SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively, the "United States"); the State of Indiana ("Indiana" or the "State"); Indiana University Health, Inc., f/k/a Clarian Health Partners, Inc. ("IU Health"); HealthNet, Inc. ("HealthNet"), and Judith Robinson ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. IU Health is a private, non-profit health care system that operates hospitals throughout the state of Indiana, including IU Health Methodist Hospital in Indianapolis, Indiana.

B. HealthNet operates medical clinics within the state of Indiana, including clinics offering obstetrics and gynecology ("OB/GYN") services. HealthNet is a federally qualified health center ("FQHC") as designated by the U.S. Department of Health and Human Services Health Resources and Services Administration.

C. On December 19, 2013, Judith Robinson ("Relator") filed a qui tam action in the United States District Court for the Southern District of Indiana captioned United States and Indiana ex rel. Robinson v. Ind. Univ. Health, Inc. et al., Civil Action Number 1:13-cv-2009-TWP-MJD, pursuant to the qui tam provisions of the False Claims Act ("FCA"), 31 U.S.C. § 3730(b), and the Indiana False Claims and Whistleblower Protection Act, Ind. Code § 5-11-5.5-4 ("Original Complaint"). Relator filed an Amended Complaint for violations of the FCA and the Indiana False Claims and Whistleblower Protection Act on October 29, 2014 ("First Amended Complaint"). Relator’s Second Amended Complaint, filed on May 5, 2016 ("Second Amended Complaint") (the Original Complaint, First Amended Complaint, and Second
Amended Complaint are referred to below as the “Civil Action”), alleges, *inter alia*, that (1) IU Health and HealthNet violated the FCA, the Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b(b), and the Indiana False Claims and Whistleblower Protection Act, Ind. Code § 5-11-5.5-1 *et seq.*, and Indiana Medicaid False Claims and Whistleblower Protection Act, Ind. Code § 5-11-5.7-1 *et seq.* (together the “Indiana FCA”), in connection with various financial arrangements between IU Health and HealthNet, (2) HealthNet violated the FCA and Indiana FCA by submitting false claims for FQHC “wrap-around” payments (i.e., supplementary payments made by the Medicaid program to FQHCs to ensure that FQHCs, when they contract with a managed care organization, receive the same reimbursement as if the claim was submitted directly to the State Medicaid Agency under a fee-for-service system) (see Paragraphs 88-94 and 119-130 of the Second Amended Complaint, hereinafter the “HealthNet Wrap-Around Claims”), and (3) IU Health and HealthNet violated the FCA and Indiana FCA by inappropriately billing for services involving high-risk pregnancies that were provided by certified nurse midwives rather than physicians (see Paragraphs 60-87 and 107-118 of the Second Amended Complaint, hereinafter the “CNM Claims”).

D. The United States contends that IU Health and HealthNet submitted and/or caused to be submitted claims for payment to the Indiana Medicaid Program, 42 U.S.C. §§ 1396-1396w-5; Ind. Code § 12-15 (“Medicaid”).

E. The United States contends that it has certain civil claims against IU Health and HealthNet arising from false claims for services provided to OB/GYN patients that IU Health and HealthNet submitted, and/or caused to be submitted, to the Indiana Medicaid program as a result of the following conduct: From May 1, 2013 through August 30, 2016 (the “relevant time period”), in violation of the Anti-Kickback Statute, IU Health provided to HealthNet an interest-free line of credit, at least one purpose of which was to induce HealthNet to refer its OB/GYN
patients to IU Health’s Methodist Hospital. The balance of the line of credit consistently exceeded any amount permitted under the Affiliation Agreement in place between IU Health and HealthNet during the relevant time period. Specifically, in its Affiliation Agreement with HealthNet, IU Health agreed to advance to HealthNet an amount equal to HealthNet’s reasonably anticipated receivables from Medicare or Medicaid cost report settlement funds for a given year to cover temporary shortfalls caused by a delay in HealthNet’s receipt of such funds (“delayed receivables”). However, during the relevant time period, HealthNet was repeatedly allowed to draw money on this line of credit in an amount that has consistently exceeded HealthNet’s delayed receivables by sums over $10 million, of which HealthNet was not expected to substantially repay the balance due. As a result of this conduct, the United States contends that the claims for services provided to OB/GYN patients referred by HealthNet to IU Health during the relevant time period were false or fraudulent. The conduct described in this Paragraph is referred to below as the Federal Covered Conduct.

