

## **EXHIBIT A**

**SETTLEMENT AGREEMENT  
AND MUTUAL RELEASES**

**I. PARTIES**

This Settlement Agreement ("Agreement") is entered into this 22nd day of April, 2009, between and among the following and their authorized representatives:

(1) the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Eastern District of Pennsylvania, and on behalf of the Office of the Inspector General ("HHS-OIG") of the United States Department of Health and Human Services ("HHS") (collectively "the United States");

(2) Youth and Family Centered Services, Inc. ("YFCS"); (3) Southwood Psychiatric Hospital, Inc. ("Southwood"); and (4) Relator Stefan P. Kruszewski ("Relator"). YFCS and Southwood are hereinafter collectively referred to as "the Defendants." The United States, the Defendants, and Relator are hereinafter collectively referred to as "The Parties." This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). The period of Defendants' obligations under this Agreement shall be three (3) years from the Effective Date, unless otherwise specified in this Agreement.

**II. PREAMBLE**

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

A. For purposes of this Agreement, the "relevant period" or the "relevant times" means the period January 1, 2005 to December 31, 2005.

**B. The joint federal/state Medicaid program, which is known in Pennsylvania as the Medical Assistance program, is administered for behavioral health at the Pennsylvania state level by the “Office of Mental Health and Substance Abuse Services,” or “OMHSAS,” which is within the Pennsylvania Department of Public Welfare (“DPW”). OMHSAS pays for Medical Assistance behavioral health care for eligible Pennsylvania residents. Within DPW’s separate Office of Medical Assistance Programs (“OMAP”), the “Bureau of Program Integrity,” or “BPI,” is responsible for ensuring that the Medical Assistance Programs for physical health and behavioral health are protected from the commission of fraud, abuse, and waste by the persons and entities -- known as “providers” -- that claim to provide Medical Assistance-covered services.**

**C. At the federal level, the Centers for Medicare & Medicaid Services, or “CMS,” which is a part of HHS, is the federal agency component that is responsible for administering the federal share of the Medicaid program.**

**D. Nationally, the continuum of care for children and adolescents, moving progressively from the least to the most intensive level of care, is as follows: (i) outpatient care (least intensive); (ii) intensive outpatient care; (iii) partial hospitalization; (iv) therapeutic foster care; (v) therapeutic group home care; (vi) psychiatric residential treatment facility care; and (vii) inpatient acute care (most intensive).**

**E. The type of behavioral care facility that is the focus of this Agreement is commonly referred to in the federal government -- and will be referred to in this Agreement -- as a “Psychiatric Residential Treatment Facility” or “PRTF.” (At the**

Pennsylvania state level, such a facility is referred to as a “Residential Treatment Facility” or “RTF” for behavioral health.) For purposes of this Agreement, the Parties recognize that:

i. A PRTF is a Pennsylvania Medical Assistance provider facility other than a hospital that: (a) provides room and board and intensive psychiatric/behavioral health services; (b) does so in a round-the-clock, highly supervised setting; (c) serves primarily persons under age 21; and (d) admits individuals who have at least one confirmed Diagnostic and Statistical Manual of Mental Disorders (“DSM”) diagnosis and who cannot function successfully within home or community because of serious social, emotional, behavioral, developmental, and/or psychiatric challenges;

ii. Such a facility is a PRTF even when it also provides some services to: (a) residents age 21 and 22; (b) dually diagnosed residents (i.e., persons diagnosed with both mental retardation and mental health conditions); (c) residents with severe mental retardation; or (d) residents with autism;

iii. The term “PRTF” includes but is not limited to such facilities even if they are: (a) free-standing units on their own along with other PRTF units within the same building that houses various treatment specialties (e.g., sexual abuse; severe psychosis; autism; conduct disorder; substance abuse dependence); or (b) set up like a home environment (e.g., with living room, dining room, kitchen);

iv. The term “PRTF” does not include facilities that are exclusively operated as: (a) group homes; (b) school-based partial programs; (c) family-based programs; (d) child day treatment centers; (e) partial hospitalization facilities;



