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## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between, on the one hand, the Center for Legal Advocacy, d/b/a Disability Law Colorado; A.A. by and through his grandmother, G.A.; C.C. by and through her mother, P.C.; and D.D. by and through her mother, P.D., and, on the other hand, Kim Bimestefer, in her official capacity as the Executive Director of the Colorado Department of Health Care Policy and Financing, the Colorado Department of Health Care Policy and Financing (“Department”), and the State of Colorado (the “State”) (together, the “State”).

### RECITALS

WHEREAS, on September 3, 2021, A.A., B.B.,<sup>1</sup> and C.C. filed a lawsuit against the Department entitled *A.A., B.B., and C.C. v. Bimestefer*, the Case as defined below, in the United States District Court for the District of Colorado, the Court as defined below;

WHEREAS, the Case was brought as a putative class action alleging that the Department failed to provide Plaintiffs, as Medicaid-eligible children with mental health or emotional disorders, the necessary services that they require in order to avoid unnecessary hospitalization and institutionalization;

WHEREAS, the Department filed a motion to dismiss on November 12, 2021, challenging the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6);

WHEREAS, the Court dismissed the complaint for lack of subject matter jurisdiction on September 28, 2022. However, the Court permitted the case to remain open and granted Plaintiffs leave to file an amended complaint to cure pleading deficiencies;

WHEREAS, on April 10, 2023, Plaintiffs filed an amended complaint in the Case with the Court;

WHEREAS, on April 24, 2023, the Court struck the amended complaint and stayed the deadline to file a motion to file amended complaint until August 14, 2023 (ECF 81);

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<sup>1</sup> B.B., a 16-year-old Medicaid recipient residing in Castle Rock, Colorado and a named plaintiff in the Complaint for Injunctive and Declaratory Relief, ECF No. 1, passed away on December 23, 2022.

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WHEREAS, on August 9, 2023, the Court further extended the deadline to file an amended complaint to October 13, 2023 (ECF 82).

WHEREAS, on January 9, 2024, the Court extended the deadline to file an amended complaint one more time to February 26, 2024 (ECF 93).

WHEREAS, on or before February 26, 2024, Plaintiffs will file a Motion for Leave to File an Amended Complaint in the Case with the Court;

WHEREAS, the Parties, wishing to avoid the delay, uncertainty, inconvenience, and expense of further litigation, desire to settle the Case on the terms set forth in this Agreement;

WHEREAS, the Parties recognize that this Case involves legal issues that may take a prolonged time to fully litigate and resolve, and further recognize that continued litigation would be an expensive, lengthy, and time-consuming matter;

WHEREAS, the Parties share a mutual interest in seeing that services are delivered to Medicaid Members, as defined below, consistent with state and federal law; and

WHEREAS, the Parties wish to enter into a settlement agreement as is fully set forth herein.

**TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations contained in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties mutually agree as follows:

**1 SCOPE OF AGREEMENT:**

- 1.1 This Agreement shall apply solely to the matters at issue in the Case, i.e., Medicaid coverage of IBHS for Medicaid Members with complex mental health care needs.
- 1.2 Nothing in this Agreement shall be deemed or construed as an acknowledgment, an admission, or evidence of liability of the Department under the federal or state Constitution or any federal or state law, and this Agreement may not be used as evidence of liability in any other civil or criminal proceeding.

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1.3 This Agreement does not serve as an admission by the Department that corrective measures are necessary to meet the requirements of the Social Security Act, the federal or state Constitution, or federal or state law or that the Department is not currently complying with the same.

**2 GOALS AND PRINCIPLES:**

2.1 Goals: The goals of this Agreement are to: (a) establish a settlement of the Case; and to (b) enable the State of Colorado to develop and improve upon its delivery of IBHS to Medicaid Members consistent with EPSDT, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

2.2 Principles: As the parties work toward meeting these goals, they will do so with the following principles and approaches in mind: (a) creating opportunities for family-centered and child-driven preferences to be elicited and prioritized; (b) a collaborative team/inter-agency approach to providing individualized services and supports to Medicaid Members; and (c) creating a delivery model for culturally relevant services and supports in the most integrated, least restrictive setting.

2.3 The Goals and Principles set forth in this section are statements of shared, broad objectives and are not enforceable.

**3 DEFINITIONS:**

3.1 “Agreement” means this Settlement Agreement.

3.2 “Case” means the lawsuit filed in the United States District Court for the District of Colorado titled A.A., B.B., and C.C. v. Bimestefer (Case No.: 21-cv-2381), and as amended in Center for Legal Advocacy, d/b/a Disability Rights Colorado; A.A. by and through his grandmother, G.A.; C.C. by and through her mother, P.C.; and D.D. by and through her mother, P.D.

3.3 “Plaintiffs’ Counsel” means the attorneys representing the named Plaintiffs in the Case: Robert H. Farley, Jr., Jane Perkins (National Health Law Program), Kim Lewis (National Health Law Program), Kelly McCullough (Disability Law Colorado), and Emily Harvey (Disability Law Colorado).

3.4 “Conferral” means a conferral between the Parties to discuss the basis of the Initial Notice and the Department’s Response in order to attempt to resolve the matter in good faith, as described in the dispute resolution process described in Section 6 of this Agreement.