F. The State contends that it has certain civil claims against IU Health and HealthNet arising from false claims that IU Health and HealthNet submitted, and/or caused to be submitted, to the Indiana Medicaid program and adopts the Federal Covered Conduct as the State Covered Conduct.

G. This Settlement Agreement is neither an admission of liability by IU Health or HealthNet nor a concession by the United States, the State, or the Relator that their claims are not well founded. IU Health and HealthNet both deny the allegations in the Civil Action, the Federal Covered Conduct, and the State Covered Conduct.

H. Relator claims entitlement under 31 U.S.C. § 3730(d) and Ind. Code § 5-11-5.7-6 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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. IU Health and HealthNet agree to pay to the United States and the State the sum of $18 million ($18,000,000.00) (the “Settlement Amount”) pursuant to the following terms:

   a. IU Health shall pay to the United States $5,106,600 (“IU Health Federal Settlement Amount”). The IU Health Federal Settlement Amount shall be paid no later than seven (7) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Southern District of Indiana.

   b. HealthNet shall pay to the United States $5,106,600 (“HealthNet Federal Settlement Amount”). The HealthNet Federal Settlement Amount shall be paid no later than seven (7) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Southern District of Indiana.

   c. IU Health shall pay to the State $3,893,400 (“IU Health State Settlement Amount”). The IU Health State Settlement Amount shall be paid no later than seven (7) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions from the State, which written instructions shall be delivered to counsel for IU Health.
d. HealthNet shall pay to the State $3,893,400 ("HealthNet State Settlement Amount"). The HealthNet State Settlement Amount shall be paid no later than seven (7) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions from the State, which written instructions shall be delivered to counsel for HealthNet.

2. Conditioned upon the United States receiving the IU Health Federal Settlement Amount from IU Health, and as soon as feasible after receipt, the United States shall pay $1,404,315 to Relator by electronic funds transfer.

3. Conditioned upon the United States receiving the HealthNet Federal Settlement Amount from HealthNet, and as soon as feasible after receipt, the United States shall pay $1,404,315 to Relator by electronic funds transfer.

4. Conditioned upon the State receiving the IU Health State Settlement Amount from IU Health, and as soon as feasible after receipt, the State shall pay $1,070,685 to Relator by electronic funds transfer.

5. Conditioned upon the State receiving the HealthNet State Settlement Amount from HealthNet, and as soon as feasible after receipt, the State shall pay $1,070,685 to Relator by electronic funds transfer.

6. IU Health’s and HealthNet’s payment(s) to Relator for expenses, attorney’s fees, and costs pursuant to 31 U.S.C. § 3730(d)(2) and Ind. Code § 5-11-5.7-6(a) shall be addressed separately from this Agreement.

7. Subject to the exceptions in Paragraph 14 (concerning excluded claims), Paragraph 31 (concerning bankruptcy), and Paragraph 32 (concerning default), below, and conditioned upon the United States’ receipt in full of the IU Health and HealthNet Federal Settlement Amounts, the United States releases IU Health from any civil or administrative
monetary claim the United States has for the Federal Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

8. Subject to the exceptions in Paragraph 14 (concerning excluded claims), Paragraph 31 (concerning bankruptcy), and Paragraph 32 (concerning default), below, and conditioned upon the United States’ receipt in full of the IU Health and HealthNet Federal Settlement Amounts, the United States releases HealthNet from any civil or administrative monetary claim the United States has for the Federal Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

9. Subject to the exceptions in Paragraph 15 (concerning excluded claims), Paragraph 31 (concerning bankruptcy), and Paragraph 33 (concerning default), below, in consideration of the obligations of IU Health set forth in this Agreement, and conditioned upon receipt by the State of the IU Health and HealthNet State Settlement Amounts, the State (on behalf of itself, its officers, agencies, and departments) agrees to release IU Health from any civil or administrative monetary claim the State has for the State Covered Conduct under the Indiana FCA or the common law theories of payment by mistake, unjust enrichment, and fraud.

