

## GENERAL RELEASE AND SETTLEMENT AGREEMENT

### I. PARTIES

This General Release and Settlement Agreement (“Agreement”) is entered into by the Medicaid Fraud and Residential Abuse Unit of the Office of the Vermont Attorney General, on behalf of itself and the Department of Vermont Health Access (“DVHA”) (collectively, the “State”), Burlington Laboratories, Inc. and Burlington Labs, LLC (collectively, “Burlington”), Michael Casarico and Jodie Casarico (collectively, “the Parties”), through their authorized representatives.

### II. PREAMBLE

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

1. Burlington Laboratories, Inc., a Vermont Corporation, is an independent toxicology laboratory, doing business in the State of Vermont during the relevant time period from January 1, 2008 to the present. Burlington Laboratories, Inc. was continuously enrolled as a Vermont Medicaid provider during the same time period, offering toxicology laboratory services.
2. Burlington Labs, LLC, a Vermont Limited Liability Company, and wholly owned subsidiary of Burlington Laboratories, Inc., is an independent toxicology laboratory, doing business in the state of Vermont from September 2014 to the present. Burlington Labs, LLC was enrolled as a Vermont Medicaid provider from September 2015 to the present, offering toxicology laboratory services.
3. Michael Casarico is president, treasurer and a director of Burlington Laboratories, Inc., and a manager of Burlington Labs, LLC.

4. Jodie Casarico is vice president and a director of Burlington Laboratories, Inc., and a manager of Burlington Labs, LLC.

5. As an enrolled Medicaid provider, pursuant to its executed Provider Enrollment Agreements, Burlington agreed to abide by applicable state and federal rules and regulations, including the Vermont Medicaid Provider Manual issued by DVHA, governing the content, submission and payment of Medicaid provider claims.

6. In 2015, MFRAU began an investigation of Burlington after MFRAU became aware of a sharp increase in reimbursements from Vermont Medicaid to Burlington for drug screening tests and certain confirmatory drug tests. Burlington asserts that it contacted the State's Medicaid payment contractor regarding increased receipts in 2015. MFRAU's on-going investigation included a review of Burlington's claims for drug screening and confirmatory tests from 2008 forward, the relevant Medicaid and Provider Manual rules and medical procedure code set instructions, as well as consultation with toxicology laboratory and coding experts.

7. In December 2015, MFRAU requested copies of Burlington's charges, standing order forms and requisition forms. Burlington provided the requested documents and cooperated with MFRAU's on-going investigation.

8. In March 2016, DVHA found a "credible allegation of fraud" against Burlington, based on MFRAU's investigation to date. On March 17, 2016, DVHA notified Burlington that pursuant to 42 C.F.R. § 455.23, it would partially suspend Vermont Medicaid payments (at a withholding rate of 50 percent) to Burlington effective March 25, 2016, pending the resolution of MFRAU's investigation and any resulting litigation. The suspension took effect as noticed. Burlington appealed that suspension to the Commissioner, by letter of April 4, 2016. The appeal

was denied by Deputy Commissioner Collins by letter of April 22, 2016; there was no further administrative appeal available to Burlington.

9. On May 26, 2016, Burlington made a second written request to DVHA for modification of payment suspension. DVHA Commissioner Steven Costantino, by letter of May 31, 2016, informed Burlington that DVHA, would release one-half of the monies that had been withheld (\$375,886.14), in light of Burlington's continued good faith negotiations with the State to resolve this matter. To date, after releasing the amount described above, DVHA has in its possession approximately \$1,276,058.22 under the payment suspension.

10. On April 21, 2016, in connection with its investigation, MFRAU issued a civil investigative demand to Burlington under the Vermont False Claims Act, 32 V.S.A. §§ 630-642. This was the first notice provided to Burlington of an intent to apply the False Claims Act.

