SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of the Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States"); defendants McKesson Corporation, McKesson Corporation d/b/a McKesson Specialty Distribution LLC, and McKesson Specialty Distribution LLC, (collectively, "McKesson"); and Terrell W. Fox ("the Relator"), (collectively, "the Parties"), through their authorized representatives.

RECITALS

A. McKesson Corporation, a corporation organized and existing under the laws of the State of Delaware, is a pharmaceutical distributor with corporate headquarters located at One Post Street, San Francisco, California 94104. McKesson Specialty Distribution LLC is a Delaware Limited Liability Company and operates as a subsidiary of McKesson Corporation. McKesson Specialty Distribution LLC is the nationwide distributor for the Center for Disease Control and Prevention’s Vaccines for Children program.

B. On July 25, 2012, Relator filed a *qui tam* action in the United States District Court for the Middle District of Tennessee captioned *United States ex rel. Terrell W. Fox v. McKesson Corporation et al.*, Civil Action No. 3:12-cv-766, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action").

C. The United States contends that it has certain civil claims against McKesson for engaging in the following conduct during the period from February 5, 2007, through approximately November 6, 2007 (hereinafter referred to as the "Covered Conduct"). The United States alleges that McKesson failed to comply with the "cold chain" shipping and handling requirements of the September 12, 2006, Distribution Contract between the Centers for Disease Control and Prevention ("CDC") and McKesson Specialty Distribution LLC, No. 200-2006-18246 (as amended from time to time thereafter). The contract related to the Vaccine for Children program, which provides federally purchased vaccine to children under 18 meeting

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certain requirements. Under this contract, McKesson provided distribution services, receiving the vaccines from the manufacturers and then distributing the vaccine to health care providers. The contract set out various requirements for the shipments, including requiring temperature monitors to be included in each box shipped. The United States further alleges that if electronic monitors were used, the contract required that the monitors be set to detect when the air temperature of a shipment reached 2° C and below, or 8° C and above, but that McKesson failed to comply with the contract and set the monitors to alert outside of that range. McKesson submitted invoices to the CDC for the cost of those shipping and handling services.

The United States contends that, as a result of the foregoing Covered Conduct, McKesson knowingly submitted false claims to the CDC for shipping and handling services under Distribution Contract.

D. McKesson denies the United States’ allegations in Paragraph C and the Relator’s allegations in the Civil Action. This Settlement Agreement is neither an admission of liability by McKesson nor a concession by the United States that its claims are not well-founded.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

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. McKesson shall pay to the United States $18,000,000.00 (the “Settlement Amount”) no later than 10 days after the Effective Date of this Agreement. This sum will be paid by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Middle District of Tennessee.

2. McKesson shall pay directly to Relator’s Counsel $525,000.00 representing attorneys’ fees, costs and expenses pursuant to 31 U.S.C. § 3730(d) arising from the filing of the civil action. The statutory attorney fees payment shall be made by electronic funds transfer no
later than 10 days after the effective date of this agreement pursuant to written instructions to be provided by relator's counsel.

3. Subject to the exceptions in Paragraph 6 below and conditioned upon McKesson's full payment of the Settlement Amount, the United States, on behalf of itself and its officers, agents, agencies, and departments, releases McKesson, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, current and former owners, and current and former officers, directors, employees and affiliates, and the successors and assigns of any of them (collectively, the "Released Persons and Entities") from any civil or administrative monetary claim that the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, including reverse false claims under § 3729(a)(1)(G); the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Conditioned upon McKesson's full payment of the Settlement Amount and upon payment of the amount described in Paragraph 2 above, the Relator, on behalf of himself and his heirs, successors, attorneys, agents, and assigns, releases the Released Persons and Entities from any claim that the Relator has asserted, could have asserted, or may assert of any kind, known and unknown, including without limitation for retaliation/wrongful termination, or for attorneys' fees, costs and expenses, for all conduct up to the date of this Agreement.

5. McKesson releases Relator himself, and his heirs, successors, attorneys, agents, and assigns, from all other possible causes of action, known or unknown.

6. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released by the United States:

   a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
   b. Any criminal liability;
c. Except as set forth in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs, and the suspension and debarment rights of any federal agency.

