

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement ("Agreement") is entered into between (1) the District of Columbia, acting through the Office of the Attorney General for the District of Columbia, and on behalf of the Department of Health Care Finance ("DHCF") (collectively referred to as the "District"), and (2) D.C. Chartered Health Plan, Inc. in Rehabilitation (referred to as "Chartered"), acting through William P. White, Commissioner of the D.C. Department of Insurance, Securities and Banking ("DISB"), in his capacity as Rehabilitator for Chartered. The District and Chartered are each referred to as a "Party" and together as the "Parties."

**PREAMBLE**

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

A. The District of Columbia is a municipal corporation created by an Act of Congress. DHCF is the agency of the District of Columbia government that manages the District's Medicaid and Alliance health programs.

B. Chartered is a managed care organization that coordinates and arranges for health care services. Chartered coordinated and managed health care services for certain District residents until April 30, 2013 under a contract with DHCF.

C. On April 9, 2012, Chartered filed an appeal (No. D-1445) before the Contract Appeals Board for the District of Columbia ("CAB") arising out of DHCF's transfer of nearly 23,000 people (the "774/775" or "transferred" populations of childless adults living at up to 200% of the federal poverty level) from the District's Alliance program to Chartered's Medicaid program, which provided coverage for pharmacy benefits for expensive antiviral medications needed by many of the population. This claim was superseded and amended in a subsequent filing, as described in Paragraph F.

D. On October 19, 2012, pursuant to an Emergency Consent Order of Rehabilitation (“Order of Rehabilitation”) under D.C. Code §§ 31-1303, 1310-1312 and 3420, Chartered was placed in court-supervised rehabilitation by the Superior Court for the District of Columbia (the “Superior Court”), in Civil Action No. 2012 CA 008227. William P. White, Commissioner of DISB, was appointed Chartered’s rehabilitator (“Rehabilitator”) and was vested with all title, control, authority and administration of and over all assets of Chartered. The Order of Rehabilitation requires the Rehabilitator to seek the Superior Court’s approval of any compromise or settlement of Chartered’s claim pending before the CAB and of contemplated claims regarding capitation rates for the Alliance program.

E. On January 4, 2013, Chartered filed a claim (the “Dental Crown Claim”) with the DHCF contracting officer alleging that DHCF failed to compensate Chartered for certain dental services that the District mandated Chartered pay for, but which were not required by its contract with the District. Chartered alleges it is entitled to an equitable adjustment to compensate it for the increased costs Chartered incurred as a result of the District’s material change to the contract. The Dental Crown Claim, CAB Appeal No. D-1478, seeks \$2,200,000 plus interest.

F. Chartered filed another claim (the “Retrospective Claim”) on February 21, 2013, which superseded and amended the claim pending before the CAB in Appeal No. D-1445, described in Paragraph C. According to Chartered, DHCF made a unilateral, material change to the terms of the District’s contract with Chartered for which Chartered allegedly has not been compensated adequately, and for which Chartered allegedly is entitled to an equitable adjustment. According to Chartered and its consultant, Towers Watson, the rates the District paid to Chartered for the transferred populations were not actuarially sound when established, in violation of Chartered’s contract as well as applicable statutes and regulations. The

Retrospective Claim includes losses Chartered alleges resulted from the actuarially unsound rates DHCF paid to Chartered for the 774/775 population as well as the existing "legacy" Medicaid population. The Retrospective Claim, CAB Appeal No. D-1479, seeks \$51,287,369 plus interest.

G. Also on February 21, 2013, Chartered filed a claim (the "Alliance Claim") with the DHCF contracting officer alleging that DHCF failed to pay actuarially sound capitation rates to Chartered for the services it provided to members of the District's Alliance program from July 2010 through July 2011. Chartered asserts that DHCF was required to pay it actuarially sound rates for the Alliance program pursuant to the terms of Chartered's contract with the District. Chartered alleges it is entitled to breach of contract damages and/or an equitable adjustment from the District. The Alliance Claim, CAB Appeal No. D-1477, seeks \$9,086,929 plus interest.