11. On the basis of its investigation, MFRAU concluded that from January 1, 2008 to the present, Burlington submitted improper claims to Vermont Medicaid as a result of the following "Covered Conduct":

- a. Burlington submitted a charged amount for drug screening tests assigned a CPT code on its Vermont Medicaid claims that was higher than the amount it charged walk-in, private-pay customers for drug screening tests. Under Section 8.2 of the Vermont Medicaid Provider Manual, where a provider has more than one usual and customary rate ("UCR") for a service, it is required to submit its lowest charge on its Medicaid claims.
- b. Burlington submitted various charged amounts for drug screening tests for the detection of varying numbers of drugs or classes of drugs on its Vermont Medicaid claims under HCPCS procedure code G0431. Burlington's charged

amounts ranged from a low of \$50 to a high of \$1,150, depending on the number of drugs or classes of drugs being screened. The 2014 Vermont Medicaid fee schedules reimbursed providers \$102.33 per claim under HCPCS procedure code G0431. Under Section 8.2 of the Vermont Medicaid Provider Manual, where a provider has more than one usual and customary rate (“UCR”) for a service, it is required to submit its lowest charge on its Medicaid claims. Also, Section 10.1 of the Vermont Medicaid Provider Manual states that Medicaid will pay laboratory providers the lesser of the amount specified in the Vermont Medicaid fee schedule or the provider’s UCR for a particular service.

- c. Burlington submitted various charged amounts for drug screening tests for the detection of varying numbers of drugs or drug classes on its Vermont Medicaid claims under CPT procedure code 80301. Burlington’s charged amounts ranged from a low of \$50 to a high of \$1,150, depending on the number of drug classes for which it screened, such that a lower charge was made if fewer drugs were screened and a higher charge if more were screened. The description of CPT procedure code 80301 reads:

Drug screen, any number of drug classes from Drug Class List A; any number of non-TLC devices or procedures (e.g. Immunoassay) capable of being read by direct optical observation, including instrument-assisted when performed (e.g., dipsticks, cups, cards, cartridges) per date of service; single drug class method, by instrumented test systems (e.g, discrete multichannel chemistry analyzers utilizing immunoassay or enzyme assay), per date of service.

The CPT codebook provides the following instruction on the use of code 80301:

“Use code 80301 once to report single or multiple procedures performed,

irrespective of the number of procedures, classes, or results on any date of service.” Under Section 8.2 of the Vermont Medicaid Provider Manual, where a provider has more than one usual and customary rate (“UCR”) for a service, it is required to submit its lowest charge on its Medicaid claims. During this period of time, Vermont Medicaid had not set a fee schedule reimbursement amount for code 80301, and determined to reimburse at 60% of billed charges rather than setting a fee schedule amount.

- d. Burlington submitted claims with more than one unit of service for the same date of service, or claims with various charged amounts, for confirmatory drug tests under CPT procedure codes 80348, 83295, G6056 (bupenorprine); 80353, 82520, G6044 (cocaine); 80354, 83925, G6056 (fentanyl); 80358, 83840, G6053 (methadone); 80360, 82524, G6058 (methyphenidate); 80361, 83925, 82649, 82646, G6056, G6046 (opiates, 1 or more); 80362, 82542, G6058 (opioids and opioid analogs); 80365, 83925, G6056 (oxycodone) and 80372, 83789 (tapentadol). Burlington submitted claims with multiple units of service or varied its charged amount, depending on the number of drugs and metabolites tested, such that fewer units or a lower charge was made when Burlington tested for fewer drugs and metabolites and a higher charge when it tested for more. The instruction in the CPT codebook for the relevant CPT codes stated: “Each category of a drug class, including metabolite(s) if performed (except stereoisomers), is reported once per date of service. . . . Drug class metabolite(s) is not reported separately unless the metabolite is listed as a separate category in the Definitive Drug Classes Listing (e.g., heroin metabolite).” Under

Section 8.2 of the Vermont Medicaid Provider Manual, where a provider has more than one usual and customary rate (“UCR”) for a service, it is required to submit its lowest charge on its Medicaid claims. During this period of time, Medicaid reimbursed on a percent of charges, rather than a fee schedule, in the same fashion as for CPT code 80301.