**(f) residential camps for children/adolescents; or (g) outpatient services;**

**v. Necessary focuses of care at a Pennsylvania PRTF are reflected in an OMHSAS-approved “program description” and typically include: (a) reducing unsafe and dysfunctional behaviors; (b) improving social skills; (c) teaching strategies for coping, problem-solving, and anger management; and (d) strengthening family systems or, when necessary, helping residents to adjust to the loss/unavailability of parental caregivers; and**

**vi. Each Pennsylvania PRTF resident receives services that are specified in an individualized plan of care and that are consistent with the PRTF’s approved program description, and such services typically include: (a) individual, group, and family psychotherapies; (b) psychiatric treatment; (c) addiction recovery support; (d) recreational programming; and (e) educational support services.**

**F. The Commonwealth of Pennsylvania has made use of PRTFs since the mid-1990s. An extensive array of private providers has developed over the past 15 years to provide PRTF services to Pennsylvania youth in Pennsylvania and outside of the Commonwealth. The Commonwealth’s child- and adolescent-serving system features a complex interaction of multiple components of the child welfare, juvenile justice, and mental health systems.**

**G. Under Title 55, Pennsylvania Code, Chapter 3800, the “Office of Children, Youth, and Families” or “OCYF,” an office within DPW, licenses and regulates Pennsylvania PRTFs. OCYF issues “provisional” licenses -- rather than full licenses -- when its inspectors find that compliance with regulatory requirements is not complete.**

**H. OMHSAS is responsible, among other things, for certifying and overseeing behavioral health services that are provided to Pennsylvania children and adolescents at Pennsylvania PRTFs.**

**I. To be entitled to Medical Assistance payment, a Pennsylvania PRTF program must be licensed by OCYF and certified by OMHSAS.**

**J. For a Pennsylvania PRTF that is accredited by the Joint Commission on Accreditation of HealthCare Organizations ("JCAHO") or another approved accrediting body, OMAP establishes a negotiated per diem Medical Assistance payment rate for the PRTF provider. This rate pays for medically necessary mental health and other health-related services, in addition to room and board. Medical Assistance payments for Pennsylvania residents are made by the Medical Assistance Fee-for-Service Program ("FFS") or a Behavioral Health Managed Care Organization ("BH-MCO").**

**K. YFCS is a for-profit corporation with its principal offices located at 1705 Capital of Texas Highway South, Suite 400, Austin, Texas. YFCS is incorporated in the State of Georgia.**

**L. Southwood, a Pennsylvania corporation, is a wholly owned, for-profit subsidiary of YFCS. YFCS acquired Southwood in 1998. Among other things, Southwood operates: (1) in Upper St. Clair, Pennsylvania, at Southwood Hospital, both a thirty-three-bed acute inpatient service for crisis stabilization for children and adolescents and a Sexually Maladaptive Behaviors ("SMB") PRTF; (2) in Bridgeville, Pennsylvania, a Mental Retardation/Mental Health ("MR/DD") Dual Diagnosis PRTF; and (3) in rural Prosperity, Pennsylvania ("the Prosperity Campus"), three PRTF programs for males -- Concord**

House, Mansion House, and Prosperity House. (These Prosperity Campus PRTF programs are hereinafter collectively referred to as the “Prosperity Campus PRTFs” or the “Prosperity PRTFs.”). The Prosperity Campus is located ten miles from the nearest town. It consists of only the three PRTF houses and a group home (commonly referred to as “Promise House”). Residential communities and businesses do not surround the Prosperity Campus. During the relevant period, and continuing until the present, Southwood has housed and treated at the Prosperity PRTFs Medicaid-recipient children and adolescents from throughout Pennsylvania, including from the Eastern District of Pennsylvania federal judicial district, as well as from the State of West Virginia. Claims for payment for such PRTF services were submitted to the Medical Assistance/Medicaid program.