10. Subject to the exceptions in Paragraph 15 (concerning excluded claims), Paragraph 31 (concerning bankruptcy), and Paragraph 33 (concerning default), below, in consideration of the obligations of HealthNet set forth in this Agreement, and conditioned upon receipt by the State of the IU Health and HealthNet State Settlement Amounts, the State (on behalf of itself, its officers, agencies, and departments) agrees to release HealthNet from any
civil or administrative monetary claim the State has for the State Covered Conduct under the Indiana FCA or the common law theories of payment by mistake, unjust enrichment, and fraud.

11. In consideration of the obligations of IU Health in this Agreement and the Attorneys’ Fees Agreement, and conditioned upon IU Health’s full payment of the IU Health Federal Settlement Amount and the IU Health State Settlement Amount, Relator, for herself individually and for her heirs, successors, attorneys (past and present), agents and assigns, fully and finally releases, waives, and forever discharges IU Health and any of its current and/or former officers, directors and employees, their successors, heirs and/or assigns, (a) from any and all claims, whether in law or in equity, whether known or unknown, that Relator has or may have through the Effective Date of this Agreement, including all claims Relator has on behalf of the United States and the State of Indiana, and (b) from any and all claims Relator has asserted, could have asserted, or may assert in the future related to the Federal Covered Conduct, the State Covered Conduct, and/or the Civil Action, including all claims for any practices, activities or conduct of which Relator learned prior to or during the pendency of this lawsuit. The Release in this Paragraph shall be fully and unconditionally effective upon IU Health’s satisfaction of its payment obligations under Paragraph 1 of this Agreement and the Attorneys’ Fees Agreement. This Agreement does not impact whatsoever: (1) any claims related to medical malpractice which have been or may be brought against Relator, IU Health and/or HealthNet; and (2) any attorney’s ability to represent any other client in any other matter involving IU Health and/or HealthNet.

12. In consideration of the obligations of HealthNet in this Agreement and the Attorneys’ Fees Agreement, and conditioned upon HealthNet’s full payment of the HealthNet Federal Settlement Amount and the HealthNet State Settlement Amount, Relator, for herself individually and for her heirs, successors, attorneys (past and present), agents and assigns, fully
and finally releases, waives, and forever discharges HealthNet and any of its current and/or former officers, directors and employees, their successors, heirs and/or assigns, (a) from any and all claims, whether in law or in equity, whether known or unknown, that Relator has or may have through the Effective Date of this Agreement, including all claims Relator has on behalf of the United States and the State of Indiana, and (b) from any and all claims Relator has asserted, could have asserted, or may assert in the future related to the Federal Covered Conduct, the State Covered Conduct, and/or the Civil Action, including all claims for any practices, activities or conduct of which Relator learned prior to or during the pendency of this lawsuit. The Release in this Paragraph shall be fully and unconditionally effective upon HealthNet’s satisfaction of its payment obligations under Paragraph 1 of this Agreement and the Attorneys’ Fees Agreement. This Agreement does not impact whatsoever: (1) any claims related to medical malpractice which have been or may be brought against Relator, IU Health and/or HealthNet; and (2) any attorney’s ability to represent any other client in any other matter involving IU Health and/or HealthNet. Furthermore, the scope of this release does not extend to claims that Relator has asserted against HealthNet relating to the HealthNet Wrap-Around Claims from 2011-2015, which are being dismissed without prejudice pursuant to Paragraph 34 of this Agreement.