H. On March 1, 2013, the Superior Court approved a Plan of Reorganization for Chartered that specifies the manner in which valid claims against Chartered are to be paid, including claims by providers.

I. On May 30, 2013, the Superior Court established August 31, 2013 (the "Bar Date") as the date by which all claims against Chartered must be filed with the Rehabilitator.

J. On July 1, 2013, Chartered filed notices of appeal in the CAB with respect to the Retrospective Claim, Alliance Claim and the Dental Crown Claim and each appeal is now pending before the CAB.

K. Chartered has been investigating and believes that it could file additional claims against DHCF, including claims for what Chartered believes may be actuarially unsound rates during the last year of Chartered's contract with DHCF (May 2012 – April 2013).

L. The District denies the allegations and claims that have been raised or asserted by Chartered. Therefore, this Agreement is neither an admission of liability nor a concession by the District of Columbia with respect to the foregoing allegations of Chartered. And, this Agreement does not create any contractual relationship between the District of Columbia and the individual providers or, except as specified herein, any independent obligation to make a payment to providers. However, in order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the claims asserted or that could have been asserted by Chartered, under any theory of liability and in any court or forum, the Parties have reached a full and final settlement.

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:

### **TERMS AND CONDITIONS**

1. **Permanent and Binding Resolution.** This Agreement is a permanent and binding agreement, accord and resolution of the rights and obligations of the Parties with respect to all matters that are the subject of this Agreement.

2. **Settlement Consideration.** Subject to the Superior Court's approval, this settlement is valued at \$48 million dollars (Forty Eight Million Dollars). This settlement shall be paid as set forth in Paragraphs 3 and 4.

3. **Payment of Settlement Amount.** The total settlement amount shall be paid by the District in two parts as described below. All payments by the District under this Agreement are subject to the limitations of the federal and District of Columbia Anti-Deficiency Acts, 32 U.S.C. §1341 *et seq.* and D.C. Code § 47-355.01, *et seq.*

- A. Part I. In accordance with the terms of this Agreement, the District shall pay \$18 million to Chartered through a Technical Adjustment under the federal Medicaid regulations ("Technical Adjustment Funds"). Subject to the Superior Court's approval, Chartered will distribute all Technical Adjustment Funds in accordance with the Plan of Reorganization to providers having undisputed Class 3 claims allowed by the Rehabilitator; provided, however, that Chartered shall first establish appropriate reserves for disputed provider claims using funds already in Chartered's possession ("Reserves"). No part of the Technical Adjustment Funds shall be used for establishment of the Reserves.
- B. Part II. In accordance with the terms of this Agreement, the District shall pay \$30 million either (a) directly to Chartered's providers in the Medicaid and Alliance programs having undisputed Class 3 claims allowed by the Rehabilitator; or (b) if necessary to prevent the lapsing of Fiscal Year 2013 funds designated for the \$30 million payment, to a third party selected by the District, in its own discretion, to make the payments to providers on the District's behalf as described in Paragraph 4. After the payments in Part I above have been made, Chartered agrees to provide the District with a list of remaining unpaid providers whose claims are not disputed by Chartered and the balance of the payments owed to the listed providers. The District shall accept Chartered's claim determinations and pay the balance of the undisputed claims on a *pro rata* basis, in accord with the determinations made by Chartered. The payments in Part II shall not duplicate any Part I payment, and

shall not be made to providers whose claims are disputed by Chartered, who refuse to provide a release of claims to Chartered and the District of Columbia as provided in Paragraph 4, or who fail to submit their claims to the Rehabilitator by the Bar Date.

C. Late interest payment. Any interest owed to providers by Chartered (i) will be paid by Chartered out of its available assets, (ii) will not be funded by the settlement consideration and (iii) will occur after the distribution of funds in Parts I and II.

