

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the following entities acting through their authorized representatives: the United States of America, acting through the United States Department of Justice (the “United States”) and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS); Temple University – Of The Commonwealth System of Higher Education (“TU”) for itself and its unincorporated subdivisions Temple University School of Medicine (“TUSM”) and Temple University Physicians (“TUP”); Temple University Health System, Inc. (“TUHS”); Temple University Hospital, Inc. (“TUH”) (collectively referred to as “Temple”); and David S. Roby, M.D. (“Relator”). The United States, Temple, and the Relator are hereafter referred to collectively as the “Parties.”

II. PREAMBLE

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

1. TU is a not-for-profit, tax-exempt corporation with its principal place of business located at 1801 N. Broad Street, Philadelphia, Pennsylvania. TUSM and TUP are unincorporated subdivisions of TU.
2. TUHS is a not-for-profit, tax-exempt corporation with its principal place of business located at 2450 West Hunting Park Avenue, Philadelphia, Pennsylvania.
3. TUH is a not-for-profit, tax-exempt corporation with its principal place of business located at 3401 N. Broad Street, Philadelphia, Pennsylvania.

4. On October 22, 2010, Relator filed a qui tam action in the United States District Court for the Eastern District of Pennsylvania, captioned *U.S. ex rel Roby v. Temple University Health System, Inc. et al.*, Civil Action No. 10-5593, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleged, inter alia, that in certain instances, claims submitted for a physician's services were insufficiently supported by documentation so as to constitute improper claims.

5. The United States contends that Temple submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396- 1396w-5 (Medicaid).

6. This agreement relates to the following conduct:

A. Beginning in October 2001 and continuing to the present, S. Ausim Azizi, M.D., Ph.D. ("Azizi"), was, and remains the Chairperson of the Department of Neurology at TUSM, a professor at TUSM, and an attending physician at TUH.

B. During the Relevant Time Period, Azizi and other Temple neurologists provided inpatient and/or outpatient medical services at various locations in the Philadelphia region. These locations include Aria (formerly known as Frankford Hospital), Episcopal Hospital, Cancer Treatment Centers of America, Jeanes Hospital, Roxborough Memorial Hospital, and the Philadelphia Nursing Home.

C. The United States contends that the United States has certain civil claims against Temple for engaging in the following conduct: (1) in certain instances, Azizi's documentation and attestations regarding his inpatient and/or outpatient medical services as to time spent and services rendered were insufficient and/or lacking, resulting in the submission of

improper claims to Medicare and Medicaid for such medical services; and (2) in certain instances, TUP submitted claims to Medicare and Medicaid for inpatient and/or outpatient medical services rendered by TUSM neurologists. At the Temple Neurology ICU, certain claims were improperly coded as CPT 99291, higher than the appropriate codes CPT 99231, 99232, or 99233 that were supported by the documentation for those services. For services rendered at Frankford Hospital by TUSM neurologists, certain claims were improperly coded as CPT 99254 or 99255, higher than the appropriate codes CPT 99252 or 99253 that were supported by the documentation for those services.

D. The conduct described in the foregoing paragraphs A-C plus all allegations of the Complaint, *U.S. ex rel Roby v. Temple University Health System, Inc. et al.*, Civil Action No. 10-5593 (E.D. Pa.), are hereinafter referred to as the “Covered Conduct.” The period of the Covered Conduct shall be October 11, 2001, through December 31, 2011 (“Relevant Time Period”).

7. This Agreement is neither an admission of liability by Temple nor a concession by the United States and the Relator that their claims were not well founded.

8. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of claims arising from the Covered Conduct, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

III. TERMS AND CONDITIONS

1. TUP agrees to pay to the United States \$100,000.00 (one hundred thousand dollars) (the “Settlement Amount”). TUP further agrees to pay Relator’s attorney for costs and fees \$50,000.00 (fifty thousand dollars) (the “Attorney’s Fees”). TUP agrees to pay the

Settlement Amount and the Attorney's Fees within 14 days of the Effective Date (as defined in paragraph 24 below) of this Settlement Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania and by Relator's attorney respectively; such instructions to be provided on or before the Effective Date.