13. In consideration of the obligations of HealthNet in this Agreement and the Corporate Integrity Agreement (the “HealthNet CIA”), entered into between OIG-HHS and HealthNet, and conditioned upon full payment of the Settlement Amount as required in Paragraph 1 above, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7(b)(f)) against HealthNet under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Federal Covered Conduct,
except as reserved in Paragraph 14 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude HealthNet from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Federal Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 14, below.

14. Notwithstanding the releases given in Paragraphs 7, 8, 11, 12, and 13 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

   a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

   b. Any criminal liability;

   c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;

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

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

   f. Any liability of individuals;

   g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

   h. Any liability for failure to deliver goods or services due;

   i. Any liability for personal injury or property damage or for other consequential damages arising from the Federal Covered Conduct.
15. 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;

c. Any civil or administrative liability that any person or entity, including IU Health or HealthNet, 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 Paragraphs 9 and 10 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 State Covered Conduct;

e. Any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State’s Medicaid program on a capitated basis;

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

g. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State’s Medicaid program;

h. Any liability for express or implied warranty claims or other claims for defective or deficient products and services provided by IU Health or HealthNet;

i. Any liability for personal injury or property damage or for other
consequential damages arising from the State Covered Conduct;

j. Any liability based on a failure to deliver goods or services due.

16. In consideration of the obligations of HealthNet set forth in this Agreement, and the HealthNet CIA, and conditioned on receipt by the State of the HealthNet State Settlement Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking permissive exclusion from the State’s Medicaid program against HealthNet for the State Covered Conduct, except as reserved in Paragraph 15 above. Nothing in this Agreement precludes the State from taking action against HealthNet in the event that HealthNet is excluded by the federal government, or for conduct and practices other than the State Covered Conduct. The State Medicaid Fraud Control Unit further agrees to refrain from recommending, causing or attempting to cause any administrative action or sanction, including debarment, by any other government agency of the State for the State Covered Conduct.

17. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator’s receipt of the payments described in Paragraphs 2 and 3, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action, except that this Agreement shall not restrict any potential claim Relator may have to a share of any future proceeds attributable to the HealthNet Wrap-Around Claims, consistent with the dismissals without prejudice as set forth in Paragraph 34.
18. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable in light of the circumstances, pursuant to Ind. Code § 5-11-5.7-5(c). Conditioned upon Relator’s receipt of the payments described in Paragraphs 4 and 5, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the State, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under the Indiana FCA, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action, except that this Agreement shall not restrict any potential claim Relator may have to a share of any future proceeds attributable to the HealthNet Wrap-Around Claims, consistent with the dismissals without prejudice as set forth in Paragraph 34.

19. IU Health and HealthNet waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Federal or State 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 or the State concerning the characterization of the Settlement Amounts for purposes of the Internal Revenue laws, Title 26 of the United States Code, or the State’s revenue code.

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

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

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

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

24. IU Health fully and finally releases the Relator and her heirs, successors, attorneys (past and present), agents, and/or assigns (a) from any and all claims, whether in law or in equity, whether known or unknown (including attorneys’ fees, costs, and expenses of every kind and however denominated) that IU Health has or may have through the Effective Date of this Agreement against the Relator, her heirs, successors, attorneys, agents, or assigns, and (b) from any and all claims IU Health has asserted, could have asserted, or may assert in the future
related to the Federal Covered Conduct, the State Covered Conduct, and/or the Civil Action, including all claims for any practices, activities or conduct of which IU Health learned prior to or during the pendency of this lawsuit. This Agreement does not impact whatsoever any claims related to medical malpractice which have been or may be brought against Relator, IU Health and/or HealthNet.