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- 3.5 “Consultant” means Suzanne Fields of the University of Connecticut School of Social Work, or another individual(s) agreed to by the Parties.
- 3.6 “Court” means the United States District Court for the District of Colorado.
- 3.7 “Department” refers to the Colorado Department of Health Care Policy and Financing.
- 3.8 “Department’s Response” means the response submitted in writing by Department’s counsel to Plaintiffs’ Counsel responding to the Initial Notice, as described in the dispute resolution process described in Section 6 of this Agreement.
- 3.9 “Early and Periodic Screening, Diagnostic, and Treatment Benefit” or “EPSDT” means the benefit authorized under 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), and 1396d(r)(1), (5) that provides comprehensive and preventive health care services for Medicaid Members under the age of 21.
- 3.10 “Implementation Plan” means the Department’s plan for implementing a model based on clinical best practices and evidence supported practices for delivering IBHS to Medicaid Members as determined by the Department in consultation with the Consultant and Plaintiffs’ Counsel.
- 3.11 “Initial Notice” means the information submitted in writing by Plaintiffs’ Counsel to the Department’s counsel in the dispute resolution process described in Section 6 of this Agreement notifying the Department of what action or inaction has taken place that Plaintiffs believe amounts to a failure to maintain Substantial Compliance.
- 3.12 “Intensive Behavioral Health Services” or “IBHS” means a continuum of Medically Necessary mental health and support services or interventions, as required and authorized by the Social Security Act, provided in the most integrated setting appropriate to the needs of Medicaid Members, as identified by the Department in consultation with the Consultant and as mutually agreed to by the Parties in the Implementation Plan. IBHS will include, but are not limited to, the following:
- a) **Intensive Care Coordination Services** provided to Medicaid Members to facilitate assessment, care planning, coordination of services, authorization of services, and monitoring of services and supports. Such services are guided by the needs of the Medicaid

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Member and ensure a single point of accountability for ensuring necessary services are accessed, coordinated, and delivered to Medicaid Members.

b) **Intensive-In-Home and Community Services** provided to Medicaid Members in their homes or community settings in order to correct or ameliorate their behavioral health condition(s). Such services include educational opportunities, behavior management, therapeutic services, and clinical services.

c) **Mobile Crisis Intervention and Stabilization Services** provided to Medicaid Members in their homes or community settings, and which will be available 24 hours a day, 7 days a week. Such services include crisis planning, stabilization, referral and coordination, and prevention and post-crisis follow-up services.

3.13 “Mediation” means a conference with the Consultant and the Parties for the purpose of attempting to resolve any dispute related to an alleged failure to maintain Substantial Compliance through informal mediation, as described in the dispute resolution process described in Section 6 of this Agreement.

3.14 “Medicaid” as used herein refers to the Colorado Medical Assistance Program authorized under Title XIX of the Social Security Act.

3.15 “Medicaid Members” means children under the age of 21 who are enrolled in Colorado’s Medicaid program and who have been diagnosed with a mental health or behavioral disorder and for whom IBHS have been determined to be Medically Necessary.

3.16 “Medically Necessary” or “Medical Necessity” means Medicaid covered services that are consistent with the Department’s utilization control and EPSDT’s “correct or ameliorate” standard, 42 USC 1396d(r)(5), and are provided to a Medicaid Member based on a recommendation by a licensed practitioner of the healing arts within their scope of practice.

3.17 The term “Parties” means the parties to this Agreement.

3.18 “Plaintiffs” means the named plaintiffs in the Case.

3.19 “Regional Accountable Entities” or “RAE” means the organization or their successor entities awarded a contract by the Department to serve a particular region of Colorado, and that is responsible for coordinating care for Medicaid Members residing in that region, connecting Medicaid Members with mental health services, and ensuring that certain

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necessary Medicaid covered services are delivered to Colorado's Medicaid Members.

3.20 "Social Security Act" means Title XIX of the Act (42 U.S.C. §1396 *et seq.*) authorizing the Medicaid program—a medical assistance program jointly financed by state and federal governments for qualifying individuals and families.

3.21 "Substantial Compliance" with the requirements contained in Section 4 of this Agreement shall be determined based on a careful weighing of the following factors, with no single factor, alone, sufficient to support a failure to maintain Substantial Compliance:

- 3.21.1 Has the Party made a strong and sustained effort to fully comply with the requirement(s) in this Agreement.
- 3.21.2 Has the requirement's purpose or objective been complied with even though its formal language is not met.
- 3.21.3 Does the identified deficiency cause more than minimal harm or risk of harm to Plaintiffs.
- 3.21.4 Is the degree of noncompliance with the requirement great enough to constitute a marked deviation from the terms of the requirement.
- 3.21.5 Is the noncompliance a temporary failure during a period of otherwise sustained compliance with the provision.
- 3.21.6 Is there compliance with a substantial majority of the agreement's requirements taken as a whole.
- 3.21.7 Is the noncompliance caused by a small number of county programs or RAE's, and has the Department taken steps to promptly and substantially correct the issue.
- 3.21.8 A failure to maintain Substantial Compliance shall not be interpreted to mean or understood to include: (1) mere technicalities; (2) isolated or temporary failure(s) to comply during a period of otherwise sustained compliance; or (3) individual challenges to the amount, duration, scope, medical necessity of, or result of any prior approval for services.
- 3.21.9 All individual challenges to the amount, duration, scope, medical necessity of, or result of any prior approval for services must proceed through existing state processes for

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administrative appeal and judicial review under the Colorado Administrative Procedure Act.

