

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State") and Millennium Health, LLC, (formerly Millennium Laboratories, Inc.) ("Millennium"), through their authorized representatives, hereinafter collectively referred to as "the Parties."

II. PREAMBLE

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

A. At all relevant times, Millennium formerly a corporation incorporated under the laws of California, now a limited liability company organized under the laws of California with its principal place of business in San Diego, California, marketed and performed laboratory testing services in the State, including pharmacogenetic testing ("PGT") and submitted claims for reimbursement to the Medicaid program.

B. On July 18, 2014 Omni Healthcare, Inc. and John Doe (Dr. Craig Deligdish) ("Relators") filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned *United States of America et al., ex rel. Omni Healthcare, Inc., et al. v. Millennium Laboratories, Inc.*, Civil Action No. 2014-CV-13052-RGS. This *qui tam* action will be referred to as the "Civil Action." The Civil Action alleges that Millennium submitted or caused to be submitted false claims to the Medicare Part B program ("Medicare"), the Medicaid program ("Medicaid"), the

Department of Defense, and the Department of Veterans Affairs, for medically unnecessary PGT.

C. Millennium has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America (as that term is defined in the Federal Settlement Agreement) hereinafter referred to as the "United States."

D. The State contends that Millennium submitted claims or caused claims for payment to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396w-5). Claims may be submitted to the Medicaid Program directly or through an intermediary, commonly known as a managed care organization ("MCO"). MCOs are contractors with the Medicaid programs and the submission of claims for payment to an MCO constitutes the submission of claims to the Medicaid Program.

E. The State contends that it has certain civil and administrative causes of action against Millennium for engaging in the following conduct (the "Covered Conduct"):

During the period from January 1, 2012, through May 20, 2015, Millennium knowingly submitted or caused the submission of false and/or fraudulent claims to the Medicaid Program, through Millennium's promotion of, and submission of claims to the Medicaid program for PGT that was medically unnecessary because it was performed on a routine or preemptive basis and without an assessment of individual patient need, as alleged in the Civil Action. The conduct described in this Paragraph shall be referred to as the Covered Conduct.

F. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

G. Millennium has advised the United States and Medicaid Participating States (as defined in Paragraph 1(c) below) that, in order to obtain sufficient funds to pay the Settlement Amount (as defined in Paragraph 1 below), it intends to effect a restructuring transaction either through an out-of-court exchange of the obligations under its secured credit facility (the “Out-of-Court Restructuring”) or through a pre-packaged plan of reorganization under chapter 11 of the Bankruptcy Code (the “In-Court Restructuring,” and together with the Out-of-Court Restructuring, the “Millennium Restructuring”) on terms and conditions set forth in a restructuring support agreement (the “Restructuring Support Agreement”) to be executed by Millennium, Millennium Lab Holdings, Inc. (“MLH”), TA Millennium, Inc. (“TA”) and the holders of Millennium’s secured credit facility (the “Lenders”), the terms of which shall be consistent with the Milestones set forth on Exhibit A to this Agreement, which is incorporated herein.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Millennium shall pay or cause to be paid to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the

sum of ten million dollars (\$10,000,000.00), plus accrued interest on that amount of 4% per annum commencing on May 20, 2015 and continuing and including the day payment is made under this Agreement (collectively, the "Settlement Amount"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement, and subject to the terms of this Agreement. This debt shall be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Millennium agrees to pay, to the United States the sum of nine million dollars (\$9,000,000.00), plus accrued interest on that amount at the rate of 4% per annum commencing on May 20, 2015 ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement. All payments of the Federal Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions by the United States.

(b) Millennium agrees to pay, to the Medicaid Participating States the sum of one million dollars (\$1,000,000.00), plus interest at the rate of four percent (4.00%) per annum from May 20, 2015 ("Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of Sub-paragraph (e) below ("Medicaid Participating State Settlement Amount"). The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for Millennium.

(c) Millennium shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Millennium and the State Team have agreed, or in a form otherwise agreed to by Millennium and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Millennium's attorneys within 30 days of receiving this Agreement. If this condition is not satisfied within 30 days, Millennium's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Millennium and the State Team to extend the 30 day period.