25. HealthNet fully and finally releases the Relator and her heirs, successors, attorneys (past and present), agents, and/or assigns (a) from any and all claims, whether in law or in equity, whether known or unknown (including attorneys’ fees, costs, and expenses of every kind and however denominated) that HealthNet has or may have through the Effective Date of this Agreement against the Relator, her heirs, successors, attorneys, agents, or assigns, and (b) from any and all claims HealthNet has asserted, could have asserted, or may assert in the future related to the Federal Covered Conduct, the State Covered Conduct, and/or the Civil Action, including all claims for any practices, activities or conduct of which HealthNet learned prior to or during the pendency of this lawsuit. This Agreement does not impact whatsoever any claims related to medical malpractice which have been or may be brought against Relator, IU Health and/or HealthNet. Furthermore, the scope of this release does not extend to any claims or defenses of HealthNet relating to the HealthNet Wrap-Around Claims from 2011-2015, which are being dismissed without prejudice pursuant to Paragraph 34 of this Agreement.

26. The IU Health and HealthNet Settlement Amounts shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), the State’s Medicaid program, or any other state payer, related to the Federal or State Covered Conduct; and IU Health and HealthNet each agree not to resubmit to any Medicare contractor, the State’s Medicaid program, or any other state payer any previously denied claims related to the Federal
or State Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals. HealthNet shall not use any Federal grant funds awarded to satisfy its obligation to pay the Federal or State Settlement Amounts under Paragraph 1.

27. IU Health and HealthNet each separately agree to the following:

a. 

Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of IU Health and/or HealthNet, their present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States’ or the State’s audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) IU Health’s and/or HealthNet’s investigation, defense, and corrective actions undertaken in response to the United States’ or the State’s audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);

(4) the negotiation and performance of this Agreement;

(5) the payments IU Health and HealthNet make to the United States and the State pursuant to this Agreement and any payments that IU Health and HealthNet may make to Relator, including costs and attorneys fees; and

(6) HealthNet’s negotiation of, and obligations undertaken pursuant to the HealthNet CIA to: (i) retain an independent review organization to
perform annual reviews as described in Section III of the HealthNet CIA;

and (ii) prepare and submit reports to the OIG-IHHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in Paragraph 27.a.(6) that may apply to the obligations undertaken by HealthNet pursuant to the HealthNet CIA affects the status of costs that are not allowable based on any other authority applicable to HealthNet and/or IU Health.

b. **Future Treatment of Unallowable Costs:** Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by IU Health and HealthNet, and IU Health and HealthNet shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by IU Health and/or HealthNet or any of their respective subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. **Treatment of Unallowable Costs Previously Submitted for Payment:** IU Health and HealthNet further agree that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by IU Health and/or HealthNet or any of their respective subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already
settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. IU Health and HealthNet agree that the United States and the State, at a minimum, shall be entitled to recoup from IU Health and/or HealthNet, whichever is applicable, any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, the State pursuant to the direction of the State, and/or the affected agencies. The United States and the State reserve their rights to disagree with any calculations submitted by IU Health and/or HealthNet or any of their respective subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on IU Health and/or HealthNet or any of their respective subsidiaries or affiliates’ cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States or the State to audit, examine, or re-examine IU Health’s or HealthNet’s books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

28. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 29 (waiver for beneficiaries paragraph), below.

29. IU Health and HealthNet each agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as the Federal or State Covered Conduct.
30. HealthNet warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States and the State of the HealthNet Settlement Amounts. 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 HealthNet, 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 HealthNet was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

31. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, HealthNet 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 HealthNet’s debts, or seeking to adjudicate HealthNet as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for HealthNet or for all or any substantial part of HealthNet’s assets, HealthNet and IU Health agree as follows:

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

b. If HealthNet’s obligations to the United States under Paragraph 1 of this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind this Settlement Agreement in full as it pertains to the United States ("Federal Rescindment"), including but not limited to all releases provided by the United States and the Relator as to IU Health and HealthNet, and bring any civil and/or administrative claim, action, or proceeding against IU Health and/or HealthNet for the claims that would otherwise be covered by the releases provided in Paragraphs 7, 8, 11, 12, and 13, above. IU Health and HealthNet agree that they shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 60 calendar days of written notification to IU Health and HealthNet that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on December 19, 2013. IU Health and HealthNet agree that any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and neither IU Health nor HealthNet shall argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay. In the event that the United States were to pursue a claim against HealthNet in the case, action, or proceeding referenced in the first clause of this Paragraph, neither HealthNet nor IU Health shall contest that the United States has a valid claim against HealthNet in the amount of forty million, forty-four thousand dollars ($40,044,000).