M. During 2005 (as has remained true since), Southwood represented that it sought to limit admissions to the Prosperity Campus PRTFs to male children and adolescents, ages 6 to 18: (i) who were incapable of benefitting from a less-restrictive level of care; (ii) with persistent and pervasive behavior that severely impacted social, familial, occupational, or educational functioning; (iii) who were nevertheless assessed as intellectually, cognitively, and emotionally able to benefit from a Prosperity PRTF program; and (iv) who met the criteria for one or more of the following DSM-IV diagnoses: disruptive behavior disorders; impulse control disorders; mood disorders; anxiety disorders; Axis II Personality Traits; Attention Deficit Hyperactivity Disorder; abuse history; and/or Asperger’s disorder/PDD. Southwood represented that it sought to exclude from the Prosperity PRTF programs individuals who were: (i) moderately mentally retarded; (ii) actively suicidal, homicidal, or psychotic; (iii) diagnosed with severe

psychiatric disorders in need of 24-hour acute inpatient hospitalization; (iv) diagnosed with antisocial behavior or violence creating an ongoing danger to self or others; (v) known to have significant history of sexually maladaptive behaviors or actively sexually acting out; and/or (vi) primarily diagnosed with significant drug and/or alcohol history that needed to be addressed in treatment.

N. Concord House is located at 130 Old Concord Road, Prosperity, Pennsylvania. It is a stand-alone building with three floors (Units 1, 2, and 3) and has a 36-bed capacity. Currently, Concord House is the PRTF program that is intended to be for the youngest Prosperity Campus residents. Southwood has operated Concord House since 1998.

O. Mansion House is located at 110 Old Concord Road, Prosperity, Pennsylvania. It is a stand-alone building that formerly was a restaurant and is now the PRTF program that is intended to be for the oldest, most aggressive Prosperity Campus residents. Mansion House currently includes the dining area that all Prosperity Campus residents and staff use and has a 20-bed capacity. Until September 2004, Mansion House was not a separate PRTF program, did not house residents, and was used by Southwood as a school.

P. Prosperity House is located at 120 Old Concord Road, Prosperity, Pennsylvania. Currently, Prosperity House is the PRTF program for the most emotionally fragile Prosperity Campus residents. It has a ten-bed capacity. Southwood has operated Prosperity House since 1998.

**Q. The Commonwealth of Pennsylvania's Child Residential and Day Treatment Facility Regulations -- Title 55 of the Pennsylvania Code, Chapter 3800 -- govern the operation of each PRTF in Pennsylvania.**

**R. As a Condition of Participation in the Medicare and Medicaid programs, CMS regulations require that PRTFs appropriately protect residents' rights, including that PRTFs appropriately use restraint and seclusion, 42 C.F.R. §§ 483.350-483.376. The Pennsylvania Department of Health ("DOH") surveys Pennsylvania PRTFs for compliance with these requirements.**

**S. This Agreement addresses the United States' civil claims against the Defendants for the conduct of their Prosperity Campus PRTF programs. This Agreement also addresses the Covered Conduct as that term is defined herein in Paragraph T. This Agreement also addresses the Relator's civil claims against the Defendants for the conduct of their Prosperity Campus PRTF programs, as alleged in United States ex rel. Stefan P. Kruszewski v. Southwood Psychiatric Hospital, et al., Eastern District of Pennsylvania, Civil Action No. 05-1839 ("Civil Action").**

**T. The United States contends that it has, for the period January 1, 2005 to December 31, 2005, certain civil claims against the Defendants under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes, and/or common law. These claims relate to the Defendants': (1) submitting or causing to be submitted to Federal health care programs, including Medicaid, claims for payment for inadequate or worthless services that were rendered to Prosperity Campus PRTF residents from January 1, 2005 to December 31, 2005; and (2) receipt of payment for such claims. These claims are based**

