

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into between and among the North Carolina Office of the Attorney General on behalf of the State of North Carolina (the “State” or “North Carolina”); the North Carolina Department of Health and Human Services, Division of Health Benefits; and Knowles, Smith & Associates LLP, a North Carolina limited liability partnership (hereinafter referred to as “KSA”). Each of the above are hereafter referred to as “the Parties” through their authorized representatives.

### **RECITALS**

A. KSA has been a North Carolina Medicaid Provider since at least 1992 and provides general dentistry and oral surgical services to Medicaid beneficiaries in the State of North Carolina. Medicaid Providers may submit claims to the North Carolina Medicaid Program for services that are medically necessary for the care of Medicaid beneficiaries and which comply with Medicaid Clinical Policy.

B. The State contends that it has certain civil claims against KSA arising from KSA’s submission of claims, during the dates of January 1, 2016, through December 31, 2020, to the North Carolina Medicaid Program for dental services, to wit, Current Dental Terminology (hereinafter referred to as “CDT”) D9223 (deep sedation/general anesthesia, 15 minute increments), which were not provided, had insufficient supporting clinical documentation, were not medically necessary, and/or were performed in violation of Division of Health Benefits Clinical Coverage Policy. The conduct referenced in this paragraph is referred to below and throughout this Agreement as the “Covered Conduct.”

C. North Carolina contends that the Covered Conduct, which includes KSA’s submission of such claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, violates the North Carolina False Claims

Act, N.C.G.S. §§ 1-605, et seq., and the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, et seq.

D. KSA disagrees with North Carolina's contentions concerning the Covered Conduct set forth above.

E. North Carolina also investigated whether KSA's submission of claims under CDT D0160 (Extensive Problem Focused Exam) and CDT D7240 (Removal of Impacted Tooth – complete bony) violated the North Carolina False Claims Act, N.C.G.S. §§ 1-605, et seq., or the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, et seq. However, North Carolina determined that insufficient evidence existed to pursue recovery under either of these CDT codes.

F. This Agreement is neither an admission of liability by KSA, nor a concession by the State that its claims are not well founded.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. KSA shall pay to North Carolina the aggregate principal amount of One Million One Hundred Fifty Thousand and No/100 Dollars (\$1,150,000.00) (the "Settlement Amount"), of which the State contends \$575,000.00 is restitution, on the terms specified herein. No later than forty-five (45) days after full execution of this Agreement, KSA will pay to the State the full Settlement Amount by a **certified check** that is made payable to the North Carolina Fund for Medical Assistance and **hand delivered** (which shall include delivery services such as Federal Express and United Parcel Service) to the Medicaid Investigations Division ("MID"), 5505 Creedmoor Road, Suite 300, Raleigh, NC 27612 ("MID address").

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon KSA's full payment of the Settlement Amount, North Carolina releases Knowles, Smith & Associates LLP, together with its current and former constituent partners; direct and indirect subsidiaries, divisions, affiliates, partnerships, joint ventures, brother or sister entities, and other commonly owned entities; current or former officers, employees, and agents; and the successors and assigns of any of them (collectively, the "Released Parties"), 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's Medicaid Program for the Covered Conduct under the North Carolina Medical Assistance Provider Fraud Claims Act, N.C.G.S. 108A-70.10, *et seq.*; the North Carolina False Claims Act, N.C.G.S. § 1-605, *et seq.*; the common law theories of payment by mistake, unjust enrichment, and fraud; and any other right to recoupment or recovery of the Medicaid payments related to the Covered Conduct.

3. In the event that KSA fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, KSA shall be in Default of KSA's payment obligations ("Default"). North Carolina will provide written notice of the Default, and KSA shall have an opportunity to cure such Default within thirty (30) business days from the date of the receipt of the notice. Notice of Default will be delivered via certified mail to KSA, or to such other representative as KSA shall designate in advance in writing. If KSA fails to cure the Default within thirty (30) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance and interest due). In the event of a Default, the State may, in its sole discretion, choose to set aside the Agreement and bring an action against KSA for the Covered Conduct.

4. Notwithstanding the releases given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims 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 government health care programs;
- d. Any liability to North Carolina (or its agencies) for any conduct other than the Covered Conduct; or
- e. Any liability based upon obligations created by this Agreement.