(d) The Settlement Amount shall be paid as follows:

- i. Within one business day of the effective date of the Federal Settlement Agreement, Millennium shall pay or cause to be paid the sum of one million, seven hundred fifty-six thousand, four hundred and ten dollars and seventy-three cents (\$1,756,410.73) to the United States (the "Initial Federal Settlement Amount"). Payment of the Initial Federal Settlement Amount shall be irrevocable, and the Initial Federal Settlement Amount shall not be returned to Millennium, regardless of default under, or termination of, this Agreement. In the event of default under, or termination of, this Agreement, the Initial Federal Settlement Amount will be credited to Millennium's liability to the United States for the Covered Conduct.

- ii. Within one business day of the effective date of a State Settlement Agreement, Millennium shall pay or cause to be paid the sum of one hundred ninety-five thousand, one hundred fifty-six dollars and seventy-five cents (\$195,156.75) to the Medicaid Participating States (the "Initial Medicaid State Settlement Amount"). The Initial Medicaid State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team, which written instructions must be delivered to counsel for Millennium before the Initial Medicaid State Settlement Amount is due under this Agreement. Payment of the Initial Medicaid State Settlement Amount shall be irrevocable, and the Initial Medicaid State Settlement Amount shall not be returned to Millennium, regardless of default under, or termination of, this Agreement. In the event of default under, or termination of, this Agreement, the Initial Medicaid State Settlement Amount will be credited to Millennium's obligations to pay the Medicaid State Settlement Amount as set forth in the Medicaid State Settlement Agreements.
- iii. Millennium shall promptly, but in any event not later than November 9, 2015, cause irrevocable standby letter(s) of credit to be issued in favor of the United States (the "Settlement Letters of Credit"), in an amount totaling eight million, two hundred seventy-nine thousand

and eight dollars and sixty-eight cents (\$8,279,008.68) (the “Settlement Letters of Credit Funds”), which equals the balance of the Settlement Amount assuming payment in full on December 30, 2015. Millennium agrees to pay for the costs, if any, of the Settlement Letters of Credit. The Settlement Letters of Credit shall be established pursuant to agreement among MLH, TA and the United States on terms and conditions acceptable to each of them, in their respective sole and absolute discretion, and which shall provide, among other things, that (i) on the first business day after the closing date of the Millennium Restructuring, as set forth in the Restructuring Support Agreement and the annexes thereto (the “Millennium Restructuring Effective Date”), the Settlement Letters of Credit Funds shall be released to the United States, HHS and the Medicaid Participating States; (ii) if the United States declares a default under this Agreement, terminates this Agreement, or takes action against Millennium based upon Millennium’s breach of this Agreement, the Settlement Letters of Credit shall terminate automatically by their terms and the Settlement Letters of Credit Funds shall be released automatically to MLH and TA based upon their respective contributions to the Settlement Letters of Credit Funds; and (iii) if the Millennium Restructuring Effective Date does not occur on or before December 30, 2015 for any reason, the Settlement Letters of Credit, at the sole discretion of MLH and TA,

may terminate by their terms and the Settlement Letters of Credit Funds, at the sole discretion of MLH and TA, may be released to MLH and TA based upon their respective contributions to the Settlement Letters of Credit Funds. None of Millennium, Millennium's creditors, the United States, or any Medicaid Participating State shall have any interest in the Settlement Letters of Credit Funds, and none of the United States nor any Medicaid Participating State shall have any interest in the Settlement Letters of Credit Funds until such time as the Millennium Restructuring Effective Date. For the avoidance of doubt, the Settlement Letters of Credit Funds shall not be property of Millennium's or its affiliates' bankruptcy estate arising under 11 U.S.C. § 541.

- iv. If full payment of the Settlement Amount is not made to the United States, HHS and the Medicaid Participating States from the Settlement Letters of Credit Funds on or before December 30, 2015, Millennium shall pay or cause to be paid the remaining balance of the Settlement Amount directly to the United States on December 30, 2015.

(e) The total portion of the amount paid by Millennium in settlement for the Covered Conduct for the State is \$193,273.93, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$80,754.83, plus applicable interest (the "State Amount"). If the State does not

execute this Agreement within 30 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Millennium absent written agreement between counsel for Millennium and the State Team to extend the time period for executing this Agreement.