#### 4 REQUIREMENTS & COMMITMENTS:

##### The Consultant

- 4.1 *Retain a Consultant:* The Department shall contract with the Consultant to perform the following duties:
- 4.1.1 Evaluate the Department's current mental and behavioral health service delivery systems;
  - 4.1.2 Assist the Department in developing and drafting an Implementation Plan to comply with this Agreement;
  - 4.1.3 Support and evaluate the Department's progress toward implementing the requirements of the Implementation Plan and Agreement;
  - 4.1.4 Review appropriate documentation, records, files, and data within the control of the Department and its contractors;
  - 4.1.5 Communicate with the Department's staff and contractors as well as Plaintiffs' Counsel, as appropriate;
  - 4.1.6 Aid in problem-solving and mediating to amicably resolve any disagreements that may arise between the Parties;
  - 4.1.7 Comply with the Department's business associate agreement, as well as all applicable federal and state patient rights and confidentiality laws and regulations, including, but not limited to: the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Standard for Privacy of Individually Identifiable Health Information and Health Insurance Reform: Security Standards, 45 C.F.R. Part 164, alcohol and drug abuse patient records laws codified at 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2, the Health Information Technology for Economics and Clinical Health Act ("HITECH Act") adopted as part of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5); and
  - 4.1.8 Conduct any additional actions as determined necessary by the Department.

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- 4.2 *Consultant Authority:* The Department shall ensure that the contract with the Consultant (the “Consulting Agreement”) provides the Consultant with the following authority:
- 4.2.1 Hire staff and consultants as necessary to help carry out the Consultant’s duties, subject to the Department’s prior written approval;
  - 4.2.2 Review Medicaid Members’ experiences, including by reviewing individual files and other data the Department and its contractors maintain, or conducting interviews or focus groups where appropriate;
  - 4.2.3 Convene meetings with any or all of the Parties as appropriate; and
  - 4.2.4 Access to the people, places, and documents that are necessary to assess the Department’s compliance with and implementation of the Implementation Plan, as permitted by law, including interviews with providers, caregivers, case managers, relevant Department staff and contractors, and Medicaid Members (with the Member’s consent). However, the Department has no obligation to (1) require any Medicaid Provider, contractor, or individual who is not a Department employee to speak with the Consultant or (2) produce any document that is not within the control or custody of the Department.
- 4.3 *Replacing the Consultant:* In the event the Consultant resigns, becomes otherwise unavailable, or the Parties agree to retain another Consultant, the Parties shall work together to identify and agree on a replacement as soon as practicable. If the Parties cannot agree on a replacement, the Parties shall proceed under the dispute resolution process described in Section 6.
- 4.4 *Consultant Testimony:* Other than testifying in this Case regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement, including, but not limited to, the Consultant’s observations, findings, and recommendations, the Parties agree that the Consultant shall not testify in any litigation or proceeding with regard to any act or omission of the State or any of its agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement.



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4.5 *State to Bear Consultant Costs:* The State will bear the cost of the Consultant, including the cost of any staff or consultants to the Consultant, but the Consultant and the Consultant's staff or consultants are not State agents.

**The Implementation Plan**

4.6 *Develop Implementation Plan:* The Department, with the help of the Consultant and with consultation between the Parties, shall develop a model and plan for delivering IBHS to Medicaid Members which shall be set forth in an Implementation Plan and shall include designing and implementing the following components:

- 4.6.1 A systematic approach through which Medicaid Members will be provided the Medicaid-authorized, medically necessary IBHS Services needed to correct or ameliorate their mental health or behavioral disorders.
- 4.6.2 A provider outreach plan to educate Medicaid providers regarding the availability of periodic and inter-periodic mental health screenings of Medicaid Members and the availability of IBHS.
- 4.6.3 A standardized assessment process for identifying which Medicaid Members qualify for particular IBHS services, and the intensity (scope and frequency) of service delivery. A standardized assessment process may include a standardized assessment tool that can be used to establish eligibility for IBHS.
- 4.6.4 Tiers of care coordination, including intensive care coordination, and a method for assigning and delivering care coordination levels to Medicaid Members within the standardized assessment process.
- 4.6.5 Strategies that support individual plans of care for each Medicaid Member. The individual plans of care will address and describe the necessary IBHS to be provided to each Medicaid Member in the least restrictive setting appropriate to meet the Medicaid Member's treatment goals and needs.
- 4.6.6 Procedures to avoid unnecessary emergency room services, hospitalizations and out-of-home placements for Medicaid Members through the provision of IBHS.

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- 4.6.7 A data collection, tracking, monitoring, and quality assurance system to analyze mental and behavioral health services, including IBHS, and network capacity to Medicaid Members.
- 4.7 *Implementation Plan Logistical Components:* The Implementation Plan shall further include the following:
  - 4.7.1 Specific tasks, timetables, goals, programs, plans, strategies and protocols.
  - 4.7.2 Descriptions of set standards for the timely provision of IBHS to Medicaid Members.
  - 4.7.3 Descriptions for hiring, training, and supervising personnel.
  - 4.7.4 Descriptions of the activities required to support the development and availability of IBHS. This includes, but is not limited to:
    - 4.7.4.1 Collecting and analyzing Medicaid claims data to determine provider capacity needed and funding necessary to provide IBHS as required by this Agreement.
    - 4.7.4.2 Developing cross-system protocols to identify and serve Medicaid Members across different child-serving agencies, including child welfare and juvenile justice/probation.
    - 4.7.4.3 Identifying and using quality management tools to measure and assess the effectiveness of IBHS.
  - 4.7.5 Descriptions for monitoring, reviewing, and revising, as necessary, managed care entity contracts to include obligations to provide timely access to necessary IBHS to Medicaid Members (e.g., timely access and time/distance and travel time standards for delivery of IBHS services).
  - 4.7.6 Descriptions of how information will be disseminated to Medicaid Members and Medicaid providers, the process by which Medicaid Members may request services, and the manner in which the Department will maintain records of Medicaid Members' service requests.
- 4.8 *Initial Review and Presentation of Implementation Plan:* Within 12 months of the Effective Date, the Department will present to Plaintiffs'