- e. Burlington submitted claims for unallowable tests under CPT codes 80320 (alcohols), 80321 (alcohol biomarkers; 1 or 2), 80323 (alkaloids, not otherwise specified), 80367 (Propoxyphene), 82055 (Alcohol (ethanol)), and 83992 (Phencyclidine (PCP)), after Vermont Medicaid discontinued coverage of these tests effective October 2009.

12. On May 5 and 6, 2016, the State met with counsel for Burlington. During these meetings, the State explained that it intended to file a civil complaint alleging that the Covered Conduct constituted violations of the Vermont False Claims Act (32 V.S.A. § 631) and Burlington’s Provider Enrollment Agreements, and gave rise to a common law claim of unjust enrichment. The State also alleged that the Covered Conduct led to overpayments to Burlington that could be administratively recovered.

13. Burlington does not dispute the facts regarding the Covered Conduct insofar as they are described above in paragraph 11 (subparagraphs a-e). Burlington denies liability in general and specifically denies that it violated the Vermont False Claims Act, engaged in fraudulent or deceptive billing practices, breached its Provider Enrollment Agreements, breached coding standards; or violated any other state or federal law, regulations, or rules, including the common law.

14. To avoid the delay, expense, inconvenience, and uncertainty of litigation or administrative recoupment proceedings, and in consideration of the mutual promises and obligations of this Agreement, the Parties reach a full and final settlement of the Covered Conduct pursuant to the Terms and Conditions set forth below.

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Burlington shall pay to the State a total sum of \$6,750,000.00 (the "Settlement Amount") over a period of seven years ("Settlement Period"). The Settlement Amount includes \$5,078,702.00 in recovered Medicaid funds and \$1,671,298.00 in additional recoveries. The federal share of the Medicaid funds is \$2,336,203.00 ("Federal Share"). The Settlement Amount shall be paid as follows:

- a. Within five (5) business days from the Effective Date of this Agreement, Burlington shall pay to the State an initial installment, consisting of all monies in DVHA's possession that have been withheld on Burlington's adjudicated claims from March 25, 2016 to the Effective Date (totaling \$1,276,058.22) ("Initial Installment"). This Initial Installment shall be made by a transfer of interest in the withheld monies from Burlington to the State. The entire amount of this Initial Installment shall be used to pay a portion of the Federal Share of recovered Medicaid funds.

- b. Within a period of twelve (12) months following the Effective Date of this Settlement Agreement, Burlington shall make payments, which inclusive of the Initial Payment shall be sufficient to pay the entirety of the Federal Share. These payments shall be made in accordance with the Schedule of Payments incorporated as Exhibit A to this Settlement Agreement. DVHA shall collect these payments, beginning on October 7, 2016, by deducting the designated amount from Burlington's weekly remittance advices.
- c. For a term of seventy-two (72) months, beginning one week following receipt of the final payment of the Federal Share referenced in the preceding paragraph, Burlington shall make three hundred and twelve (312) payments to the State in weekly installments in accordance with the Schedule of Payments incorporated as Exhibit A to this Settlement Agreement. Burlington shall make these payments by electronic funds transfer or issuance of a cashier's check in the required amount, made payable to the State of Vermont, and sent to the attention of the Office of the Vermont Attorney General, Medicaid Fraud and Residential Abuse Unit, 109 State Street, Montpelier, VT 05461.
- d. In any week that an installment payment described in subparagraph b is due, if the total amount of reimbursement that Medicaid owes Burlington on its adjudicated claims is insufficient to fund all or any part of an installment payment, Burlington shall pay the installment payment or its remaining balance to the State by electronic funds transfer or cashier's check within five (5) business days of receipt of written notice of the shortfall.

- e. In addition to the rights provided in Paragraph 11, *infra*, in the event that Burlington fails to make a payment as provided for in subparagraph c or d above, DVHA may make a withholding from Burlington's claims payment on the next available remittance advice in an amount equal to any past due payments.
- f. At any time following the Effective Date of this Agreement, Burlington, at its discretion and without penalty, may shorten the Settlement Period by making additional installment payments or by paying a portion of the balance, or the entire balance, of the Settlement Amount. Any additional payments shall be made by electronic funds transfer or cashier's check.