4. Procedures for Payment.

A. The payments described in Part II of this Agreement are specifically conditioned on the provider submitting such application and other documentation as reasonably may be required by the District and providing a full and complete release to the District of Columbia and its current and former officers, agents and employees for (a) the full amount of the provider's claim described in Paragraph 3 and (b) any and all other claims under any theory of liability. Each provider also shall agree in writing that the payments it has received by the District under Part II of Paragraph 3 shall be credited against the amounts owed to that provider by Chartered and shall provide a complete release of any and all claims, under any theory of liability, against Chartered to the extent of the amounts paid by or on behalf of the District under Part II of Paragraph 3.

- B. Chartered agrees to provide the District with any documentation needed to verify the outstanding provider claim amount(s), if any, for the Medicaid or Alliance programs.
- C. To the extent Chartered's contract with the District prohibited direct payments by or on behalf of the District to any of Chartered's providers, Chartered hereby consents to the payments under Part II of Paragraph 3 going from or on behalf of the District directly to Chartered's providers.
- D. If, at any time, the District reasonably believes that its funds for the payments described in part II of Paragraph 3 are at risk of lapsing at the end of Fiscal Year 2013 (i.e., September 30, 2013), the District shall pay to a third party of its choosing any portion of the \$30 million that has not been paid to providers, and the District shall instruct the chosen third party to assist in the distribution of the remaining Part II payments to providers.
- E. After the District's payments in Part II have been made, the District agrees to provide Chartered with an accounting of the amounts paid to each provider and copies of the releases executed by the providers.
- F. If any provider refuses to provide the releases required by Paragraphs 3 and 4, the Parties shall work together to reallocate, on a pro rata basis, to providers that have executed the releases the amount that would have been paid to the non-releasing provider.
- G. The Parties shall cooperate to ensure that all amounts paid to providers under this Agreement are calculated in accordance with the Plan of Reorganization.

5. Authorization by CMS. The payment specified in Paragraph 3, Part I, must be authorized by the U.S. Centers for Medicaid & Medicare Services ("CMS"). Should CMS not authorize the Part I payment, this Agreement shall be null and void.

6. Approval by the Superior Court. The terms of this Agreement, including, but not limited to, the payment plan described in Paragraphs 3 and 4, must be approved by the Superior Court in *District of Columbia v D.C. Chartered Health Plan, Inc.*, 2012 CA 8227, currently pending before the Hon. Judge Melvin Wright, before any payments may be made. Should the Superior Court not approve the settlement, this Agreement shall be null and void.

7. Timing of payments. The District shall make the payment specified in Paragraph 3, Part I, within ten (10) business days following the later of (a) the date CMS provides the authorization described in Paragraph 5, and (b) the date the Superior Court issues an approval order as described in Paragraph 6. The District shall make the payments specified in Paragraph 3, Part II, within forty-five (45) days following the later of (a) the date the Superior Court issues an approval order as described in Paragraph 6, (b) the date Chartered provides to the District the information and documentation required by Paragraphs 3 and 4 regarding unpaid and undisputed claims, and (c) the date a provider has provided the releases and documentation required by paragraphs 3 and 4 of this Agreement.

8. Release by Chartered. In exchange for the obligations and promises of the District of Columbia in this Agreement, Chartered hereby releases, waives, relinquishes and forgives the District of Columbia and its current and former officers, officials and employees, of any and all claims, demands, suits, and causes of action that Chartered has asserted or could have asserted against the District of Columbia and its current and former officers, officials and employees, relating to both the Medicaid and Alliance programs under any theory of liability or

claim and in any arbitration or administrative or judicial forum. This release and waiver: (a) includes, but is not limited to, the claims and potential claims referenced in the Preamble to this Agreement, and (b) is a global release waiving, relinquishing and forgiving any and all claims, known or unknown, arising from or relating to in any way Chartered's activities or services at any time for or on behalf of the District, including, but not limited to, any and all claims, known or unknown, arising from or relating to any contract or agreement with the District.