2. Promptly following ninety-one (91) days after the State's receipt of the full State Amount and conditioned upon the non-occurrence of an Avoidance Event, or avoidance of the Guarantee Agreement or any payment thereunder, and subject to the exceptions in Paragraph 4 (concerning excluded claims) and Paragraph 12 (concerning payment avoidance and recoveries), below, following the State's receipt of full payment of the State Amount, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Millennium in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Action. Following written notice to the United States of final resolution of all disputes among Relators concerning Relators' rights to receive all or part of an award pursuant to 31 U.S.C. § 3730(d) (whether by agreement, final non-appealable judicial order, or binding alternative dispute resolution), and contingent upon the receipt of their respective State Amounts, the State, if served with the Civil Action and liable to pay a Relator's share, agrees to pay the Relators the amount of \$13,324.55, plus applicable interest, promptly following ninety-one (91) days after the State's receipt of the full State Amount and conditioned upon the non-occurrence of an Avoidance Event, or avoidance of the Guarantee Agreement or any payment thereunder. This amount is to be paid through the State Team and has been addressed via side letters with the Relators in the Civil Action.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) and Paragraph 12 (concerning payment avoidance and recoveries), below, following Millennium's full payment of the State Amount, the State agrees and covenants not to sue Millennium with respect to the Covered Conduct. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Millennium set forth in this Agreement, and conditioned upon Millennium's full payment of the State Amount plus accrued interest, and subject to Paragraph 12 below, the State agrees to release Millennium, its predecessors and current and former parents, brother and sister corporations, divisions, direct and indirect subsidiaries, affiliates, successors, transferees, heirs, and assigns, and their current and former owners, directors, officers, shareholders and employees, individually and collectively (collectively, the "Millennium Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program, or its contracted MCOs, as a result of the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

(a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability not specifically released by this Agreement;

(c) any civil or administrative liability that any person or entity, including any Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i)

State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

(d) any liability to the State for any conduct other than the Covered Conduct;

(e) any liability based upon obligations created by this Agreement;

(f) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Millennium;

(h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(i) any liability based on a failure to deliver goods or services due.

5. In consideration of the obligations of Millennium set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Millennium has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the Medicaid Participating State Settlement Amount, and subject to Paragraphs 6 and 12, below, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against Millennium for the Covered Conduct, except as reserved in Paragraph 4 above. Nothing in this Agreement precludes the State from taking action against Millennium in the event that Millennium is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

6. Notwithstanding the foregoing, in the event of default in payment by Millennium as set forth in Paragraph 1.b, d, or e, above, the State Medicaid program may exclude Millennium from participating in the State Medicaid program until Millennium pays the unpaid portion of the State Amount, interest due, and collection costs. The State Medicaid program will provide written notice of any such exclusion to Millennium. Millennium waives any further notice of exclusion, and agrees not to contest exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Millennium wishes to apply for reinstatement, Millennium must submit a written request for reinstatement to the State Medicaid program. Millennium will not be reinstated unless and until the State Medicaid program approves such request for reinstatement. The option for Exclusion for Default as defined in this Paragraph is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

7. Millennium waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. In consideration of the obligations of the State set forth in this Agreement, Millennium Released Entities waive and discharge the State, its agencies, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Millennium Released Entities have against the

State, its agencies, employees, and agents arising from the State's investigation and prosecution of the Covered Conduct.

9. The amount that Millennium must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, any MCO which may be under contract to the State Medicaid program, or any other state payor, for the Covered Conduct; and Millennium agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of or not to appeal or cause the appeal of any such denials of claims, and further Millennium agrees not to resubmit to any MCO which may be under contract to the State Medicaid program any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

10. Millennium shall not seek payment for any claims for reimbursement to the State's Medicaid Program released by this Agreement from any health care beneficiaries of a State funded plan or benefit, or their parents, sponsors, legally responsible individuals, or third party payors, and further Millennium shall not seek payment for any claims for reimbursement to any MCOs which may be under contract to the State's Medicaid Program, and attributable in any way to the Covered Conduct, from any health care beneficiaries of a State funded plan or benefit, or their parents, sponsors, legally responsible individuals, or third party payors.

11. The Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth in

this Agreement constitute a contemporaneous exchange for new value given to Millennium, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange for new value. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Millennium was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. Millennium agrees to the following in exchange for valuable consideration provided in this Agreement.