2. Relator's Share. The United States shall pay the Relator a relator's share in the amount of \$17,000.00 (the "Relator's Share"). The obligation to pay the Relator's Share is expressly conditioned upon the receipt by the United States of the Settlement Amount, as described in paragraph III.1 above. Conditioned upon the payment in full of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns in their capacities as such agree not to object to this Settlement Agreement. Relator and his heirs, successors, attorneys, agents, and assigns in their capacities as such agree that this Settlement amount is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Relator and his heirs, successors, attorneys, agents, and assigns in their capacities as such agree to waive, and forever discharge the United States, its officers, agents, and employees, from any claims arising from or relating to: 31 U.S.C. § 330; the filing of the Civil Action; the percentage share of the Settlement Agreement; and any claims the Relator may have under this Settlement Agreement. This Settlement Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Settlement Agreement. The Relator consents to the public disclosure of this Settlement Agreement, and information about this Settlement Agreement, by the United States.

3. Subject to the exceptions in Paragraph 5 below, in consideration of TUP's obligations in this Settlement Agreement and conditioned upon TUP's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Temple University – Of the Commonwealth System of Higher Education, its successors, assigns, subsidiaries, unincorporated subdivisions and affiliates, each of their respective current and former trustees, directors, governors, officers, employees, agents, representatives, successors and assigns, including but not limited to TUSM, TUP, TUHS and TUH, from any civil or administrative monetary claim the United States has or may have for the 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; any statutory provision creating a cause of action for civil damages or civil penalties for which the Civil Division of the Department of Justice has actual or present authority to assert or compromise pursuant to 28 C.F.R., Part O, Subpart I, Section 0.45(d); or the common law theories of payment by mistake, unjust enrichment, fraud and disgorgement of illegal profits.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Temple and/or its officers, directors, and employees from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

5. The Relator, for and in consideration of the undertakings set forth in this Agreement, and intending to be legally bound does hereby remise, release, waive and forever discharge with prejudice, and is barred from bringing any action against Temple, and its respective past, present and future administrators, parents, subsidiaries, divisions, subdivisions,

affiliated or related entities, employees, practitioners, independent contractors, officers, directors, trustees, managers, partners, principals, employers, agents, representatives, attorneys, insurance carriers, shareholders, members, predecessors, successors, and assigns, executors and administrators, and all other persons or other persons or entities, claiming by or through them, both known and unknown, of, from and regarding any and all manner of actions and causes of action, rights, suits, controversies, claims as shareholders or as holders of an ownership interest, debts, demands, dues, duties, liabilities, accounts, bonds, bills, covenants, contracts, agreements, representations, promises, obligations, judgments, claims, charges, demands, losses, damages, costs, loss of income, interest, delay damages, attorneys' fees, penalties, compensation and all consequential and/or general and/or punitive and/or equitable and/or other damages whatsoever in law and/or equity, in tort or contract, statutory or common law, whether or not heretofore known, suspected or asserted, which the Relator or his respective past, present or future heirs, decedents, dependents, executors or administrators, representatives, attorneys, insurance carriers, predecessors, successors and assigns, and all other persons or entities claiming by or through them, both known and unknown, ever had, now has, or hereafter may have, in any individual, *quidam*, or representative capacity, by reason of any matter, cause or thing whatsoever from the beginning of the world to the date this Agreement is fully executed, including but not limited to any and all claims and/or conduct arising out of, in connection with or relating in any way to any conduct, act, transaction, occurrence or failure to act in connection with the Covered Conduct, matters which were or could have been asserted in or arise out of the Civil Action or Complaint, matters arising under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, or matters otherwise of any nature whatsoever, known or unknown, including future

developments thereof. The Relator represents and warrants that no other individual or entity is entitled to assert any matter released in this Paragraph in or through the Relator's rights.

6. Notwithstanding any term of this Settlement Agreement, specifically reserved and not released are the following, any:

a. civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. criminal liability;

c. administrative liability, including mandatory exclusion from Federal health care programs;

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

e. liability based upon such obligations as are created by this Settlement Agreement.

7. Temple waives and shall not assert any defenses Temple may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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 Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. Nothing in this Paragraph or any other provision of this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Temple fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Temple asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the investigation and prosecution thereof. Further, Temple fully and finally releases Relator and his heirs, successors, attorneys, agents, and assigns in their capacities as such from any and all claims that Temple has asserted, could have asserted, or may assert in the future against him including, but not limited to, any claim related to the Covered Conduct and the investigation and prosecution thereof.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct. Temple agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct. Temple agrees not to appeal any such denials of claims.

