Costs Previously Submitted for Payment: Julie Mittleider and Sentry further agree that within ninety (90) days of the Effective Date of this Agreement they 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 Julie Mittleider and/or Sentry or any of their 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. Julie Mittleider and Sentry agree that the United States, at a minimum, shall be entitled to recoup from Julie Mittleider and/or Sentry 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 Julie Mittleider and/or Sentry or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) Julie Mittleider and/or Sentry's or any of their subsidiaries' or affiliates' 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 Julie Mittleider and/or Sentry's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

22. 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 23 (waiver for beneficiaries paragraph) below.

23. Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree that they waive and shall not hereafter 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.

24. If Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry commences, or a third party commences against Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry's debts, or seeking to adjudicate Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or

Sentry as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry or for all or any substantial part Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry's assets, then Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree as follows:

- (a) Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry were insolvent at the time this Agreement was entered into, or became insolvent as a result of payments made to the United States or Relator; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry.
- (b) If Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry's 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, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and/or Sentry for the claims that would otherwise be covered by the

releases provided in Paragraphs 9 and 10 above, and Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry agree that (i) any such claims, actions, or proceedings brought by the United States are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph because it would be an exercise of the United States’ police and regulatory power to protect public policy and public health, safety and welfare, and Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; (ii) Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within sixty (60) calendar days of written notification to Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry’s that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available in the underlying litigation in this matter; (iii) the United States has an undisputed, noncontingent and liquidated, allowed claim against the debtor in the case, action, or proceeding referenced in the first clause of this paragraph for treble damages under the FCA in the amount of Four Million dollars (\$4,000,000); and (iv) the United States and Relator may pursue their claims in the case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action, or proceeding.

- (c) Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry acknowledge that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

25. Upon receipt of the payments described in Paragraphs 2 and 8 above, the Parties shall promptly sign and file a Joint Stipulation of Dismissal of the United States' Complaint in Intervention and the SAC pursuant to Rule 41, subject to the terms of this Agreement, requesting that the Court in this action retain jurisdiction to enforce this Agreement and resolve any disputes hereunder and any relator share issues. The dismissal by the United States of its Complaint in Intervention shall be with prejudice and the Relator's dismissal of the SAC will be with prejudice to the Relator but without prejudice to the United States.

26. Except as provided in Paragraph 8 above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

27. 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.

28. 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 Southern District of Mississippi. 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.

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

30. The undersigned counsel for Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry represent and warrant that they have advised such persons and entities in connection with the making of this Agreement and have recommended their execution hereof.

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

32. As used herein, an "affiliate" means a corporation, limited liability company, partnership, or other legal entity that is directly, or indirectly in control of, or under common control with, another, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of an entity, whether through the ownership of stock, by contract or otherwise.

33. This Agreement is binding on Hyperion, AltaCare, LTCS, Douglas Mittleider, Julie Mittleider and Sentry's predecessors, successors, transferees, heirs, and assigns.

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

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

36. 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: 11.15.17

BY:



RICHARD S. NICHOLSON
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 11/15/17

BY: Lisa M. Re

LISA M. RE
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

ACADEMY HEALTH CENTER, INC.

DATED: _____

BY: _____

Roger Burke
Director, Academy Health Center, Inc.

COUNSEL FOR ACADEMY HEALTH CENTER, INC.

DATED: _____

BY: _____

Julie Bowman Mitchell
Counsel for Academy Health Center, Inc.

FINAL

DATED: _____

BY: _____

LISA M. RE
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

ACADEMY HEALTH CENTER, INC.

DATED: 11-15-2017 BY:



Roger Burke
Director, Academy Health Center, Inc.

COUNSEL FOR ACADEMY HEALTH CENTER, INC.

DATED: _____

BY: _____

Julie Bowman Mitchell
Counsel for Academy Health Center, Inc.

DATED: _____

BY: _____

LISA M. RE
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

ACADEMY HEALTH CENTER, INC.

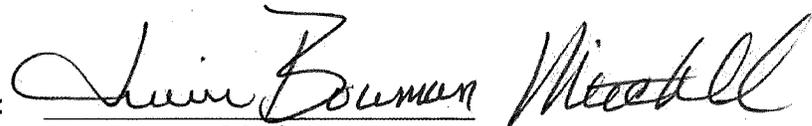
DATED: _____

BY: _____

Roger Burke
Director, Academy Health Center, Inc.

COUNSEL FOR ACADEMY HEALTH CENTER, INC.

DATED: 11/15/17

BY: 

Julie Bowman Mitchell
Counsel for Academy Health Center, Inc.

DOUGLAS K. MITTLEIDER

DATED: 11-15-17

BY: 
Douglas K. Mittleider

JULIE D. MITTLEIDER

DATED: _____

BY: _____
Julie D. Mittleider

HYPERION FOUNDATION, INC

DATED: 11-14-17

BY: 
Douglas K. Mittleider,
Director and President of Hyperion Foundation, Inc.

ALTACARE CORPORATION

DATED: 11-16-17

BY: 
Douglas K. Mittleider,
Director and President of AltaCare Corporation

LONG TERM CARE SERVICES, INC.

DATED: 11-16-17

BY: 
Douglas K. Mittleider,
Director and President of Long Term Care Services, Inc.

FINAL

DOUGLAS K. MITTLEIDER

DATED: _____

BY: _____
Douglas K. Mittleider

JULIE D. MITTLEIDER

DATED: 11-18-17

BY: Julie D. Mittleider
Julie D. Mittleider

HYPERION FOUNDATION, INC

DATED: _____

BY: _____
Douglas K. Mittleider,
Director and President of Hyperion Foundation, Inc.

ALTACARE CORPORATION

DATED: _____

BY: _____
Douglas K. Mittleider,
Director and President of AltaCare Corporation

LONG TERM CARE SERVICES, INC.

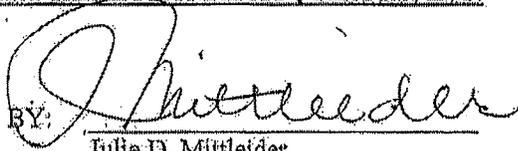
DATED: _____

BY: _____
Douglas K. Mittleider,
Director and President of Long Term Care Services, Inc.

FINAL

SENTRY HEALTHCARE ACQUIRORS, INC.

DATED: 11-15-17

BY: 

Julie D. Mittleider,
Director and President of Sentry Healthcare Acquirors, Inc.

COUNSEL FOR DOUGLAS K. MITTLEIDER,
JULIE D. MITTLEIDER, ALTACARE CORPORATION, LONG TERM
CARE SERVICES, INC., AND SENTRY HEALTHCARE ACQUIRORS, INC.

DATED: _____

BY: _____

John P. Sneed, Esq.
WISE CARTER CHILD & CARAWAY
401 E. Capitol Street, Suite 600
Jackson, Mississippi 39205

SENTRY HEALTHCARE ACQUIRORS, INC.

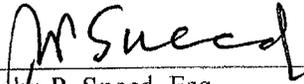
DATED: _____

BY: _____

Julie D. Mittleider,
Director and President of Sentry Healthcare Acquirors, Inc.

**COUNSEL FOR DOUGLAS K. MITTLEIDER,
JULIE D. MITTLEIDER, ALTACARE CORPORATION, LONG TERM
CARE SERVICES, INC., AND SENTRY HEALTHCARE ACQUIRORS, INC.**

DATED: 11.15.17

BY: 

John P. Sneed, Esq.
WISE CARTER CHILD & CARAWAY
401 E. Capitol Street, Suite 600
Jackson, Mississippi 39205