2. Concurrently with the execution of this Agreement, Burlington and the State shall execute a Corporate Integrity Agreement, for a term of five years, governing Burlington's continued participation as a Vermont Medicaid provider. Execution of the Corporate Integrity Agreement is a material term to this Settlement Agreement, and a condition precedent to any releases contained herein. However, a breach of the Corporate Integrity Agreement, by itself, does not and will not constitute a breach of this Settlement Agreement and will not give rise to a Default Event.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Burlington set forth in this Agreement, and conditioned upon Burlington's execution of the Corporate Integrity Agreement described in paragraph 2 above, the State (on behalf of itself, its officers, agents, agencies and departments) hereby releases Burlington, its current and former parents, divisions, subsidiaries, successors, transferees, heirs, assigns, direct or indirect affiliates, and its current and former directors, officers, employees, representatives, servants, agents and

consultants, individually and collectively from any civil or administrative claim(s) that the State has or may have for or related to the Covered Conduct.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the release described in Paragraph 3, and scope and terms of this Agreement, as to any entity or person (including Burlington) are any and all of the following:

- a. Any criminal, civil or administrative liability to the State for conduct other than the Covered Conduct;
- b. Any liability based upon a breach of such obligations as are created by this Agreement;
- c. Any liability created by actions taken by Burlington following execution of this Agreement, including but not limited to any breach of the Corporate Integrity Agreement.

5. Without limitation of the foregoing, immediately following execution of this Agreement, MFRAU and DVHA shall terminate all current administrative, civil and criminal investigations and proceedings against Burlington, including, but not limited to, the State's Civil Investigative Demand No.: 16-9344, related to the Covered Conduct, and will not pursue any further or additional claims or litigation against Burlington relating to the Covered Conduct absent a breach of this Agreement.

6. Immediately following execution of this Agreement, DVHA shall terminate Burlington's payment suspension and instruct HP Enterprise Services, the State's Medicaid fiscal intermediary, to begin reimbursing Burlington at a rate of 100 percent on its paid claims, subject to the Settlement Amount installment payment procedures described in Paragraph 1,

subparagraph b, at the earliest possible remittance advice, but no later than ten (10) days from the Effective Date of this Settlement Agreement.

7. In consideration of the obligations of the State set forth in this Agreement, Burlington agrees to release the State, its agencies, political subdivisions, employees, officers, servants, and agents from any claims or causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) that Burlington has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, related to the Covered Conduct, the State's investigation thereof, and the suspension of Vermont Medicaid provider payments to Burlington under 42 CFR § 455.23.

8. By the Effective Date of this Agreement, Burlington agrees to conform its Medicaid claims and billing practices to the terms and conditions of the Vermont Medicaid Provider Enrollment Agreement, as well as all applicable state and federal laws, rules, and regulations, including but not limited to the Vermont Medicaid Provider Manual and the medical procedure code sets Burlington uses in connection with its claims. Failure to comply with any of these rules, regulations and authorities will not, in and of itself, constitute a breach of this Settlement Agreement.

9. Burlington shall be deemed in default of this Agreement if any one of the following Default Events is determined by the State to have occurred, after following the procedure described in Paragraph 10 below:

- a. Burlington fails to pay the Initial Installment or any subsequent weekly installment payment of the Settlement Amount provided for in Paragraph 1 of this Agreement; or

- b. Burlington fails to satisfy any other material obligations undertaken in this Agreement.

10. In the event the State determines that a Default Event has occurred, the State shall provide written notice to Burlington (“Notice of Default”), and allow Burlington an opportunity to cure the Default Event within ten (10) business days of receipt of the written notice. Notice of Default will be sent by certified first class mail to: Burlington Laboratories, Inc., 199 Main St, Burlington, VT 05401. If Burlington does not cure the Default Event to the State’s reasonable satisfaction within ten (10) business days of receipt of the Notice of Default, the Vermont Attorney General’s Office may declare Burlington in default of this Agreement (“Declaration of Default”).