5. KSA waives and shall not assert any defenses KSA may have 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 to any criminal prosecution or administrative action relating to the Covered Conduct. This Agreement bars those defenses in such a criminal prosecution or administrative action. Beyond these defenses, which are specifically waived, KSA retains and reserves KSA's rights to assert any other defenses in any criminal prosecution or administrative action that might be brought.

6. KSA fully and finally releases North Carolina, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that KSA has asserted, could have asserted, or may assert in the future against North Carolina, and its agencies, employees, servants, and agents, related to the Covered Conduct and North Carolina's investigation and prosecution thereof.

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment and/or as a result of funds which are otherwise being withheld from payment by the

Medicaid Program or any Medicaid contractor or intermediary or any state payor on behalf of the Medicaid Program, related to the Covered Conduct; and KSA agrees not to resubmit to the Medicaid Program, any state payor or any of the other above entities acting on behalf of the Medicaid Program, any previously denied claims related to the Covered Conduct, and agrees not to appeal any such previously denied claims related to the Covered Conduct.

8. This Agreement is intended to be for the benefit of the Parties and the Released Parties only. The Parties do not release any claims against any other person or entity except as provided in Paragraph 2 and this Paragraph 8. KSA agrees that it waives and shall not seek payment for any of the health care billings related to the Covered Conduct from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

9. KSA warrants that it has reviewed its respective financial situation(s) and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall, to the fullest extent possible, remain solvent during payment to North Carolina of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to KSA 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. 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 KSA was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

10. If within 91 days of the Effective Date of this Agreement or of any payment made

under this Agreement, KSA commences, or a third party commences, 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 KSA's debts, or seeking to adjudicate KSA as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for KSA, or for all or any substantial part of KSA's assets, KSA agree as follows:

a. KSA's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and KSA shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) KSA's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) KSA was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to North Carolina; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to KSA.

b. If KSA'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, North Carolina, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against KSA, for the claims that would otherwise be covered by the releases provided in Paragraph 2 above. KSA agrees that (i) any such claims, actions, or proceedings brought by North Carolina 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 sentence of this Paragraph 10, and KSA shall not argue or otherwise contend that North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) KSA 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 North Carolina within sixty (60) calendar days of written notification to KSA that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement and (iii) North Carolina may pursue its claim in the case, action, or proceeding referenced in the first sentence of this Paragraph 10, as well as in any other case, action, or proceeding.

c. KSA acknowledges that its agreement in this Paragraph is provided in exchange for valuable consideration provided in this Agreement.

11. Each of the Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each of the Parties to this Agreement represents that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion.

13. 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.

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

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

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

17. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns.

18. All Parties consent to the disclosure by North Carolina or any other disclosure

required by law of this Agreement, and information about this Agreement, to the public.

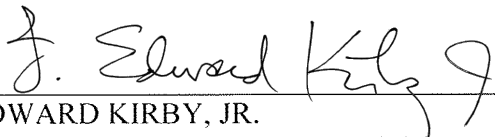
19. This Agreement is effective on the date of signature of the last signatory to the Agreement (the “Effective Date” of this Agreement). Facsimiles, PDFs or similar electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

20. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such term or provision shall be excluded and stricken from this Agreement to the extent of such invalidity, illegality, or unenforceability; all other terms and provisions herein shall remain in full force and effect.

[Signature Page Follows]



STATE OF NORTH CAROLINA



F. EDWARD KIRBY, JR.  
Director, Medicaid Investigations Division  
Office of the Attorney General

Dated: 1/18/2022

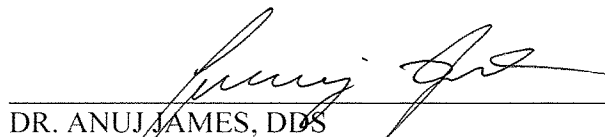
NC DEPARTMENT OF HEALTH & HUMAN SERVICES,  
DIVISION OF HEALTH BENEFITS

DocuSigned by:  
  
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DAVE RICHARD  
Deputy Secretary, NC Medicaid  
NC Department of Health & Human Services, Division of Health Benefits

Dated: 01/18/22 | 1:30 PM PST

KNOWLES, SMITH & ASSOCIATES LLP



DR. ANUJ JAMES, DDS  
Managing Partner, on behalf of  
KNOWLES, SMITH & ASSOCIATES LLP

Dated: 01/18/2022