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Counsel its completed Implementation Plan. Within 30 days of receipt, Plaintiffs' Counsel will provide comments, if any, to the Department regarding the Implementation Plan. Within 30 days of receiving comments, the Department, working with the Consultant, will either revise its Implementation Plan accordingly or if a disagreement arises, work collaboratively with Plaintiffs' Counsel to address and resolve the disagreement informally. If the Parties fail to resolve the disagreement and Plaintiffs' Counsel believes the disagreement constitutes a failure to maintain Substantial Compliance, then the dispute resolution process described in Section 6 of this Agreement shall govern.

- 4.9 *Stakeholder Engagement.* Early on and throughout the planning and implementation process, the Department will engage with appropriate stakeholders to identify their goals, concerns, and recommendations regarding the Implementation Plan.
- 4.10 *Periodic Review of and Updates or Amendments to Implementation Plan:* The Department shall review the Implementation Plan on at least an annual basis for the duration of this Agreement. The Department shall provide Plaintiffs' Counsel with an opportunity to review and comment upon any proposed updates or amendments to the Implementation Plan at least 30 days in advance of the effective date of any updates or amendments. In the event Plaintiffs' Counsel objects to a proposed update or amendment, Plaintiffs' Counsel shall state all objections in writing within 14 days. The Parties will then work collaboratively to resolve the objections informally. If the Parties fail to resolve the objection and Plaintiffs' Counsel believes the objection constitutes a failure to maintain Substantial Compliance, then the dispute resolution process described in Section 6 of this Agreement shall govern.
- 4.11 *Ongoing Evaluation and Monitoring Fee:* In consideration of Plaintiffs' Counsel's commitment to review, evaluate, consult, comment, and monitor the Department's progress toward the Achievements set forth in Section 5 of this Agreement (*see* Sections 4.1.5, 4.1.6, 4.2.3, 4.3, 4.6, 4.8, and 4.10), the Department shall compensate Plaintiffs' counsel for their ongoing monitoring and evaluation work at a rate of \$50,000.20 per year for five (5) years, for a Total Monitoring Fee Payment of \$250,001.00. The Department shall pay the Total Monitoring Fee Payment of \$250,001.00 to Plaintiffs' counsel by delivering the Total Monitoring Fee Payment to Robert H. Farley, Jr., Ltd., 1155 S. Washington Street, Suite 201, Naperville, IL 60540, within 90 days of the execution of this Agreement.

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**5 ACHIEVEMENTS:**

The Defendant shall meet the following achievements prior to termination of this Agreement:

- 5.1 Retain the Consultant, as described in Sections 4.1 through 4.5.
- 5.2 Develop and present an Implementation Plan within 12 months of the effective date of this Agreement, as described in Sections 4.6 through 4.10.
- 5.3 Ensure Substantial Compliance with the Settlement Agreement, including implementing the Implementation Plan, within five (5) years from the execution of this Agreement.

**6 DISPUTE RESOLUTION:**

6.1 *Intent of the Parties:* It is the Parties' intent to pursue a problem-solving approach to this Agreement so that disagreements can be minimized and resolved amicably, without resorting to further litigation.

6.2 *Dispute Resolution Process:* In the event that Plaintiffs believe that some action or inaction by the Department constitutes a failure to maintain Substantial Compliance, the Parties agree to employ the following process in an effort to resolve the dispute:

6.2.1 Step 1: Initial Notice of Failure to Maintain Substantial Compliance

Plaintiffs' Counsel may submit information, in writing, to the Department's counsel notifying the Department of what action or inaction has taken place that Plaintiffs believe amounts to a failure to maintain Substantial Compliance.

6.2.2 Step 2: The Department's Response to Initial Notice

The Department shall promptly investigate the basis of Plaintiffs' Initial Notice and respond, in writing, within 30 days.

6.2.3 Step 3: Acceptance or Rejection of Department's Response

Plaintiffs shall consider the Department's Response in good faith and either accept or reject within 14 days. If the Department's Response is accepted, no further action is

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required. If the Department's Response is rejected, the Parties shall engage in a meeting to confer, as described below.

6.2.4 Step 4: Meet and Confer

Within 30 days of Plaintiffs' rejection of the Department's Response, the Parties shall meet and confer. The Parties must discuss the basis of the Initial Notice and attempt to resolve the matter in good faith. If the Conferral is successful, no further action is required. If the Conferral is not successful, the Parties shall create a document that sets forth the issue(s) in dispute as well as the respective positions of the Parties.

6.2.5 Step 5: Mediation

If the alleged failure to maintain Substantial Compliance is not addressed within 20 days of the Conferral date, then either Party may request an informal mediation conference with the Consultant.

If the Mediation is successful, no further action is required. If the Mediation is not successful, the Parties may jointly or individually seek intervention from the Court for the purpose of effectuating compliance with the provisions specified in the Initial Notice.