11. Upon a Declaration of Default, the State may exercise, at its sole option, one or more of the following rights, as applicable:

- a. Declare this Agreement breached, and proceed against Burlington for any claims, including those to be released by this Agreement in which case Burlington may contest whether a Default has occurred in court;
- b. If the breach is due to a failure to pay as defined by paragraph 9.a. of this agreement, terminate Burlington’s Vermont Medicaid Provider Agreement and disenroll Burlington as a Vermont Medicaid provider. Burlington agrees not to contest any termination of its Provider Agreement and disenrollment imposed pursuant to this provision, either administratively or in any state or federal court, except that it may contest whether a Default has occurred, if no Default is found, Burlington will be reinstated as a Vermont Medicaid provider;

c. Exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity.

12. Burlington, Michael and Jodie Casarico (individually or together) will fully disclose this Settlement Agreement and its continued obligations to any person or entity with whom they may form any other entity delivering healthcare services or who may acquire an ownership interest in such entity. Michael and Jodie Casarico will also make the same disclosure to any person or entity with whom they enter into an agreement to purchase a majority interest in any entity delivering healthcare services; and

13. Any organization that delivers healthcare services formed or acquired by Michael and Jodie Casarico (individually or together) in which they individually or jointly own a majority interest or which acquires the assets of Burlington, will agree to assume as an ongoing obligation, the remaining monetary obligations under this Settlement Agreement as a successor to the liability. It is agreed that an entity acquiring the assets of Burlington or a majority interest in Burlington may assume the remaining monetary obligations under this Settlement Agreement by executing an Assumption Agreement in the form attached hereto as Exhibit B.

14. The Parties each represent that this Agreement is freely and voluntarily entered into with the advice of counsel without any degree of duress or compulsion whatsoever.

15. Each party to this Agreement shall bear his, her or its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. The laws of the State of Vermont govern this Agreement. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under

this Agreement shall be the Vermont Superior Court, Washington County, unless otherwise agreed in writing by the State and Burlington.

17. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

18. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Amount for the purposes of the state or federal tax laws. Burlington will rely on its own counsel or experts regarding the effect of this Agreement under any state or federal tax laws.

19. Burlington agrees not to resubmit to the Vermont Medicaid program or its fiscal intermediary any previously denied claims for the Covered Conduct, and shall not appeal any such denial of claims, but may do so for non-Covered Conduct.

20. Burlington represents and warrants that the representative designated below is authorized to execute this Agreement on behalf of Burlington and that Burlington has not assigned any claims, rights or liabilities subject to this Agreement to any other person. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

21. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

22. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

23. Subject to Paragraph 2, relating to the Corporate Integrity Agreement, this Agreement constitutes the complete agreement between the Parties with respect to this matter

and shall not be amended except by written consent of the Parties. All prior agreements, statements, representations, warranties and promises by the Parties are hereby merged into this Agreement.

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

25. This Agreement is effective on the date of the signature of the last signatory to the Agreement ("Effective Date").

### SIGNATORIES

#### STATE OF VERMONT

William H. Sorrell  
VERMONT ATTORNEY GENERAL

DATED: October 10, 2016

BY:

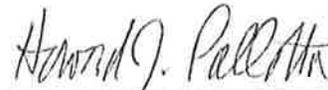


Jason M. Turner  
Assistant Attorney General  
Director, Medicaid Fraud & Residential Abuse  
Unit

DEPARTMENT OF VERMONT  
HEALTH ACCESS

DATED: October 10, 2016

BY:



Howard J. Pallotta  
General Counsel, DVHA

#### BURLINGTON LABORATORIES, INC.

DATED: October 6, 2016

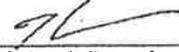
BY:



Michael Casarico  
President

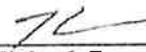
BURLINGTON LABS, LLC

DATED: October 6, 2016

BY:   
Michael Casarico  
President

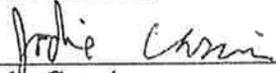
MICHAEL CASARICO

DATED: October 6, 2016

BY:   
Michael Casarico

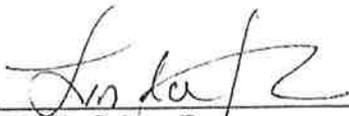
JODIE CASARICO

DATED: October 6, 2016

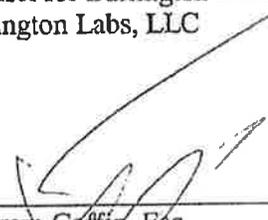
BY:   
Jodie Casarico

ACKNOWLEDGED:

DATED: October 6, 2016

BY:   
Linda Cohen, Esq.  
Dinse, Knapp & McAndrew, P.C.  
Counsel for Burlington Laboratories, Inc. &  
Burlington Labs, LLC

DATED: October 6, 2016

BY:   
Tristram Coffin, Esq.  
Downs Rachlin Martin, PLLC  
Counsel for Michael & Jodie Casarico

16970558.1

# Exhibit A

Exhibit A to Settlement Release Agreement  
 Payment Schedule

<u>Quarter ending</u>	<u>Weekly amount</u>	<u>Quarterly total</u>	<u>% of Annual Amt.</u>	<u>Cummulative</u>	<u>% of Recovery</u>
12/31/2016	5,708.47	74,210.13	7.00%		
3/31/2017	12,232.44	159,021.72	15.00%		
6/30/2017	24,464.88	318,043.43	30.00%		
9/30/2017	46,260.86	508,869.49	48.00%		
		1,060,144.78	1st year total	2,336,203.00	34.61%
12/31/2017	3,840.00	57,600.00	18.00%		
3/31/2018	5,415.38	70,400.00	22.00%		
6/30/2018	6,153.85	80,000.00	25.00%		
9/30/2018	8,615.38	112,000.00	35.00%		
		320,000.00	2nd year total	2,656,203.00	39.35%
12/31/2018	5,400.00	70,200.00	18.00%		
3/31/2019	6,600.00	85,800.00	22.00%		
6/30/2019	7,500.00	97,500.00	25.00%		
9/30/2019	10,500.00	136,500.00	35.00%		
		390,000.00	3rd year total	3,046,203.00	45.13%
12/31/2019	8,100.00	105,300.00	18.00%		
3/31/2020	9,900.00	128,700.00	22.00%	3,280,203.00	48.60%
6/30/2020	11,250.00	146,250.00	25.00%		
9/30/2020	15,750.00	204,750.00	35.00%		
		585,000.00	4th year total	3,631,203.00	53.80%
12/31/2020	12,184.62	158,400.00	18.00%		
3/31/2021	14,892.31	193,600.00	22.00%		
6/30/2021	16,923.08	220,000.00	25.00%		
9/30/2021	23,692.31	308,000.00	35.00%		
		880,000.00	5th year total	4,511,203.00	66.83%
12/31/2021	13,984.62	181,800.00	18.00%		
3/31/2022	17,092.31	222,200.00	22.00%		
6/30/2022	19,423.08	252,500.00	25.00%		
9/30/2022	27,192.31	353,500.00	35.00%		

Exhibit A to Settlement Release Agreement  
Payment Schedule

		1,010,000.00	6th year total	5,521,203.00	81.80%
12/31/2022	17,014.11	221,183.46	18.00%		
3/31/2023	20,795.03	270,335.34	22.00%		
6/30/2023	23,630.71	307,199.25	25.00%		
9/30/2023	33,083.00	430,078.95	35.00%		
		1,228,797.00	7th year total	6,750,000.00	100.00%

## Exhibit B

### ASSUMPTION AGREEMENT

This Assumption Agreement (“Agreement”) is entered into by the Medicaid Fraud and Residential Abuse Unit of the Office of the Vermont Attorney General (“MFRAU”), on behalf of itself and the Department of Vermont Health Access (“DVHA”) (collectively, the “State”), and Burlington Labs Acquisition, LLC, a Delaware limited liability company (“BL Acquisition”) through their authorized representatives.