**upon the following alleged conduct:**

**Southwood, in 2005, while it made significant profit, and while Prosperity Campus PRTF capacity grew from 46 to 76 residents with an increased average number of actual residents, failed to maintain commensurate and appropriate levels of staffing. Meanwhile, a greater number of adolescents were admitted to the campus from the juvenile justice system, and the use of physical restraints and resident-on-resident sexual behavior increased. Beginning in mid-2005, OCYF, OMHSAS, and BPI -- based on complaints from multiple sources -- surveyed the Prosperity Campus PRTFs and cited Southwood for staffing, training, facility, safety, and medical/psychological treatment regulatory violations and deficiencies there that posed risks to the health and safety of residents and/or had caused harm to them. In August 2005, OMHSAS limited its approval of the Prosperity PRTF programs to a four-month period, and in September 2005 OCYF placed the three Prosperity Campus PRTFs on provisional licenses. In accordance with the findings of these Pennsylvania agencies, and based upon its own investigation, the United States asserts that -- among the Defendants' conduct in 2005 for which they claimed payment from Federal health care programs -- the Defendants subjected the Prosperity Campus PRTF residents to inadequate care resulting from: (1) insufficient levels and methods of staffing; (2) inadequate staff training; (3) deficient facilities; (4) deficient safety procedures; and (5) deficient medical/psychological treatment.**

**These allegations are hereinafter referred to as the "Covered Conduct."**

**U. The United States also contends that, for the Covered Conduct, it has certain administrative claims against the Defendants based upon the provisions for: (i) civil penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and (ii) civil monetary penalties under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a.**

**V. The Parties acknowledge that, subsequent to the above-cited 2005 licensure sanctions, conditions at the Prosperity Campus PRTFs have generally improved. For example, in late January 2006 OCYF conducted licensing inspections at the Prosperity PRTFs and found all three Prosperity Campus PRTFs in full compliance with Pennsylvania regulations. Since 2006, OCYF continuously has given all three PRTFs full,**

**non-provisional licenses. On February 22, 2006, OMHSAS, in approving the Prosperity Campus PRTF programs, noted “significant improvements” in the “physical environment,” “better staff morale,” and “a more thorough assessment and screening process.” By March 2006, OCYF noted significant improvements at the Prosperity PRTFs. In 2006, JCAHO, a non-profit organization that sets standards for healthcare organizations and programs in the United States, and further evaluates and accredits compliance with those standards, accredited the Prosperity PRTFs for a three-year period.**

**W. This Agreement is neither an admission of liability or wrongdoing by the Defendants nor a concession by the United States that its claims are not well-founded.**

**X. To avoid the delay, uncertainty, risk, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full, final, and amicable settlement pursuant to the Terms and Conditions 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, intending to be legally bound, agree as follows:**

**1. The Defendants agree to pay to the United States the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) (the "Settlement Amount") in accordance with the following schedule: (a) \$50,000 shall be due upon the signing of this Agreement;<sup>1</sup> (b) \$50,000 shall be due within eleven months of the signing of this Agreement; and (c) the final \$50,000 shall be due within twenty-four months of the signing of this Agreement. Interest shall accrue on the final \$50,000 of the Settlement Amount from the date of signing of this Agreement until final payment at the rate applicable under 28 U.S.C. § 1961. The Defendants agree to pay the Settlement Amount, including each and every installment thereof, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania.**

**2. Subject to the exceptions in Paragraph 4 below (concerning claims excluded from this Agreement), and in consideration of the obligations of the Defendants that are set forth in this Agreement, and on condition that the Defendants fully pay the Settlement Amount, and subject to Paragraph 28 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement), the United States (on behalf of itself, its officers, agents, departments, and agencies) agrees to release**

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<sup>1</sup> For purposes of this Agreement, the date of "signing of this Agreement" means the Effective Date.



the Defendants and (i) their divisions, affiliates, and subsidiaries, (ii) their predecessors, successors, assigns, and transferees, and (iii) their present and former officers and employees, from any civil or administrative monetary claim or cause of action or claim for interest that 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; or the common law theories of payment by mistake, unjust enrichment/restitution, breach of contract, and fraud for payments made by the Medicaid program for the Covered Conduct as more fully described in Paragraph T above.

3. HHS-OIG expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion against the Defendants and/or their 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).

4. Notwithstanding any term of this Agreement, the following are specifically reserved and excluded from the scope and terms of this Agreement as to the Defendants and any other person or entity:

a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code). Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws.

b. Any criminal liability.