- a. Millennium's obligations under this Agreement, financial or otherwise, may not be avoided pursuant to 11 U.S.C. § 547, and Millennium shall not argue or otherwise take the position in any case, proceeding, or action that: (i) Millennium's obligations under this Agreement may be avoided under 11 U.S.C. § 547; or (ii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Millennium. Millennium further agrees that the mutual promises, covenants and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Millennium was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).
- b. (1) If Millennium defaults on any of its obligations under this Agreement, prior to irrevocable payment in full of the Settlement Amount; or (2) if any

portion of the Initial Federal Settlement Amount or the Initial Medicaid State Settlement Amount is avoided or recovered for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547, 548 or 550, or any other Bankruptcy Code Provision (an “Avoidance Event”):

- i. The State, in its sole discretion, may rescind the covenants and releases in this Agreement and discontinue its forbearance from bringing any civil and/or administrative claim, action, or proceeding against Millennium for the claims that would otherwise be covered by the covenants and releases provided in Paragraphs 2, 3 and 5. Millennium agrees that: (A) any such claims, actions, or proceedings brought by the State 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 this Paragraph due to the State’s police and regulatory powers to protect public policy and public health, safety and welfare, and Millennium shall not argue or otherwise contend that the State’s claims, actions, or proceedings are subject to an automatic stay and consents to the lifting of the automatic stay for cause pursuant to 11 U.S.C. § 362(d); (B) neither Millennium nor its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, shall 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 proceedings that are brought by the State within 120 calendar days of written notification to

Millennium that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 19, 2015; and (C) the State has an allowed, valid, liquidated claim against Millennium in the amount of \$2,500,000 secured by valid and perfected offset and recoupment rights, and the State may pursue its claim in the case, action, or proceeding referenced in this Paragraph, as well as in any other case, action, or proceeding.

ii. The State Medicaid agency may exclude Millennium from participating in the State Medicaid program until Millennium cures the default and/or pays the unpaid portion of the State Amount, interest due, and collection costs. The State Medicaid agency will provide written notice of any such exclusion to Millennium. Millennium waives any further notice of the exclusion, and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Millennium wishes to apply for reinstatement, Millennium must submit a written request for reinstatement. Millennium will not be reinstated unless and until the State Medicaid agency approves such request for reinstatement. The option for exclusion for default as described in this Paragraph is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

iii. The United States and the Medicaid Participating States shall be made whole for any avoided or recovered portion of the Initial Federal

Settlement Amount or Initial Medicaid State Settlement Amount by means of enforcement of the Guarantee Agreement set forth in Exhibit B attached hereto. If payment made under the Guarantee Agreement is recovered from the United States or the Medicaid Participating States for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547, 548 or 550, or any other Bankruptcy Code Provision, the State, in its sole discretion, may rescind the covenants and releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding for the claims that would otherwise be covered by the covenants and releases provided in Paragraphs 2, 3, and 5.

Millennium agrees that (i) any rescission of covenants, releases and/or any claims, actions, or proceedings brought by the State is 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 this Paragraph due to the State's police and regulatory powers to protect public policy and public health, safety, and welfare, and Millennium shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay and consents to the lifting of the automatic stay for cause pursuant to 11 U.S.C. § 362(d); (ii) neither Millennium nor any of its predecessors, current and former parents, direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, officers, directors, or employees, shall 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 State within 120 calendar days of written notification to Millennium that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 19, 2015; and (iii) the State has a valid, liquidated claim against Millennium in the amount of \$2,500,000, secured by valid and perfected offset and recoupment rights, and the United States may pursue its claim in any case, action, or proceeding referenced in this Paragraph, as well as in any other case, action, or proceeding.

iv. The State may, in its sole discretion, declare that Millennium's failure to comply with any of its obligations in the Milestones set forth in Exhibit A hereto, is a default of Millennium's obligations under this Agreement for purposes of Paragraphs 12.b.i and 12.b.ii.

13. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. Millennium agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice, Millennium shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, for interviews and testimony, consistent with the rights and privileges of such individuals and of Millennium. Upon request, Millennium agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct.

15. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

17. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

18. In addition to all other payments and responsibilities under this Agreement, Millennium agrees to pay all reasonable expenses, and travel costs of the State Team, including reasonable consultant fees and expenses. Millennium will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

19. This Agreement is governed by the laws of the State, except disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

20. The undersigned Millennium signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their

official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

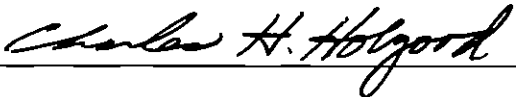
21. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

22. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

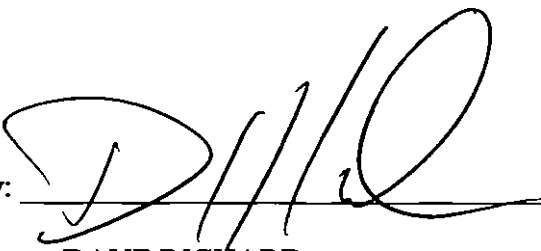
23. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

STATE OF NORTH CAROLINA

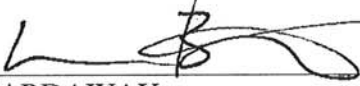
By: 
CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 11/6/2015

By: 
DAVE RICHARD
Deputy Secretary for Medical Assistance
Division of Medical Assistance

Dated: 10/29/15

MILLENNIUM HEALTH, LLC

By:  Dated: 10-19-15
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

By:  Dated: 10-19-15
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC


By:  Joseph F. Savage / ACB Dated: 10-19-15
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC


EXHIBIT A: MILESTONES

1. Millennium must obtain the written, irrevocable support for the Millennium Restructuring, as evidenced in a Restructuring Support Agreement, of Lenders representing not less than a majority in number and not less than 66.67% of the principal amount of the total holders and obligations outstanding, respectively, under its secured credit facility, on or before October 16, 2015;
2. Millennium must obtain the written, irrevocable support for the Millennium Restructuring, of shareholders representing not less than a majority of Millennium's equity, on or before October 16, 2015;
3. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall provide the United States with a copy of its bankruptcy plan by October 19, 2015, and obtain approval of the bankruptcy plan from the United States. The United States shall not withhold its approval of the bankruptcy plan without a good faith basis, and must inform Millennium of the reasons for withholding approval; Millennium shall have seven (7) days to revise the plan and seek approval of the revised bankruptcy plan from the United States;
4. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall deliver ballots and solicitations and obtain plan acceptance in a manner complying with 11 U.S.C. §§ 1125 and 1126 from all creditors entitled to vote on the plan on or before November 8, 2015;
5. Millennium shall have caused its shareholders to provide the United States with an irrevocable letter of credit, in each case on terms and conditions acceptable to the shareholders and the United States, in each one's respective sole and absolute

discretion, in an amount equal to \$187,933,497.03 on or before November 9, 2015; provided, however, that in all events, Millennium shall present the irrevocable letter of credit at least one day prior to the date on which Millennium files the petition described in paragraph 6;

6. If the Millennium Restructuring involves an In-Court Restructuring, Millennium shall file its petition for relief under chapter 11 of title 11 of the United States Code by November 10, 2015; and

7. If the Millennium Restructuring involves an In-Court Restructuring, the bankruptcy plan, as described in paragraph 3, must be confirmed by the Bankruptcy Court by order entered on or before December 21, 2015.

BY:  Dated: 10.15.15
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

BY: _____ Dated: _____
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC

BY: _____ Dated: _____
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC

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provided, however, that in all events, Millennium shall present the irrevocable letter of
credit at least one day prior to the date on which Millennium files the petition described
in paragraph 6;

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Code by November 10, 2015; and

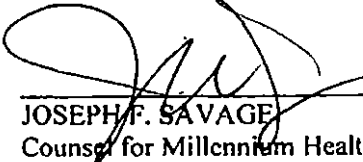
7. If the Millennium Restructuring involves an In-Court Restructuring, the
bankruptcy plan, as described in paragraph 3, must be confirmed by the Bankruptcy
Court by order entered on or before December 21, 2015.

BY: _____
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

Dated: _____

BY: Michael K. Loucks/ACB
MICHAEL K. LOUCKS
Counsel for Millennium Health, LLC

Dated: 10-15-15

BY: 
JOSEPH F. SAVAGE
Counsel for Millennium Health, LLC

Dated: 10/15/15

EXHIBIT B: GUARANTEE AGREEMENT

This Guarantee Agreement is entered by and among Millennium Lab Holdings, Inc. ("MLH"), TA XI, L.P. ("TA"), the United States of America ("United States"), acting through the United States Department of Justice, Millennium Health, LLC ("Millennium"), a California limited liability company, formerly known as Millennium Laboratories, Inc., a former California corporation, and James Slattery on behalf of the Slattery Family Trust ("Slattery").