6.2.6 Step 6: Court Intervention

If Plaintiffs seek intervention by the Court, Plaintiffs may move the Court for an order for compliance with this Agreement. However, Plaintiffs agree that any such motion shall seek relief that is narrowly drawn to determining whether there has been a failure to maintain Substantial Compliance, as defined in this Agreement, extends no further than to address the dispute at issue, and is the least intrusive means for effectuating compliance with terms of the Agreement identified in the Initial Notice.

6.3 *Timelines*: The Parties may agree in writing to modify the timelines in this section or in other provisions under the Agreement to accommodate appropriate inquiry, review, and resolution of a compliance matter.

6.4 *No Contempt of Court*: Nothing herein gives any Party a right to attempt to hold any other Party in contempt of court.

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## 7 ADMINISTRATIVE CLOSURE, TERMINATION, AND RELEASE:

7.1 *Administrative Closure of the Case:* Upon execution of this Agreement, the Parties shall file a motion with the Court requesting that the Court administratively close the Case and retain jurisdiction only to provide a forum to address an alleged failure to maintain Substantial Compliance with this Agreement, as set forth in Section 6 of this Agreement.

7.2 *Termination:* The Department will begin implementing this Agreement immediately upon the Effective Date. The Parties anticipate that the Department will have Substantially Complied with the Requirements and Commitments, and the Achievements set forth in Sections 4 and 5 within 60 months after the Effective Date. Therefore, the Agreement, unless it is otherwise terminated, canceled, or extended, shall expire 60 months after the Effective Date. The Parties may terminate this Agreement sooner by mutual written agreement. Within 30 days of termination of this Agreement, the Parties shall file a joint motion to dismiss with prejudice in the Case.

7.3 *Release:*

7.3.1 *Release of claims for money damages and attorneys' fees, through effective date.* Upon the Effective Date, Plaintiffs and their counsel, for themselves and their past, present, and future heirs, successors, assigns, agents, and representatives, including legal representatives, release, acquit, and forever discharge Defendant, the State of Colorado, the State's departments, agencies, instrumentalities, and elected officials, including but not limited to the Department, and each of their current and former officers and employees, agents, and successors (collectively, the "Released Parties"), from any and all claims for money damages or attorneys' fees, demands for money damages or attorneys' fees, causes of action for money damages or attorneys' fees, and obligations for money damages or attorneys' fees, whether asserted or unasserted, whether matured, unmatured, or wholly inchoate, and whether known or unknown, including but not limited to any and all claims for negligence or deprivation of liberty interests arising from or relating to the subject matter of the Case, up to the effective date of this Agreement. This release applies to any claim for money damages or attorneys' fees whatsoever, arising out of state or federal law, and encompasses any claim to recover monetarily through a state's criminal restitution statute. Without limiting the generality of the foregoing, this Agreement applies to any and all matters for money damages

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or attorneys' fees asserted, or which could have been asserted, up to the effective date of this Agreement.

7.3.2 *Full release of claims upon Entry of Order of Dismissal.* Upon Entry of an Order of Dismissal with Prejudice in this Case, Plaintiffs and their counsel, for themselves and their past, present, and future heirs, successors, assigns, agents, and representatives, including legal representatives, release, acquit, and forever discharge Defendant, the State of Colorado, the State's departments, agencies, instrumentalities, and elected officials, including but not limited to the Department, and each of their current and former officers and employees, agents, and successors (collectively, the "Released Parties"), from any and all claims, demands, causes of action, and obligations, whether asserted or unasserted, whether matured, unmatured, or wholly inchoate, and whether known or unknown, including but not limited to any and all claims for negligence or deprivation of liberty interests arising from or relating to the subject matter of the Case. This release applies to any claim whatsoever, arising out of state or federal law, and encompasses any claim to recover monetarily through a state's criminal restitution statute. Without limiting the generality of the foregoing, this Agreement applies to any and all matters asserted, or which could have been asserted, up to the effective date of this Agreement.

## 8 MISCELLANEOUS:

8.1 *Delegation:* Nothing shall prohibit the Department from engaging, collaborating with, or delegating service oversight or operational duties established under the Implementation Plan to another State entity as permitted under applicable law. The duties or responsibilities delegated to another State entity shall be performed consistent with the Department's obligations under this Agreement and the Implementation Plan; provided, however, that the inclusion of other State agencies in this subpart neither binds those agencies to this Agreement nor relieves the Department of its obligations under this Agreement. Likewise, nothing shall prohibit the Department from engaging, collaborating with, or utilizing contractors or other State entities as the Department may determine to be necessary to (a) design, review, coordinate, or manage the development of any part of the Implementation Plan; (b) provide planning, education, outreach, training, analysis, and technical support or advice to the Department, other State entities, providers, or contractors; (c) provide, coordinate, manage, review or authorize care or services to Medicaid Members; or (d) implement any part of the

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Implementation Plan or this Agreement. The use of contractors or other State entities neither binds those contractors or State entities to this Agreement nor relieves the Department of its obligations under this Agreement.