9. Covenant Not to Sue. The District covenants not to sue Chartered under any legal or equitable theory that seeks recovery or indemnification from Chartered of amounts paid to providers by the District pursuant to Paragraph 3 of this Agreement. However, nothing in this Agreement precludes the District from suing Chartered (a) for any criminal or other intentional misconduct occurring prior to October 19, 2012; (b) for submission of any false claims in violation of federal or District law; (c) for taxes, or (d) nominally, where its being named in a suit is deemed by the District to be a necessary prerequisite to commencing an action against former members of Chartered's Board, the parent entity of Chartered or the sole shareholder of Chartered's parent entity, as to whom the District expressly reserves its right to sue.

10. Parties Bear Their Own Costs. Except as expressly provided to the contrary in this Agreement, 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. Advice of Counsel. This Agreement is the product of informed negotiations. Each Party agrees that it is fully informed as to the meaning and intent of this Agreement and has been advised independently by counsel of its choosing in that regard.

12. Representations and Warranties. Each Party represents and warrants that subject to the funding limitations referenced in Paragraphs 3, 5 and 6 of this settlement agreement (a) it

has all requisite power and authority to enter into this Agreement and perform the obligations herein, and (b) the obligations herein are valid and binding obligations. The signatories to this Agreement represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement and bind the Party for whom s/he has signed.

13. Entire Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or any of their conditions or terms. This Agreement represents the complete agreement between the Parties and supersedes any prior oral or written communications regarding the settlement.

14. Authorship. The Parties agree that this Agreement reflects the joint drafting efforts of both Parties. In the event any dispute, disagreement, or controversy arises regarding this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

15. Execution. Provided that all Parties hereto execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic transmission.

16. Further Action. The Parties agree to take such action and to execute such additional documents as may be necessary to carry out and enforce the terms of this Agreement.

17. Amendment. This Agreement may not be amended or modified except by a written instrument signed by the duly authorized representatives of each of the Parties.

18. Headings. The headings in the Agreement are for convenience only and are not to be considered a construction of the provisions hereof.

19. Severability. If any provision of this Agreement is found to be invalid, unenforceable, or void for any reason, the entire agreement shall be null and void unless both parties expressly agree in writing that the Agreement, other than the provision that has been invalidated or voided, shall remain in effect.

20. Non-Assignment. This Agreement and the payments required hereunder may not be assigned to any third party or non-signatory to the Agreement without the prior written approval of both Parties. Chartered expressly represents and warrants that no payments due to Chartered from the District or that are paid by the terms of this Agreement have already been assigned or pledged to any third party, including its parent entity, not a signatory to this Agreement.

21. No Third Party Beneficiary Rights. This Agreement does not create any rights, entitlements or benefits to, and cannot be relied upon or enforced by, any third party not a signatory to this Agreement.

22. Conflict of Law and Enforcement. This Agreement shall be interpreted, enforced, and governed by the laws of the District of Columbia. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. Either Party may seek to enforce the terms of this Agreement if the other Party materially breaches the Agreement and, after receiving written notice, fails to cure such breach within ten (10) business days, and nothing otherwise in this Agreement, including but not limited to Paragraphs 8 and 9, shall prevent the Parties from enforcing the terms of this

Agreement. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereto or the right of such Party thereafter to enforce each and every such provision.