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

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

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

**f. Any civil or administrative claims against any individuals, including current and former officers and employees, that are not based upon the Covered Conduct.**

**g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.**

**h. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Defendants) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicated, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.**

**5. Defendants waive and will not assert any defenses that they 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 United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.**

**Defendants agree that the Settlement Amount is not punitive in nature or effect for purposes of such criminal prosecution or administrative action.**

**6. Defendants fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that the Defendants, or any of them, has or have 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 United States' investigation and prosecution thereof.**

**7. Defendants agree that they waive and will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries, or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct. Defendants waive any cause of action against these beneficiaries, or their parents, sponsors, legally responsible individuals, or third-party payors, based upon the claims for payment covered by the Agreement.**

**8. In consideration of the mutual promises and obligations of this Agreement, and in consideration of a separate resolution by agreement or by Court determination of the issues between Relator and Defendants concerning Relator's attorney's fees and costs, Relator has released and discharged all Parties including the United States from any and all causes of action as described herein. The Parties further agree that in consideration of Defendants' payment in full of the Settlement Amount and agreement to abide by the terms of this Agreement, the Civil Action shall be dismissed with prejudice.**

9. In consideration of the mutual promises and obligations of this Agreement, Defendants have released Relator from any and all causes of action, as described herein. Upon receipt of the electronic funds transfers as described in Paragraph 1 above, the United States will pay to Relator and Relator's counsel jointly the Relator's share of each such transfer by electronic funds transfer. It is anticipated that Relator's share of each \$50,000.00 payment is Seven Thousand Five Hundred Dollars (\$7,500.00).

10. Relator agrees that this settlement is fair, adequate, and reasonable under all of the circumstances, and will not challenge the Agreement pursuant to 31 U.S.C. § 3730(c)(2)(B).

11. The Settlement Amount that Defendants must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above will 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 payor, related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare carrier or intermediary or any State payor any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

12. Defendants agree to the following:

a. Unallowable Costs Defined. All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their 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):

- i. The matters covered by this Agreement;
- ii. The United States’ audit(s) and civil investigation(s) of the matters covered by this Agreement;
- iii. Defendants’ investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil investigation(s) and the Commonwealth of Pennsylvania’s audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees); provided, however, that the expenses associated with the Compliance Director positions described in Paragraph 14 of this Agreement shall not be considered “unallowable costs” for purposes of this Paragraph 12(a);
- iv. The negotiation and performance of this Agreement, including but not limited to the obligations under the Agreement to (i) retain and pay an independent review organization, and (ii) to prepare and submit reports to the United States; and
- v. The payment(s) Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including any costs and attorney’s fees.

Provided, however, that this Agreement shall not require Defendants to self-disallow otherwise allowable costs incurred in administering their ongoing compliance

program in the ordinary course of business (and excluding the separate and additional costs incurred to supplement or enhance their existing compliance programs as a condition of this Agreement).

b. **Future Treatment of Unallowable Costs.** Defendants shall separately determine and account for these unallowable costs in nonreimbursable cost centers or otherwise as appropriate, and Defendants will 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 Defendants or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. **Treatment of Unallowable Costs Previously Submitted for Payment.** Defendants further agree that within 120 days of the effective date of this Agreement they will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA 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 Defendants or any of their 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 U.S. Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Defendants or any of their subsidiaries' or affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

13. The Parties acknowledge that YFCS has a Corporate Compliance Program. The Parties agree that -- at a minimum, for three (3) years from the Effective Date of this Agreement -- YFCS shall continue to have a fully operational compliance plan (the "Compliance Program") and to amend it to ensure both that it includes the elements set forth in Paragraphs 14, 15, 16, 17, and 20 of this Agreement and that it comports with statutory and regulatory changes. All of YFCS's employees shall continue to participate in the Compliance Program.