c. If HealthNet’s obligations to the State under Paragraph 1 of this
Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind this Settlement Agreement in full as it pertains to the State (“State Rescindment”), including but not limited to all releases as to IU Health and HealthNet, and bring any civil and/or administrative claim, action, or proceeding against IU Health and/or HealthNet for the claims that would otherwise be covered by the releases provided in Paragraphs 9-12, above. IU Health and HealthNet agree that they shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the State within 60 calendar days of written notification to IU Health and HealthNet that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on December 19, 2013. IU Health and HealthNet agree that 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 the first clause of this Paragraph, and neither IU Health nor HealthNet shall argue or otherwise contend that the State’s claims, actions, or proceedings are subject to an automatic stay. In the event that the State were to pursue a claim against HealthNet in the case, action, or proceeding referenced in the first clause of this Paragraph, neither HealthNet nor IU Health shall contest that the State has a valid claim against HealthNet in the amount of nineteen million, nine hundred fifty-six thousand dollars ($19,956,000).

d. Nothing in this Agreement shall prevent IU Health from pursuing a claim against HealthNet in the case, action, or proceeding referenced in the first clause of this Paragraph. However, IU Health agrees that in the event it pursues any claim against HealthNet in such case, action, or proceeding, IU Health’s claim shall be subordinated to any claims pursued by the United States and/or the State in such case, action, or proceeding, unless and until
the full Settlement Amount is received by the United States and the State. Any payment made
by HealthNet which is subsequently avoided for any reason, including, but not limited to,
through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, shall not count
towards payment of the full Settlement Amount for purposes of the preceding sentence.

e. HealthNet and IU Health acknowledge that their agreements in this
Paragraph are provided in exchange for valuable consideration provided in this Agreement.

32. In the event that HealthNet fails to pay the HealthNet Federal Settlement Amount
within five (5) days of the date that it is due according to Paragraph 1.b of this Agreement, the
United States may, at its sole option, rescind this Settlement Agreement in full as it pertains to
the United States, including but not limited to all releases provided by the United States and the
Relator as to IU Health and HealthNet, and bring any civil and/or administrative claim, action, or
proceeding against HealthNet and/or IU Health for the Federal Covered Conduct. Rescindment
shall be automatically effective upon the United States’ bringing of such an action. In the event
of Rescindment by the United States, neither IU Health nor HealthNet 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 United States or Relator within 90 calendar days of HealthNet’s failure to pay the
HealthNet Federal Settlement Amount pursuant to the terms provided in Paragraph 1.b, except to
the extent such defenses were available on December 19, 2013. IU Health and HealthNet agree
that in the event of Rescindment by the United States, they shall not plead, argue, or otherwise
raise any defenses that any amounts paid to the United States or the State pursuant to Paragraph
1 should be used to reduce the determination of single damages for purposes of calculating treble
damages or penalties under the FCA. The option for Rescindment by the United States identified
in this Paragraph is in addition to, and not in lieu of, other options identified in this Agreement or
otherwise available. In the event of Rescindment by the United States, whatever rights the Relator could have asserted in connection with the Civil Action prior to dismissal will be restored to the Relator in connection with whatever claim, action, or proceeding the United States chooses to pursue.