11. Temple agrees to the following:

a. Unallowable Costs Defined: that 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 Temple, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP"):

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Temple' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Settlement Agreement (including attorney's fees);
- (4) the negotiation and performance of this Settlement Agreement; and
- (5) the payment TUP makes to the United States pursuant to this Settlement Agreement, including any payments Temple may make to Relator, including any costs and attorney's fees.

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in non-reimbursable cost centers by Temple, and Temple 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 Temple or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Temple further agrees that within 90 days of the Effective Date of this Settlement Agreement they 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 Temple or any of its 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. Temple agrees that the United States, at a minimum, shall be entitled to recoup from Temple 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 and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Temple or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Temple or any of its 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 to audit, examine, or re-examine Temple's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

12. This Settlement Agreement is intended only for the benefit of the Parties. The Parties do not release any claims against any other person or entity, except to the extent provided for in in this Settlement Agreement.

13. Temple waives and shall not seek payment for any of the health care billings covered by this Settlement Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

14. TU warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Temple, 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 Temple were or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

15. If, within 91 days of the Effective Date of this Settlement Agreement or any payment made under this Settlement Agreement, TU 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 TU's debts, or seeking to adjudicate TU as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for TU or for all or any substantial part of TU's assets, TU agrees as follows:

a. TU's obligations under this Settlement Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and TU shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) TU's obligations under this Settlement Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) TU was insolvent at the time this Settlement Agreement was entered into, or became insolvent as a result of the payment made to the United

States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Settlement Agreement do not constitute a contemporaneous exchange for new value given to Temple.

b. If Temple's obligations under this Settlement 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 the releases in this Settlement Agreement, and bring any civil and/or administrative claim, action, or proceeding against TU for the claims that would otherwise be covered by the releases provided in Paragraphs 2-3, above. TU agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude TU from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and TU shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) TU 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 proceedings that are brought by the United States within 90 calendar days of written notification to TU that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on November 1st, 2010; and (iii) the United States has a valid claim against TU in the amount of \$100,000.00 and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Temple acknowledges that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Settlement Agreement.

16. Each Party to this Settlement Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement, except as provided herein.

17. Each Party represents that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. This Settlement Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Eastern District of Pennsylvania.

19. Pursuant to 31 U.S.C. § 3730(c) the United States will move to intervene in United States of America ex rel. David S. Roby, M.D. v. Temple University Health Systems, Inc., Civil Action No. 10-cv-5593, Eastern District of Pennsylvania UNDER SEAL, dismiss the complaint with prejudice in its entirety, and request that the seal(s) be lifted as appropriate.

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

21. The individuals signing this Settlement Agreement warrant that they are authorized to execute this Settlement Agreement on behalf of a Party thereto. The United States signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

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

23. This Settlement Agreement is binding on the Relator and Temple, and their respective successors, transferees, heirs, and assigns in their capacities as such.

24. All parties consent to the United States' disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

25. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement ("Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

THE UNITED STATES OF AMERICA

DATED: 2/20/13

BY: Mary Catherine Foy for
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

DATED: 2/20/13

BY: Susan R. Becker
SUSAN R. BECKER
VERONICA J. FINKELSTEIN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Inspector General
U.S. Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division

DATED: _____

BY: _____
SUSAN R. BECKER
VERONICA J. FINKELSTEIN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: 2/21/13

BY: Robert K. DeConti
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Inspector General
U.S. Department of Health and Human Services

THE RELATOR

DATED: 2/13/2013

BY: David S Roby
DAVID S. ROBY, M.D.
Relator

DATED: 2/13/2013

BY: Edward S Mazurek
EDWARD S. MAZUREK, ESQUIRE
The Mazurek Law Firm, LLC
Counsel for relator

TEMPLE

DATED:

2/15/13

BY:

Beth C. Koob

BETH C. KOOB

Counsel for Temple University – Of The
Commonwealth System of Higher Education
and its unincorporated divisions Temple
University School of Medicine and Temple
University Physicians, Temple University
Health System, Inc. and Temple University
Hospital, Inc.