BACKGROUND

A. At the time of execution of this Guarantee Agreement, one hundred percent (100%) of the stock of Millennium is owned by Millennium Lab Holdings II, LLC ("MLH II, LLC"). Approximately fifty-five percent (55%) of the stock of MLH II, LLC is owned by MLH, and approximately forty-five percent (45%) of the stock is owned by TA Millennium, Inc. The stock of MLH is owned by fourteen trusts which own various amounts of the stock of MLH. Seven of these trusts were established by James Slattery for the benefit of himself and/or members of his family, and these Slattery trusts own approximately 79.896 percent of the stock of MLH. One of these trusts, known as the Slattery Family Trust, owns 24.46 percent of the stock of MLH. James Slattery, co-trustee of the Slattery Family Trust, is the founder of Millennium and is currently the Director of the Board of Millennium.

B. Millennium is this day entering into a Settlement Agreement – Urine Drug Testing ("UDT Settlement Agreement") with the United States and certain relators in connection with seven *qui tam* actions against Millennium and the United States' Complaint In Intervention filed March 19, 2015. This Guarantee Agreement is Exhibit B to the UDT Settlement Agreement.

C. Millennium is also this day entering into a Settlement Agreement – Pharmacogenetic Testing (“PGT Settlement Agreement”) with the United States and certain relators in connection with a *qui tam* action against Millennium, *United States, et al., ex rel. Omni Healthcare Inc., et al. v. Millennium Laboratories, Inc.*, No. 14-cv-13052-RGS (D. Mass.). This Guarantee Agreement is Exhibit A to the PGT Settlement Agreement.

D. Millennium is also this day entering into an Administrative Settlement Agreement with the Department of Health and Human Services (“HHS”), acting through the Centers for Medicare and Medicaid Services, in connection with administrative overpayment and denial actions. This Guarantee Agreement is Exhibit A to the Administrative Settlement Agreement.

E. Millennium is this day or will hereafter be entering into Urine Drug Testing Settlement Agreements and Pharmacogenetic Testing Settlement Agreements (each of these agreements will be hereinafter referred to as a “Medicaid State Settlement Agreement”) with certain States (the “Medicaid Participating States”).

F. Collectively, the agreements referenced in Paragraphs B, C, D and E will be referred to as the “Settlement Agreements.” Under the terms of the Settlement Agreements, within one business day of the effective date of the Settlement Agreements, Millennium shall pay or cause to be paid an Initial Federal Settlement Amount, an Initial Medicaid State Settlement Amount, and an Initial Administrative Settlement Amount (as such terms are defined in the Settlement Agreements), aggregating to a total of fifty million dollars (\$50,000,000) (collectively, the “Initial Settlement Amount”).

G. In consideration of the covenants and releases provided in the Settlement Agreements, MLH, TA and Slattery shall guarantee through the Termination Date (as defined below), as set forth and subject to the limitations herein, to the United States, HHS, and the

Medicaid Participating States the Initial Settlement Amount should any such payments or a portion thereof be avoided or recovered through judgment, settlement or otherwise.

H. The United States, HHS, and Medicaid Participating States are the beneficiaries of this Guarantee Agreement.

I. TA and Slattery have provided, on a confidential basis, to the United States documentation of the availability of funds sufficient to satisfy the payment guarantee set forth herein.

THEREFORE, for fair and valuable consideration, receipt of which is hereby acknowledged, it is agreed:

TERMS AND CONDITIONS

1. Guarantee.

a. Effective immediately upon execution of this Guarantee Agreement, and prior to the Termination Date, in the event all or any part of the Initial Settlement Amount under any of the Settlement Agreements is avoided or recovered from the United States, Medicaid Participating States, or HHS, for any reason, including, but not limited to, through the exercise of powers granted under 11 U.S.C. §§ 544, 547, 548 or 550, or any other Bankruptcy Code provision or state law provision, by entry of judgment or settlement (defined herein as an "Avoidance Event"), MLH and TA and Slattery each guarantee to the United States, HHS, and the Medicaid Participating States payment of the amount(s) avoided or recovered such that the United States, HHS and/or the Medicaid Participating States are made whole with respect to the amount(s) avoided or recovered by entry of judgment or settlement (the "Guaranteed Payment") as set forth and subject to the limitations herein. The Guaranteed Payment shall be made within ten (10) days of entry of a final order requiring, effectuating or approving an Avoidance Event

and payment of the amount subject to the Avoidance Event by the United States, HHS, and/or the Medicaid Participating States, as the case may be. MLH, TA and Slattery agree to pay the Guaranteed Payment as follows:

i. MLH will, and hereby does, unconditionally agree to pay the United States, HHS, and the Medicaid Participating States the due and punctual payment of fifty-five percent (55%) of up to \$50.0 million of the Guaranteed Payment that is subject to an Avoidance Event, pursuant to a final order in a Debt Relief Action (as defined below) and required to be disgorged and disgorged.