33. In the event that HealthNet fails to pay the HealthNet State Settlement Amount within five (5) days of the date that it is due according to Paragraph 1.d of this Agreement, the State may, at its sole option, rescind this Settlement Agreement in full as it pertains to the State, including but not limited to all releases as to IU Health and HealthNet, and bring any civil and/or administrative claim, action, or proceeding against HealthNet and/or IU Health for the State Covered Conduct. Rescindment by the State shall be automatically effective upon the State’s bringing of such an action. In the event of Rescindment by the State, neither IU Health nor HealthNet 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 or Relator within 90 calendar days of HealthNet’s failure to pay the HealthNet State Settlement Amount pursuant to the terms provided in Paragraph 1.d, except to the extent such defenses were available on December 19, 2013. IU Health and HealthNet agree that in the event of Rescindment by the State, they shall not plead, argue, or otherwise raise any defenses that any amounts paid to the United States or the State pursuant to Paragraph 1 should be used to reduce the determination of single damages for purposes of calculating treble damages or penalties under the Indiana FCA. The option for Rescindment by the State identified in this Paragraph is in addition to, and not in lieu of, other options identified in this Agreement or otherwise available. In the event of Rescindment by the State, whatever rights the Relator could have asserted in connection with the Civil Action prior
to dismissal will be restored to the Relator in connection with whatever claim, action, or proceeding the State chooses to pursue.

34. Upon receipt of the payments described in Paragraph 1 above, the Parties shall promptly file in the Civil Action an Unopposed Motion to Dismiss the Civil Action pursuant to Rule 41(a)(2) (the “Unopposed Motion”), to which the State shall give its consent. Such motion shall seek dismissal with prejudice to the Relator, except as to (1) the HealthNet Wrap-Around Claims from 2011-2015, which dismissal shall be without prejudice to the Relator, and (2) claims for expenses, attorney’s fees and costs. As to the United States and the State, such motion shall seek dismissal with prejudice as to all allegations in the Second Amended Complaint, except that the HealthNet Wrap-Around Claims from 2011-2015 shall be dismissed without prejudice to both the United States and the State. The Unopposed Motion shall request a Court Order dismissing the Civil Action subject to the terms of the Settlement Agreement, such that, under the terms set forth in Paragraphs 31-33 above, this action is subject to reinstatement, and the United States and/or the State and/or Relator are eligible to bring any other civil and/or administrative claim, action, or proceeding against IU Health and/or HealthNet, for the claims that would otherwise be dismissed by this Settlement Agreement in the event that the Settlement Amount is not received in full or payment of any portion of the Settlement Amount is avoided.

35. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except that IU Health’s and HealthNet’s payment(s) to Relator for expenses, attorneys’ fees, and costs subject to 31 U.S.C. § 3730(d) and Ind. Code § 5-11-5.7-6(a) shall be addressed separately.

36. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.
37. This Agreement is governed by the laws of the United States and the State of Indiana. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Indiana. 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.

38. Except for the HealthNet CIA, or to the extent the State and HealthNet have entered into a separate settlement agreement, or as explicitly stated above, this Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

41. This Agreement is binding on IU Health’s and HealthNet’s successors, transferees, heirs, and assigns.

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

43. All parties consent to the United States’ and the State’s disclosure of this Agreement, and information about this Agreement, to the public.

44. This Agreement is effective on the date of signature of the last signatory to the Agreement (“Effective Date of this Agreement”). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
THE UNITED STATES OF AMERICA

DATED: 4/27/17  
BY: Daniel A. Spiro  
Senior Trial Counsel  
Nathan P. Green  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED:  
BY: Jonathan Bont  
Assistant United States Attorney  
Southern District of Indiana

DATED: 4/26/17  
BY: Lisa M. Rie  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

STATE OF INDIANA

DATED:  
BY: Matthew G. Whitmire  
Director, Medicaid Fraud Control Unit  
Office of the Attorney General

DATED:  
BY: Joseph Moser  
Executive Director of Medicaid  
Office of Medicaid Planning and Policy
THE UNITED STATES OF AMERICA

DATED: ________ BY: __________________________
DANIEL A. SPIRO
Senior Trial Counsel
NATHAN P. GREEN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 4/27/17 BY: __________________________
JONATHAN BONT
Assistant United States Attorney
Southern District of Indiana

DATED: 4/26/17 BY: __________________________
LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

STATE OF INDIANA

DATED: ________ BY: __________________________
MATTHEW G. WHITMIRE
Director, Medicaid Fraud Control Unit
Office of the Attorney General