WHEREAS, BL Acquisition proposes to acquire the assets of Burlington Labs pursuant to a Contribution Agreement that will be entered into on or about October 15, 2016;

WHEREAS, Burlington Labs, LLC and Burlington Laboratories, Inc. (collectively, “Burlington Lab Companies”) and the State executed the Settlement Agreement dated September 26, 2016 (the “Settlement Agreement”), attached hereto as Exhibit A, under which, among other things, the Burlington Labs Companies agreed to pay the State a sum of \$6,750,000 over a term of 7 years. The State and Burlington Labs Companies also executed a Corporate Integrity Agreement with a term of five years.

WHEREAS, BL Acquisition is willing to assume the monetary obligations of the Burlington Labs Companies under the Settlement Agreement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Capitalized terms used in this Agreement, which are not otherwise defined herein, shall have the meanings given in the Settlement Agreement.
2. BL Acquisition agrees to assume the payment obligations of Burlington Labs,

LLC and Burlington Laboratories, Inc. as such obligations are set forth in Part III, Section 1 of the Settlement Agreement. BL Acquisition, and/or any successor in interest, or any other affiliated entity that is created for the purpose of assuming the business and functions of the Burlington Labs Companies (“Successor Entity”). BL Acquisition agrees that DVHA may collect the payments required under Part III, Section 1.b. by deducting the amount owed under the Settlement Agreement from BL Acquisition’s weekly remittance from Vermont Medicaid. BL Acquisition further agrees that, in the event that BL Acquisition fails to make a payment as provided for in Part III, Section 1.c. or d. of the Settlement Agreement, DVHA may make a withholding from BL Acquisition's or any Successor Entity’s claims payment on the next available remittance advice in an amount equal to any past due payments.

3. The State (on behalf of itself, its officers, agents, agencies and departments) hereby releases BL Acquisition, its members, managers, officers, employees, representatives, servants, agents and consultants, individually and collectively from any civil or administrative claim(s) that the State has or may have for or related to the Covered Conduct (as such term is defined in the Settlement Agreement), subject to the exclusions set forth in Part III, Section 4 of the Settlement Agreement.

4. In consideration of the agreements of the State set forth in this Agreement, BL Acquisition agrees to release the State, its agencies, political subdivisions, employees, officers, servants, and agents from any claims or causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) that BL Acquisition may have against the State, its agencies, political subdivisions, employees, servants, and agents, related to the Covered Conduct, the State's investigation of the Burlington Labs Companies, and the suspension of Vermont Medicaid provider payments to the Burlington Labs Companies prior to the date of this Agreement.

5. BL Acquisition shall not be subject to provisions of the Settlement Agreement relating to the Corporate Integrity Agreement so long as (1) Michael and/or Jodie Casarico do not: (a) hold a majority ownership interest in BL Acquisition or any Successor Entity, (b) maintain a voting seat on the Board of Directors of BL Acquisition, or (c) have an executive role that allows them control of the billing of Medicaid claims for BL Acquisition or any Successor Entity or oversight BL Acquisition's or any Successor Entity's Compliance Program; and (2) prior to the date of this Agreement, BL Acquisition has adopted a Compliance Plan attached as Exhibit B to this Agreement which is approved by the State. If any of the conditions in Section 5(1)(a) through (c), after initially being met, become unfulfilled at any time during the five years from the date of this Agreement, or if BL Acquisition does not maintain a Compliance Plan that is substantively similar to the Compliance Plan (subject to modifications made from time to time as necessary to adapt the Compliance Plan to applicable laws and regulations), then, upon written notification from the State specifying the subsection of this Section 5 with which BL Acquisition failed to comply, and BL Acquisition's failure to cure such failure with thirty (30) days of such notice, BL Acquisition will become obligated to comply with the Corporate Integrity Agreement for the remainder of the five-year term or until the conditions above are again met.