8.2 *Budgeting and Appropriation:* As part of the Implementation Plan and the Achievements, the Department shall establish operational policies and structures as necessary to implement this Agreement, including but not limited to financial and budgeting matters, funding of services, and interagency coordination of services, including coordination with other relevant state agencies and boards. The Department is prohibited by law from making commitments beyond the term of the current state fiscal year. The Department, while empowered to enter into and implement this Agreement, does not have the legal authority to bind the Colorado General Assembly, which has the authority to appropriate funds for, and amend laws pertaining to, the state's Medicaid program. The Department agrees to seek funding necessary as provided in Sections 4 and 5 and as necessary to implement and comply with this Agreement. However, nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, the Department's obligations under this Agreement that extend beyond the effective date of this Agreement are contingent upon funds being appropriated, budgeted, and otherwise made available for the purpose of this Agreement and subject to annual appropriation. In the event the Department is unable to obtain necessary appropriations to implement and comply with certain terms and provisions of the Implementation Plan this year or in any future fiscal year, this Agreement's requirement to execute the Implementation Plan as set forth in Sections 4 and 5 shall be unenforceable as to those terms and provisions. Any question of whether the amount of the appropriations is adequate to implement and complete the terms of Sections 4 and/or 5 is solely for determination by the Department, and the Department's determination may not be challenged by Plaintiffs in any forum, unless Plaintiffs can show it was not made in good faith.

8.3 *Medicaid Administration:* Nothing in this Agreement shall require or authorize the Department to cover or make available any particular IBHS to a Medicaid Member if such service is not authorized or covered by the Social Security Act, including EPSDT, or the Centers for Medicare and Medicaid Services. This Agreement shall not override or supersede applicable law, and nothing in this Agreement shall require the provision of any particular type of service. Furthermore, nothing in this Agreement shall dictate how the Department shall otherwise operate or fund Colorado's Medical Assistance programs or State Plan



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beyond the obligations specifically set forth herein with regard to this Agreement and Case.

- 8.4 *Intended Third-Party Beneficiaries.* The parties agree and acknowledge that the Colorado Department of Health Care Policy & Financing, the State Office of Risk Management, the State, and their respective employees and elected officials, although they may not each be signatory parties to this Agreement, are intended third-party beneficiaries of this Agreement, and each and all of them shall have the right to rely upon and enforce this Agreement in any court of competent jurisdiction in the event that any action or proceeding based upon claims or causes of action released hereby may be threatened or commenced.
- 8.5 *No Admission of Liability:* The Agreement is entered into for the purposes of avoiding further litigation and to compromise claims. The parties agree that this Agreement does not constitute evidence of or an admission of any liability, omission, or wrongdoing of any kind by the State or any current or former employees, officials, agents, or attorneys of the State. This Agreement shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove and enforce its terms.
- 8.6 *Binding and Enforceability:* This Agreement is a binding and enforceable contract for the benefit of the Parties hereto and their respective successors, assigns, and heirs, with respect to this Case.
- 8.7 *Integration and Merger:* This Agreement constitutes the entire agreement between the Parties regarding the subject matter and transactions contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth herein. This Agreement supersedes any and all prior agreements and understandings by and between the Parties with respect to the subject matter of this Agreement.
- 8.8 *Amendments to this Agreement:* This Agreement may not be changed, altered, or modified, except in a writing signed by both Parties.
- 8.9 *Choice of Law:* This Agreement shall be interpreted in accordance with the laws of the State of Colorado.
- 8.10 *Consultation with Counsel:* Each Party has carefully read this entire Agreement and understands it. Each Party has had the opportunity to consult with its respective counsel prior to signing this Agreement. Also, each Party acknowledges it is entering into this Agreement knowingly and voluntarily, without coercion, duress, or undue influence.

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- 8.11 *Execution*: This Agreement is intended to be self-executing. However, the Parties agree that at the reasonable request of the other, each Party will execute any further documents or instruments reasonably necessary to effect this Agreement.
- 8.12 *Severance*: If any provision of this Agreement should be declared to be unenforceable, with the exception of the releases set forth in Paragraph 7.3, the remainder of this Agreement will continue to be binding on the Parties.
- 8.13 *Counterparts*: This Agreement may be signed in counterparts and, when each Party has signed one counterpart hereof, it shall be a binding and enforceable document.
- 8.14 *Signatures*: This Agreement may be executed by electronic or facsimile signatures, and such signatures will be deemed to be as valid as an original signature.
- 8.15 *Settlement Payment – Attorney Fees and Costs*. The Department, by and through the Office of Risk Management, shall pay to Plaintiffs’ Counsel the total sum of ninety-nine thousand, nine hundred ninety-nine dollars **\$99,999.00** (the Settlement Payment), in full and final settlement of any and all attorney fees and costs associated with any and all claims arising from the Case with respect to State of Colorado agencies, departments and employees, the State of Colorado, and the Defendant. A Form 1099 may be issued to Plaintiffs’ Counsel on the payments and no payment made is designated as wages, salary, or back pay. The Settlement Payment shall be made by warrant on the Treasurer of the State of Colorado payable in the following amounts and to the order of the following:
- 8.15.1 \$53,799.00 to Robert H. Farley, Jr., Ltd., 1155 S. Washington Street, Suite 201, Naperville, IL 6054.
  - 8.15.2 \$46,200.00 to National Health Law Program, Inc., 3701 Wilshire Blvd, Suite 315, Los Angeles, CA 90010-2804.
- 8.16 *Withholding of Settlement Funds*. Pursuant to C.R.S. § 24-30-202.4 (as amended), the State Controller may offset the Settlement Payment by any debts owed by Plaintiffs’ attorneys to State agencies under the vendor offset interception system, including debts for: (a) unpaid child support or child support arrearages; (b) unpaid balance of tax, accrued interest and other charges specified in Article 21, Title 39, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; (e) medical bills incurred by

of 27  
EXHIBIT A

Claimant paid in part or in full by Medicaid or Medicare; (f) unpaid restitution owed to victims, the State, or any persons or entities pursuant to any outstanding court order; and (g) other unpaid debts owing to the State or any state agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the Controller.