DATED: ________ BY: __________________________
JOSEPH MOSER
Executive Director of Medicaid
Office of Medicaid Planning and Policy
THE UNITED STATES OF AMERICA

DATED: ___________ BY: 

DANIEL A. SPIRO
Senior Trial Counsel
NATHAN P. GREEN
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: ___________ BY: 

JONATHAN BONT
Assistant United States Attorney
Southern District of Indiana

DATED: ___________ BY: 

LISA M. RE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

STATE OF INDIANA

DATED: 4/27/17 BY: 

MATTHEW G. WHITMIRE
Director, Medicaid Fraud Control Unit
Office of the Attorney General

DATED: 4/24/17 BY: 

JOSEPH-MOSER
Executive Director of Medicaid
Office of Medicaid Planning and Policy
INDIANA UNIVERSITY HEALTH, INC. - DEFENDANT

DATED: 4/24/17  BY: DENNIS M. MURPHY
          President and Chief Executive Officer

DATED: 4/24/17  BY: JENNIFER M. ALVEY
          Senior Vice President and Chief Financial Officer

DATED: 4/24/17  BY: STEPHEN G. SOZIO, JONES DAY
                     HEATHER M. O'SHEA, JONES DAY
                     Counsel for Indiana University Health, Inc.

HEALTHNET, INC. - DEFENDANT

DATED:       BY: RICARDO DIAZ
            President and Chief Executive Officer

DATED:       BY: MARC T. QUIGLEY, KRIEG DEVault
              THOMAS J. COSTAKIS, KRIEG DEVault
              Counsel for HealthNet, Inc.

JUDITH ROBINSON - RELATOR

DATED:       BY: JUDITH ROBINSON

DATED:       BY: JILLIAN L. ESTES
              Counsel for Judith Robinson
INDIANA UNIVERSITY HEALTH, INC. - DEFENDANT

DATED: __________ BY: __________________________________________

DENNIS M. MURPHY
President and Chief Executive Officer

DATED: __________  BY: __________________________________________

JENNIFER M. ALVEY
Senior Vice President and Chief Financial Officer

DATED: __________  BY: __________________________________________

STEPHEN G. SOZIO, Jones Day
HEATHER M. O’SHEA, Jones Day
Counsel for Indiana University Health, Inc.

HEALTHNET, INC. - DEFENDANT

DATED: 4/21/17  BY: __________________________________________

RICARDO DIAZ
President and Chief Executive Officer

DATED: 4/21/17  BY: __________________________________________

MARC T. QUIGLEY, Krieg DeVault
THOMAS J. COSTAKIS, Krieg DeVault
Counsel for HealthNet, Inc.

JUDITH ROBINSON - RELATOR

DATED: __________  BY: __________________________________________

JUDITH ROBINSON

DATED: __________  BY: __________________________________________

JILLIAN L. ESTES
Counsel for Judith Robinson
INDIANA UNIVERSITY HEALTH, INC. - DEFENDANT

DATED: ________ BY: ____________________________
DENNIS M. MURPHY
President and Chief Executive Officer

DATED: ________ BY: ____________________________
JENNIFER M. ALVEY
Senior Vice President and Chief Financial Officer

DATED: ________ BY: ____________________________
STEPHEN G. SOZIO, Jones Day
HEATHER M. O'SHEA, Jones Day
Counsel for Indiana University Health, Inc.

HEALTHNET, INC. - DEFENDANT

DATED: ________ BY: ____________________________
RICARDO DIAZ
President and Chief Executive Officer

DATED: ________ BY: ____________________________
MARC T. QUIGLEY, Krieg DeVault
THOMAS J. COSTAKIS, Krieg DeVault
Counsel for HealthNet, Inc.

JUDITH ROBINSON - RELATOR

DATED: 4-21-17 BY: ____________________________
JUDITH ROBINSON

DATED: 4-21-17 BY: ____________________________
JILLIAN L. ESTES
Counsel for Judith Robinson