6. BL Acquisition agrees to conform its Medicaid claims and billing practices to the terms and conditions of the Vermont Medicaid Provider Enrollment Agreement, as well as all applicable state and federal laws, rules, and regulations, including but not limited to the Vermont Medicaid Provider Manual and the medical procedure code sets BL Acquisition uses in connection with its claims. Failure to comply with any of these rules, regulations and authorities will not, in and of itself, constitute a breach of this Agreement.

7. BL Acquisition shall be deemed in default of this Agreement if BL Acquisition fails to make or cause to be made the payments required in Part III, Section 1.b. through Part III, Section 1.f. of the Settlement Agreement (the “Default Event”).

8. In the event the State determines that a Default Event has occurred, the State shall provide written notice to BL Acquisition (“Notice of Default”), and allow BL Acquisition an opportunity to cure the Default Event within ten (10) business days of receipt of the written notice. Notice of Default will be sent by email to cpowell@burlingtonlabs.com and tmoody@drm.com, and by certified first class mail to: Burlington Labs Acquisition, LLC, 199 Main Street, Suite 226, Burlington, Vermont 05401. The date of receipt for purposes of this paragraph will be that indicated on the certified mail return receipt. If BL Acquisition does not cure the Default Event to the State’s reasonable satisfaction within ten (10) business days of receipt of the Notice of Default, the Vermont Attorney General’s Office may declare BL Acquisition in default of this Agreement (“Declaration of Default”).

9. Upon a Declaration of Default, the State may exercise, at its sole option, one or more of the following rights, as applicable:

- a. Declare this Agreement and the Settlement Agreement breached;
- b. Proceed against BL Acquisition for any overdue amounts together with interest on the overdue amounts at a rate of 12% per annum;
- c. Terminate the Vermont Medicaid Provider Agreement with BL Acquisition and disenroll BL Acquisition as a Vermont Medicaid provider, in which case, BL Acquisition agrees not to contest any termination of the Provider Agreement and disenrollment imposed pursuant to this provision, either administratively or in any state or federal court, except that it may contest

whether a Default has occurred, if no Default is found, BL Acquisition will be reinstated as a Vermont Medicaid provider; and/or

d. Exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity.

10. The Parties each represent that this Agreement is freely and voluntarily entered into with the advice of counsel without any degree of duress or compulsion whatsoever.

11. Each party to this Agreement shall bear his, her or its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. The laws of the State of Vermont govern this Agreement. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the Vermont Superior Court, Washington County, unless otherwise agreed in writing by the State and BL Acquisition.

13. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the Settlement Amount for the purposes of the state or federal tax laws. BL Acquisition will rely on its own counsel or experts regarding the effect of this Agreement under any state or federal tax laws.

14. BL Acquisition represents and warrants that the representative designated below is authorized to execute this Agreement on behalf of BL Acquisition and that BL Acquisition has not assigned any claims, rights or liabilities subject to this Agreement to any other person. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

15. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

16. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties, including but not limited to any Successor Entity.

17. This Agreement, in conjunction with any provisions of the Settlement Agreement that are incorporated herein by reference, constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties. All prior agreements, statements, representations, warranties and promises by the Parties are hereby merged into this Agreement.

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

19. This Agreement is effective on the date of the signature of the last signatory to the Agreement (“Effective Date”).

STATE OF VERMONT

William H. Sorrell  
VERMONT ATTORNEY GENERAL

DATED: \_\_\_\_\_, 2016

BY: \_\_\_\_\_  
Jason M. Turner  
Assistant Attorney General  
Director, Medicaid Fraud & Residential Abuse  
Unit

DEPARTMENT OF VERMONT  
HEALTH ACCESS

DATED: \_\_\_\_\_, 2016

BY: \_\_\_\_\_  
Howard J. Pallotta  
General Counsel, DVHA

BURLINGTON LABS ACQUISITION, LLC

DATED: \_\_\_\_\_, 2016

BY: \_\_\_\_\_  
James H. Crook  
Chairman

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