8.17 *Internal Revenue Service W-9 Forms.* Plaintiffs' attorneys will provide fully executed and signed I.R.S. W-9 forms or ITIN (Individual Taxpayer Identification Number) forms to the State prior to payment of any amounts under this Agreement.

8.18 *Reporting & Tax Treatment of Settlement Payment.* It is expressly intended and understood that the Settlement Payment represents settlement of attorneys' fees and costs. Notwithstanding such intent and understanding, Plaintiffs agree that the State will file such tax forms and reports reflecting the Settlement Payment that they deem necessary. Such forms include all appropriate reporting forms with the Internal Revenue Service and other State or Federal taxing authorities on the amounts paid to Plaintiffs' attorneys, including a Form 1099. The State makes no representation as to the taxability or non-taxability of these payments. Plaintiffs and Plaintiffs' attorneys are liable for all tax consequences resulting from the payments. In the event any part of the payment received by Plaintiffs' attorneys in this settlement is determined to be taxable, Plaintiffs' attorneys will be solely responsible for any tax liability arising therefrom, including any interest or penalty assessed. In the event that any claim is asserted against the State or any agency to satisfy a tax liability arising from Plaintiffs or Plaintiffs' attorneys' failure to pay any tax on the settlement payment, Plaintiffs and Plaintiffs' attorneys agree to defend, indemnify, and hold the State and any agency harmless on such a claim, including any interest or penalties, within 30 days after notification by the State or any agency that a taxing authority has asserted a tax claim, or such longer period as specified by the taxing authority. Plaintiffs agree that the State, State departments and agencies, the State Office of Risk Management, and the Office of the Colorado Attorney General have made no representations or given any legal opinion concerning the tax treatment of the settlement payment, and Plaintiffs are expressly not relying on any such representation or opinion. Plaintiffs have sought and received such tax opinions and advice as Plaintiffs deem necessary from attorneys and/or tax advisors of Plaintiffs' choice.

8.19 *Open Records Act and Other Releases Provided by Law.* Plaintiffs understand and agrees that upon a valid request made pursuant to applicable public disclosure laws, including, without limitation, the

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EXHIBIT A

provisions of C.R.S. §§ 24-72-101, *et seq.* (Open Records Act), all as presently or subsequently amended, the State is obligated to provide the requesting person a copy of this Agreement. Plaintiffs agree that Plaintiffs will not hold any Released Party liable for any information released in compliance with applicable law.

- 8.20 *Warranties and Representations.* Plaintiffs represent and warrant that Plaintiffs are the sole owners of all claims released hereby, and that Plaintiffs have not assigned or transferred any claim arising from or related to the Accident to any third party. Plaintiffs further represent and warrant that no third party has been subrogated to Plaintiffs' interest in claims released hereby, including but not limited to insurers, parent companies, or subsidiaries subrogated by reason of payment of costs or expenses, or, if any third party has been subrogated to Plaintiffs' interest, the interest of any subrogee has been settled, compromised, and extinguished. Plaintiffs agree to defend and indemnify all persons and entities released hereby and hold them harmless against the claims of any assignee or subrogee to claims released hereby that may hereafter be asserted. Plaintiffs are responsible for the payment of any outstanding medical bills or liens, including Medicare or Medicaid liens that have been asserted or may be asserted in the future.
- 8.21 *Advice of Counsel.* Plaintiffs represent that (a) Plaintiffs have relied upon the advice of attorneys and/or other consultants of Plaintiffs' own choice concerning the legal and federal, state and local tax consequences of this Agreement, (b) this Agreement has been thoroughly read by Plaintiffs and its terms have been explained to Plaintiffs' satisfaction by an attorney or attorneys of Plaintiffs' choice, and (c) the terms of this Agreement, including its release of unasserted and unknown claims, are fully understood and voluntarily accepted by Plaintiffs. Plaintiffs further understand and agree that this Agreement shall be forever binding and that no cancellation, rescission, or modification of, or release from the terms of, this Agreement shall be made based upon any mistake of fact or of law.
- 8.22 *Effective Date:* This Agreement shall become effective upon execution by all the Parties.
- 8.23 *Failure to Enforce Not a Waiver:* Failure to enforce any deadline or other provision of this Agreement shall not be construed as a waiver of any enforcement rights.
- 8.24 *Notice:* Any notices necessary under this Section shall be sent by electronic mail to the recipient's counsel of record.

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EXHIBIT A

*{CONTINUED ON FOLLOWING PAGE}*

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EXHIBIT A

CENTER FOR LEGAL ADVOCACY,  
D/B/A DISABILITY LAW  
COLORADO



Andrew Romanoff  
Executive Director  
455 Sherman Street, Suite 130  
Denver, CO 80203

Dated: \_\_\_\_\_

A.A. BY AND THROUGH HIS  
GRANDMOTHER, G.A.

\_\_\_\_\_  
Lizann Blankenship

Dated: \_\_\_\_\_

C.C. BY AND THROUGH HER  
MOTHER, P.C.

\_\_\_\_\_  
Angelena Rice

Dated: \_\_\_\_\_

D.D. BY AND THROUGH HER  
MOTHER, P.D.