23. Dismissal of Claims. Within three (3) days after executing this Agreement, the Parties shall file a motion to stay Chartered's claims pending before the CAB, if they have not already filed such a motion. Within five (5) days after the District has paid \$48 million, as specified in Paragraphs 3 and 4 above, Chartered shall dismiss with prejudice its claims pending before the CAB. If the District does not fully comply with its payment obligations set forth in this Agreement, Chartered preserves and does not waive or forego its right to seek by motion to the Superior Court to enforce the settlement, and if the Court deems the District to be in material breach and such enforcement is unsuccessful in bringing the District into compliance with this Agreement, to seek to pursue its CAB claims against the District and to pursue additional CAB claims that otherwise would have been released under this Agreement if those claims are ripe for review at the CAB. If the Superior Court deems the District to be in material breach which is not cured and authorizes Chartered to pursue its CAB claims against the District, then (a) Chartered may also seek up to \$50,000 for the attorneys' fees and costs that Chartered incurs in seeking such authorization, (b) the District shall not object to the lifting of the stay of the CAB action should the Court deem the District to be in material breach of the settlement and that breach has not been cured, and (c) if Chartered is successful in its CAB claims against the District, Chartered shall credit to the District the full amount of any payments the District has made under this Agreement. Other than as specified in the preceding sentence or as otherwise specified in this Agreement, nothing in this paragraph is intended to deprive the District of Columbia of any

defenses it may have to an action or motion by Chartered to enforce the settlement or any specific relief sought by Chartered in the event of a material breach by the District

24. Notice. Any notices under this Agreement shall be provided to the following:

For the District of Columbia, on behalf of the Department of Health Care Finance:

Wayne Turnage  
Director, District of Columbia Department of Health Care Finance  
899 North Capitol Street NE, Suite 6039  
Washington, D.C. 20002

George C. Valentine  
Deputy Attorney General, Civil Litigation Division  
District of Columbia Office of the Attorney General  
441 4<sup>th</sup> Street NW  
Washington, D.C. 20001

For D.C. Chartered Health Plan, Inc. (in Rehabilitation):

William P. White  
Commissioner, District of Columbia Department of Insurance, Securities  
and Banking, in his capacity as Rehabilitator for D.C. Chartered  
Health Plan, Inc.  
810 First Street, NE, Suite 701  
Washington, D.C. 20002

A. Scott Bolden  
Reed Smith LLP  
1301 K Street, N.W., Suite 1100 – East Tower  
Washington, D.C. 20005-3373

Charles T. Richardson  
Faegre Baker Daniels, LLP  
1050 K Street NW, Suite 400  
Washington, D.C. 20001

Notices shall be made either (a) via overnight mail or (b) via first-class mail with a copy via electronic mail. Notwithstanding Paragraph 17, either Party unilaterally may change any or all of the persons designated above for it, after notice to the other Party pursuant to this Paragraph.

25. Effective Date. This Agreement, once duly executed by the Parties, is effective upon the Superior Court's approval of its terms.

**D.C. CHARTERED HEALTH PLAN, INC.**

By: William P. White  
William P. White, Commissioner of the  
District of Columbia Department of Insurance,  
Securities and Banking, in his capacity as  
Rehabilitator for D.C. Chartered Health Plan, Inc.

Dated: July 22, 2013

**DISTRICT OF COLUMBIA**

By: Wayne Turnage  
Wayne Turnage  
Director  
District of Columbia Department of Health  
Care Finance

Dated: 7-22-2013

and

Irvin B. Nathan  
Attorney General for the District of Columbia

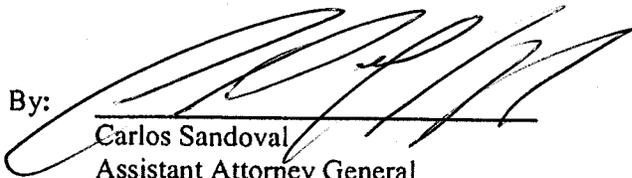
By: George C. Valentine  
George C. Valentine  
Deputy Attorney General  
Civil Litigation Division

Dated: 7/22/13

By: Kimberly M. Johnson  
Kimberly Matthews Johnson  
Section Chief, GL I  
Civil Litigation Division

Dated: 7-22-13

By:



Carlos Sandoval  
Assistant Attorney General  
Civil Litigation Division  
Office of the Attorney General  
441 4th Street, N.W., Suite 650-North  
Washington, D.C. 20001

Dated:

7/22/2013

Counsel for the District of Columbia