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon obligations created by this Agreement;

f. Any liability to the United States (or its agencies) for express or implied warranty claims or other claims for defective or deficient products, including quality of goods;

g. Any liability to the United States (or its agencies) for failure to deliver goods due;

h. Any liability to the United States (or its agencies) for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and his heirs, successors, attorneys, agents, and assigns agree that they will not object to this Agreement, and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Agreement and this Civil Action, Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and his/her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claim(s),
8. McKesson waives and shall not assert any defenses McKesson may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. McKesson fully and finally releases the United States, and its officers, agents, employees, servants, agencies, and departments from any claims (including attorney’s fees, costs, and expenses of every kind and however denominated) that McKesson has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to or arising from the Covered Conduct and the United States’ investigation and prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of McKesson, and its present or former officers, directors, employees, shareholders, and agents in connection with:

   (1) the matters covered by this Agreement;
   (2) the United States’ audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
   (3) McKesson’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);
   (4) the negotiation and performance of this Agreement and any plea agreement;
(5) the payment McKesson makes to the United States pursuant to this Agreement and any payments that McKesson may make to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by McKesson, and McKesson shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, McKesson shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by McKesson or any of its subsidiaries or affiliates from the United States. McKesson agrees that the United States, at a minimum, shall be entitled to recoup from McKesson any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine McKesson's books and records and to disagree with any calculations submitted by McKesson or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by McKesson, or the effect of any such Unallowable Costs on the amount of such payments.

11. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

12. Upon receipt of the payments described in Paragraphs 1 and 2 above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Federal Rule of Civil Procedure 41(a)(1). The dismissal will be with prejudice as to the Relator, with prejudice as to the United States with
respect to the Covered Conduct, and without prejudice as to the United States with respect to all other conduct.

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

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

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

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

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

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

19. This Agreement is binding on McKesson’s successors, transferees, heirs, and assigns.

20. This Agreement is binding on Relator’s successors, transferees, heirs, and assigns.

21. All Parties consent to the United States’ disclosure of this Agreement and information about this Agreement to the public.

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

Dated: July 4, 2014

THE UNITED STATES OF AMERICA

By:

CHARLES J. BIRO

Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: July 4, 2014

By:

JOHN-DAVID THOMAS

Assistant U.S. Attorney
Office of the United States Attorney
for the Middle District of Tennessee

Dated: July 4, 2014

By:

ROBERT DECONTI

Assistant Inspector General for Legal Affairs
Office of Inspector General
United States Department of Health and Human Services
AGREED AND ACCEPTED:

THE UNITED STATES OF AMERICA

By: CHARLES J. BIRO
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

By: JOHN-DAVID THOMAS
Assistant U.S. Attorney
Office of the United States Attorney
for the Middle District of Tennessee

By: ROBERT DECONTI
Assistant Inspector General for Legal Affairs
Office of Inspector General
United States Department of Health and Human Services
Dated: July 31, 2014

MCKESSON CORPORATION
MCKESSON CORP. D/B/A MCKESSON
SPECIALTY DISTRIBUTION LLC
MCKESSON SPECIALTY
DISTRIBUTION LLC

By: 

WILLIE C. BOGAN

Secretary
Mckesson Corp.
Mckesson Corp. d/b/a McKesson Specialty
Distribution LLC

Dated: July 31, 2014

KEKER & VAN NEST LLP

By: 

T JEPFRB CHANIN

Counsel for McKesson Corp.
Mckesson Corp. d/b/a McKesson Specialty
Distribution LLC
Mckesson Specialty Distribution LLC

Dated: July ___, 2014

TERRELL W. FOX, RELATOR

By: 

TERRELL W. FOX

Dated: July ___, 2014

By: 

TREVOR HOWELL

Attorneys for Relator Terrell W. Fox

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Dated: July ___, 2014

MCKESSON CORPORATION
MCKESSON CORP. D/B/A MCKESSON
SPECIALTY DISTRIBUTION LLC
MCKESSON SPECIALTY
DISTRIBUTION LLC

By: WILLIE C. BOGAN
Secretary
McKesson Corp.
McKesson Corp. d/b/a McKesson Specialty
Distribution LLC

Dated: July ___, 2014

KEKER & VAN NEST LLP

By: JEFFREY CHANIN
Counsel for McKesson Corp.
McKesson Corp. d/b/a McKesson Specialty
Distribution LLC
McKesson Specialty Distribution LLC

Dated: July 25, 2014

TERRELL W. FOX, RELATOR

By: TERRELL W. FOX

Dated: July 25, 2014

By: TREVOR HOWELL
Attorneys for Relator Terrell W. Fox