ii. Slattery will, and hereby does, unconditionally agree to pay the United States, HHS, and the Medicaid Participating States the due and punctual payment of fifty-five percent (55%) of up to \$50.0 million of the Guaranteed Payment that is subject to an Avoidance Event, pursuant to a final order in a Debt Relief Action (as defined below) and required to be disgorged and disgorged; *provided, however*, that such guarantee owed by Slattery will only be triggered if, upon request by the United States and the Medicaid Participating States, MLH fails to remit a timely Guaranteed Payment. For the avoidance of doubt, under no circumstances shall Slattery and MLH be responsible for (or be required to pay), collectively, more than fifty-five percent (55%) of up to \$50.0 million of the Guaranteed Payment.

iii. TA will, and hereby does, unconditionally agree to pay the United States, HHS, and the Medicaid Participating States the due and punctual payment of forty-five percent (45%) of up to \$50.0 million of the Guaranteed Payment that is subject to an Avoidance Event, pursuant to a final order in a Debt Relief Action (as defined below) and required to be disgorged and disgorged.

b. The guarantees provided for herein shall be several and joint as to MLH and Slattery (together, the “MLH Guarantors”), and several (and not joint) as to TA (the “TA Guarantor,” and the TA Guarantor and the MLH Guarantors, each being a “Guarantor”), and the United States, HHS, and the Medicaid Participating States may enforce each entity’s rights as against each Guarantor with respect to the Guaranteed Payment as set forth herein according to the percentages set forth in Paragraph 1.a. In the event that MLH, TA and/or Slattery is required to perform on their respective obligations hereunder as Guarantors, MLH, TA and/or Slattery shall each receive a dollar-for-dollar credit or offset with respect to any payment made by them if the United States, HHS, or the Medicaid Participating States obtain a judgment or recovery against any of MLH, TA and /or Slattery.

2. This Guarantee Agreement shall terminate upon the latest to occur of (the “Termination Date”):

a. the expiration of ninety-one (91) days after full payment of the Initial Settlement Amount in accordance with the Settlement Agreements if, within such ninety-one (91) day period no case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors has been filed seeking any order for relief of Millennium’s debts, or seeking to adjudicate Millennium as bankrupt or insolvent or seeking appointment of a receiver, trustee, custodian, or other similar official for Millennium or for all or any substantial part of Millennium’s assets (hereinafter “Debt Relief Action”) has been filed;

b. fifteen (15) days after the termination of all proceedings, including any appeals, of any Debt Relief Action that has been commenced within ninety-

one (91) days after full payment of the Initial Settlement Amount in accordance with the Settlement Agreements, provided that no Avoidance Event has occurred, and no action or proceeding seeking to effectuate an Avoidance Event is pending;

c. fifteen (15) days after the termination of all proceedings, including any appeals, of any action in any Debt Relief Action seeking to effectuate an Avoidance Event that has been commenced within the applicable statute of limitations for such action, provided that the obligations set forth in this Guarantee Agreement have been satisfied; or

d. the day after expiration of the statute of limitations for the commencement of any action in any Debt Relief Action seeking to effectuate an Avoidance Event, provided that no action seeking to effectuate an Avoidance Event is pending.

Notwithstanding the foregoing, if an order entered in any Debt Relief Action approves payment of the Initial Settlement Amount, provides that such payment is not subject to an Avoidance Event, and prohibits and enjoins the commencement of any action or proceeding seeking to effectuate an Avoidance Event, the Guarantee Agreement shall terminate on the fifteenth (15th) day after such order becomes final and not subject to appeal.

