

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of California ("the State") and Accredo Health Group, Inc. (including its predecessors, successors, and assigns, collectively referred to as "Accredo"), hereinafter collectively referred to as "the Parties."

II. PREAMBLE

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

A. At all relevant times, Accredo, a specialty pharmacy headquartered in Memphis, Tennessee and a wholly owned subsidiary of Medco Health Solutions, Inc., filled patients' prescriptions for Exjade (deferasirox), a drug manufactured and distributed by Novartis Pharmaceuticals Corporation ("Novartis"). From December 22, 2005 to March 31, 2012, Accredo contracted with Novartis to dispense Exjade as part of Novartis's "Exjade Patient Assistance and Support Services" network ("EPASS"). During this period, Accredo was one of three specialty pharmacies permitted to dispense Exjade as part of EPASS (the "EPASS pharmacies").

B. On or about November 14, 2011, David Kester ("Relator") filed a *qui tam* action in the United States District Court for the Southern District of New York captioned *United States ex rel. David M. Kester et al. v. Novartis Pharmaceuticals Corporation, Accredo Health Group, Inc., Amerisource Bergen Corporation, Bioscrip Corporation, Curascript, Inc., CVS Caremark Corporation, Express Scripts, Inc., McKesson Corporation, Medco Health Solutions, Inc., and Walgreens Company*, 11 Civ. 8196 (CM) (JCF) ("the Civil Action"). The Civil Action contains multiple causes of action, among

them claims pursuant to the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. § 3730(b), and several state False Claims Acts (the "State FCAs"). The *qui tam* action named as plaintiffs the United States and the states of California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Wisconsin, and the District of Columbia.

C. Accredo has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America (as that term is defined in the Federal Settlement Agreement), hereinafter referred to as the "United States."

D. The State contends that Accredo caused claims for payment for Exjade to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)) in violation of the federal anti-kickback statute ("federal AKS").

E. The State alleges – as relevant to this settlement – that, from in or about March 2008 to in or about March 2012, Accredo violated the federal AKS, state anti-kickback statutes, and the State FCA, and/or similar state laws by submitting claims for Exjade to the State's Medicaid Program (42 U.S.C. §§ 1396-1396w-5) and by participating in an Exjade patient referral allocation scheme under which Novartis and Accredo agreed that Accredo would receive additional patient referrals and related benefits in return for achieving the highest refill percentage for Exjade patients as compared to the refill percentages among Exjade patients at the other EPASS

pharmacies. The conduct described in this paragraph E is referred to as the "Covered Conduct."

F. This Agreement is not a concession by the State that its allegations are not well founded.

G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Accredo agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$60,000,000.00 as specifically delineated below, in civil damages, plus accrued interest on that amount of 3.25% per annum commencing on April 10, 2015 and continuing and including the day before payment is made under this Agreement (collectively, the "Settlement Amount"). The Settlement Amount shall constitute a debt due and owing to the United States as set forth in the Federal Settlement Agreement referenced in paragraph 1(a) below, and a debt due and owing to the Medicaid Participating States on the Effective Date, subject to the terms of this Agreement, including the non-participating state deduction provision of sub-

paragraph (d) below. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Accredo shall pay to the United States the sum of \$45,060,598.87, plus accrued interest on that amount at a rate of 3.25% per annum commencing on April 10, 2015, ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Accredo shall pay to the Medicaid Participating States the sum of \$14,939,401.13, plus accrued interest on that amount at a rate of 3.25% per annum commencing on April 10, 2015 ("Medicaid State Settlement Amount"), no later than ten (10) business days after (i) the expiration of the 30-day opt-in period for Medicaid Participating States described in sub-paragraph (c) below, or (ii) receipt of wiring instructions from the State Negotiating Team ("State Team"), whichever occurs later. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Team, which written instructions shall be delivered to counsel for Accredo.

(c) Accredo shall execute a State Settlement Agreement ("Agreement") with any State that executes such an Agreement in the form to which Accredo and the State Team have agreed, or in a form otherwise agreed to by Accredo and an individual State. The State shall constitute a Medicaid Participating State provided the Agreement is fully executed by the State and delivered to Accredo attorneys within 30 days of receiving this Agreement. If the Agreement is not returned to Accredo within 30 days, Accredo's offer to resolve this matter with the individual State shall

become null and void absent written agreement between counsel for Accredo and the State Team to extend the 30-day period.

(d) The total portion of the amount paid by Accredo in settlement for the Covered Conduct for the State is 5,189,783.55, plus applicable interest, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of 2,738,844.72, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within 30 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Accredo absent written agreement between counsel for Accredo and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss that are currently pending against Accredo in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Action. Contingent upon receipt of their respective State Amounts, the State, if served in the Civil Action and liable to pay a relator's share, agrees to pay the Relator, as soon as feasible after such receipt, such amounts as have been or will be negotiated with the Relator in the Civil Action, which shall be set forth in side letters issued to and executed by the Relator in the Civil Action. With respect to the claims against Accredo and Curascript, Inc. in Relator's Third Amended Complaint in the Civil Action that are not encompassed by the Covered Conduct (the "Remaining Claims"), the State agrees to dismissal without prejudice as to itself of the Remaining Claims against

Accredo and Curascript, Inc. and consents to the dismissal with prejudice as to Relator of the Remaining Claims against Accredo and Curascript, Inc.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Accredo set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State agrees to release Accredo, its predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, agents, attorneys, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the "Accredo Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

(a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability;

(c) any civil or administrative liability that any person or entity, including any Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

(d) any liability to the State for any conduct other than the Covered Conduct;

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

(f) any liability based upon obligations created by this Agreement;

(g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Accredo;

(i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(j) any liability based on a failure to deliver goods or services due.

5. The State expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Accredo and/or its officers, directors, and employees from the State Medicaid Program (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).

6. Accredo waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct that are based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution,

that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. In consideration of the obligations of the State set forth in this Agreement, Accredo waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Accredo has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct.

8. The State Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Accredo agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

9. Accredo shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

10. Accredo expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount and compliance with this Agreement. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the

mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Accredo within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do in fact, constitute such a contemporaneous exchange.

11. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. Accredo agrees to cooperate fully and truthfully with any State investigation or prosecution of individuals or entities not released in this Agreement. Upon reasonable notice, Accredo shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of Accredo. Upon request, Accredo agrees to furnish to the State complete and un-redacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Accredo shall be responsible for all costs it may incur in complying with this paragraph.

13. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Except as otherwise stated in this Agreement, 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.

15. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

16. In addition to all other payments and responsibilities under this Agreement, Accredo agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Accredo will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

17. This Agreement is governed by the laws of the State and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

18. The undersigned Accredo signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. 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.

19. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

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

21. 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.

22. 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.

State of California

BY: **Original Signed By** _____ Date: 6/10/15
Nicholas N. Paul
Supervising Deputy Attorney General
California Department of Justice
Bureau of Medi-Cal Fraud and Elder Abuse
1455 Frazee Rd, Ste 315
San Diego, CA 92108

By: **Original Signed By** _____ Date: 5/22/15
Jennifer Kent
Director
Department of Health Care Services
MS 0000
P.O. Box 997413
Sacramento, CA 95899-7413

ACCREDITO HEALTH GROUP, INC.

Original signed by:

Dated: 07/14/15

Executive Vice President
and General Counsel
Express Scripts Holding Company

Original signed by:

By:

Dated: 7/9/15

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