\_\_\_\_\_  
Carla Persson

Dated: \_\_\_\_\_

COLORADO DEPARTMENT OF  
HEALTH CARE POLICY AND  
FINANCING

\_\_\_\_\_  
Kim Bimestefer  
Executive Director  
1570 Grant Street  
Denver, CO 80203

Dated: \_\_\_\_\_

STATE OF COLORADO

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD (or  
designee)  
State Controller

Dated: \_\_\_\_\_

COLORADO DEPARTMENT OF  
PERSONNEL & ADMINISTRATION

\_\_\_\_\_  
Tony Gherardini (or designee)  
Executive Director

Dated: \_\_\_\_\_

of 27  
EXHIBIT A

CENTER FOR LEGAL ADVOCACY,  
D/B/A DISABILITY LAW  
COLORADO

COLORADO DEPARTMENT OF  
HEALTH CARE POLICY AND  
FINANCING

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Andrew Romanoff  
Executive Director  
455 Sherman Street, Suite 130  
Denver, CO 80203

\_\_\_\_\_  
Kim Bimestefer  
Executive Director  
1570 Grant Street  
Denver, CO 80203

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

A.A. BY AND THROUGH HIS  
GRANDMOTHER, G.A.

STATE OF COLORADO

  
Lizarn Blankenship

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD (or  
designee)  
State Controller

Dated: 2/19/2024

Dated: \_\_\_\_\_

C.C. BY AND THROUGH HER  
MOTHER, P.C.

COLORADO DEPARTMENT OF  
PERSONNEL & ADMINISTRATION

\_\_\_\_\_  
Angelena Rice

\_\_\_\_\_  
Tony Gherardini (or designee)  
Executive Director

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

D.D. BY AND THROUGH HER  
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\_\_\_\_\_  
Carla Persson

Dated: \_\_\_\_\_

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COLORADO DEPARTMENT OF  
HEALTH CARE POLICY AND  
FINANCING

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Andrew Romanoff  
Executive Director  
455 Sherman Street, Suite 130  
Denver, CO 80203

\_\_\_\_\_  
Kim Bimestefer  
Executive Director  
1570 Grant Street  
Denver, CO 80203

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

A.A. BY AND THROUGH HIS  
GRANDMOTHER, G.A.

STATE OF COLORADO

\_\_\_\_\_  
Lizann Blankenship

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD (or  
designee)  
State Controller

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

C.C. BY AND THROUGH HER  
MOTHER, P.C.

COLORADO DEPARTMENT OF  
PERSONNEL & ADMINISTRATION

\_\_\_\_\_  
Angela Rice

\_\_\_\_\_  
Tony Gherardini (or designee)  
Executive Director

Dated: 2/18/24

Dated: \_\_\_\_\_

D.D. BY AND THROUGH HER  
MOTHER, P.D.

\_\_\_\_\_  
Carla Persson

Dated: \_\_\_\_\_



of 27  
EXHIBIT A

CENTER FOR LEGAL ADVOCACY,  
D/B/A DISABILITY LAW  
COLORADO

COLORADO DEPARTMENT OF  
HEALTH CARE POLICY AND  
FINANCING

\_\_\_\_\_  
Andrew Romanoff  
Executive Director  
455 Sherman Street, Suite 130  
Denver, CO 80203

\_\_\_\_\_  
Kim Bimestefer  
Executive Director  
1570 Grant Street  
Denver, CO 80203

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

A.A. BY AND THROUGH HIS  
GRANDMOTHER, G.A.

STATE OF COLORADO

\_\_\_\_\_  
Lizann Blankenship

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD (or  
designee)  
State Controller

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

C.C. BY AND THROUGH HER  
MOTHER, P.C.

COLORADO DEPARTMENT OF  
PERSONNEL & ADMINISTRATION

\_\_\_\_\_  
Angelena Rice

\_\_\_\_\_  
Tony Gherardini (or designee)  
Executive Director

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

D.D. BY AND THROUGH HER  
MOTHER, P.D.

  
\_\_\_\_\_  
Carla Persson

Dated: 2/19/2024

of 27  
EXHIBIT A

CENTER FOR LEGAL ADVOCACY,  
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COLORADO

COLORADO DEPARTMENT OF  
HEALTH CARE POLICY AND  
FINANCING



\_\_\_\_\_  
Andrew Romanoff  
Executive Director  
455 Sherman Street, Suite 130  
Denver, CO 80203


\_\_\_\_\_  
Kim Bimestefer  
Executive Director  
1570 Grant Street  
Denver, CO 80203

Dated: \_\_\_\_\_

Dated: 2/16/2024

A.A. BY AND THROUGH HIS  
GRANDMOTHER, G.A.

STATE OF COLORADO

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Nathan Manley

\_\_\_\_\_  
Lizann Blankenship

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD (or  
designee)  
State Controller

Controller Delegation

Dated: \_\_\_\_\_

Dated: 2/22/2024

C.C. BY AND THROUGH HER  
MOTHER, P.C.

COLORADO DEPARTMENT OF  
PERSONNEL & ADMINISTRATION

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Tobin Follenweider

\_\_\_\_\_  
Angelena Rice

\_\_\_\_\_  
Tony Gherardini (or designee)  
Executive Director

Deputy Executive Director

Dated: \_\_\_\_\_

Dated: 2/21/2024

D.D. BY AND THROUGH HER  
MOTHER, P.D.

\_\_\_\_\_  
Carla Persson

Dated: \_\_\_\_\_

of 27  
EXHIBIT A

APPROVED AS TO FORM:

FOR THE DEPARTMENT

PHILIP J. WEISER  
Attorney General



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JENNIFER L. WEAVER, 28882  
CORELLE M. SPETTIGUE, 39208  
JUSTINE M. PIERCE, 43930  
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1300 Broadway, 6th Floor  
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State Services Section

Dated: 02/20/2024