3. Additional Terms.

a. TA Representations. TA has the authority to enter into this agreement and to perform in accordance with its terms. TA has on hand, or has access to, sufficient funds to satisfy the payment guarantee set forth herein. TA has provided to the United States documentation demonstrating the availability of such funds and hereby represents and warrants that the documentation is accurate

and that sufficient funds to satisfy the payment guarantee set forth herein will remain available through the Termination Date.

b. MLH Representations. MLH has the authority to enter into this agreement and to perform in accordance with its terms. MLH has put into action requests to obtain sufficient funds to satisfy the payment guarantee set forth herein. Upon thirty days of entry into this Guarantee Agreement, MLH will provide, on a confidential basis, to the United States documentation of the availability of such funds.

c. James Slattery Representations. James Slattery has the authority, and will continue to have the authority, to enter into this agreement on behalf of the Slattery Family Trust and to bind the Slattery Family Trust to perform in accordance with the terms of this Guarantee Agreement. The Slattery Family Trust has on hand, or has access to, sufficient funds to satisfy the payment guarantee set forth herein. The Slattery Family Trust has provided to the United States documentation demonstrating the availability of such funds and hereby represents and warrants that the documentation is accurate and that the funds evidenced by such documentation will remain available through the Termination Date. The Slattery Family Trust has provided to the United States documentation demonstrating the authority of James Slattery, as a Trustee of the Slattery Family Trust, to obligate and control the trust funds and hereby represents and warrants that the documentation is accurate and that James Slattery shall maintain trustee authority through the Termination Date.

4. Waiver of Notice. MLH, TA, and Slattery each waives notice of the acceptance of this guarantee, presentment, demand, notice of dishonor, protest, notice of sale of any security, and all other notices whatsoever.

5. Consent to Jurisdiction. MLH, TA, and Slattery each consent to the jurisdiction of the United States District Court for the District of Massachusetts in any action to enforce the terms of this Guarantee Agreement.


6. Consent to Judgment. If an Avoidance Event occurs, MLH, TA, and Slattery each consent, to the entry of a judgment in the amount of the Guaranteed Payment that each has agreed to pay as provided herein, plus interest, costs of suit and attorneys' fees.

7. Limitation. Nothing in this Guarantee Agreement constitutes an agreement by the United States concerning the characterization of any amounts required to be paid hereunder for purposes of any proceeding under Title 26 of the Internal Revenue Code.

8. Miscellaneous. No party to this Guarantee Agreement may assign its rights, interests or obligations hereunder to any other person or entity without the prior written consent of the other parties. This Guarantee Agreement shall not be amended except in writing signed by all of the parties hereto. The provisions of this Guarantee Agreement shall be binding on all parties hereto and their successors. This Guarantee Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Each signatory hereto represents and warrants that he or she is authorized to execute and deliver this Guarantee Agreement on behalf of the party for whom he or she is purporting to act. Each party hereto warrants and represents that this Guarantee Agreement constitutes a valid and binding agreement, enforceable according to its terms.

Dated: This 16th day of October, 2015.

By:


JAMES SLATTERY
Millennium Lab Holdings, Inc.

Dated: 10-14-15

By:


JAMES SLATTERY
As Trustee on behalf of the Slattery Family Trust

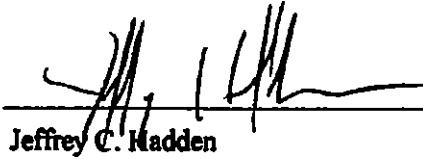
Dated: 10-14-15

TA XI, L.P.

By: TA Associates XI GP, L.P., its General Partner

By: TA Associates, L.P., its General Partner

By:

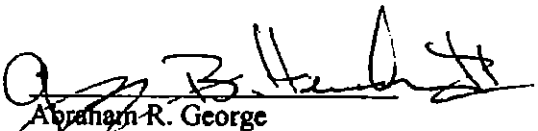
A handwritten signature in black ink, appearing to read 'Jeffrey C. Madden', is written over a horizontal line.

Jeffrey C. Madden

Chief Operating Officer and General Counsel


Dated: 10/15/15

UNITED STATES OF AMERICA

By: 
Abraham R. George
George B. Henderson, II
Assistant United States Attorneys
District of Massachusetts

Dated: 10/16/2015

By:


BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

Dated:

10-15-15

By:

MICHAEL K. LOUCKS
Counsel to Millennium Health, LLC

Dated:

By:

JOSEPH F. SAVAGE
Counsel to Millennium Health, LLC

Dated:

By: _____
BROCK HARDAWAY
Chief Executive Officer
Millennium Health, LLC

Dated: _____

By: Michael K Loucks
MICHAEL K. LOUCKS
Counsel to Millennium Health, LLC

Dated: 10-15-15

By: Joseph F. Savage
JOSEPH F. SAVAGE
Counsel to Millennium Health, LLC

Dated: 10/15/15