14. Compliance Directors and Committees.

a. *National Compliance Director.* At the latest, within 120 days after the Effective Date of this Agreement, YFCS shall create an Office of Corporate Compliance that will be staffed by a full-time National Compliance Director and a full-time Deputy National Compliance Director. YFCS's General Counsel shall not hold a position

within that Office. The National Compliance Director and Deputy National Compliance Director, neither of whom shall have any non-compliance duties, will be responsible, on a YFCS-wide basis, for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements that are set forth in this Agreement and with Federal health care program requirements. The National Compliance Director shall: (a) be a member of YFCS's senior management; (b) have access to the full resources and personnel of YFCS; (c) make periodic (at least quarterly) compliance reports directly to YFCS's Chief Executive Officer ("CEO") and/or to -- at the National Compliance Director's discretion -- YFCS's Board of Directors; (d) be authorized to report on such matters to YFCS's Board of Directors at any time; and (e) be responsible for monitoring both YFCS's day-to-day compliance activities and YFCS's reporting obligations under this Agreement. The National Compliance Director shall not be subordinate to YFCS's General Counsel. YFCS shall report to the United States, in writing, any changes in the identity or position description of the National Compliance Director, or any actions or changes that would affect the National Compliance Director's ability to perform the duties necessary to meet the obligations in this Agreement, within 15 days after such a change.

b. *National Compliance Committee.* YFCS represents that: (a) it has established, and shall continue for the term of this Agreement to maintain, a National Compliance Committee; and (b) this committee is separate and apart from any committee of the YFCS Board of Directors that may receive compliance reports and/or undertake audits in the ordinary course of business. The National Compliance Committee includes, and shall continue to include, at a minimum: (a) the National Compliance Director; (b) the



Deputy National Compliance Director; and (c) other members of senior management who are necessary to meet the requirements of this Agreement (e.g., senior executives of billing, clinical, human resources, audit, operations, legal, and other relevant departments).

Within 120 days after the Effective Date of this Agreement, the National Compliance Director shall chair -- and shall continue for the duration of this Agreement to chair -- the National Compliance Committee, which shall support the National Compliance Director in fulfilling his/her responsibilities. The National Compliance Committee's support of the National Compliance Director shall include, but not be limited to, providing: (a) assistance in the analysis of YFCS's risk areas; and (b) oversight of the monitoring of internal and external audits and investigations. YFCS shall report to the United States, in writing, any changes in the composition of the National Compliance Committee, or any actions or changes that would affect the National Compliance Committee's ability to perform the duties necessary to meet the obligations in this Agreement, within 15 days after such a change.

c. *Regional Compliance Director.* YFCS organizes its operations by region. Among YFCS's regions is a MidWest Region that includes YFCS's Indiana, Missouri, and Pennsylvania (Southwood) facilities and programs. Within 120 days after the Effective Date of this Agreement, for each separate YFCS regional office, including the MidWest regional office, YFCS shall create and staff the position of Regional Compliance Director. Each Regional Compliance Director shall be permitted to perform non-compliance duties only to the extent that his/her time spent performing such duties does not exceed twenty-five percent of his/her total hours worked for YFCS each month. Each

**Regional Compliance Director shall report directly to the National Compliance Director. YFCS shall report to the United States, in writing, any changes in the identity(ies) or position description(s) of any Regional Compliance Director(s), or any actions or changes that would affect the Regional Compliance Directors' abilities to perform the duties that are necessary to meet the obligations in this Agreement, within 15 days after such a change.**

**d. *Regional Compliance Committee.* Within 120 days after the Effective Date of this Agreement, YFCS shall establish, for each region of its operations, including but not limited to its MidWest Region, a Regional Compliance Committee. Each Regional Compliance Committee shall consist of: (a) the Regional Vice President of Operations; (b) the Regional Clinical Director; (c) the Regional Compliance Director; (d) YFCS's General Counsel; and (e) the National Compliance Director. Each Regional Compliance Committee shall receive periodic reports from the National Compliance Director regarding compliance activities in and/or affecting the region. YFCS shall report to the United States, in writing, any changes in the composition of the Regional Compliance Committees, or any actions or changes that would affect the Regional Compliance Committees' abilities to perform the duties necessary to meet the obligations in this Agreement, within 15 days after such a change.**

**e. *Local Compliance Director.* Within 90 days after the Effective Date of this Agreement, YFCS shall designate for each of its groups of facilities, including for the Southwood facilities that include but are not limited to the Prosperity PRTFs, a Local Compliance Director. Each Local Compliance Director will be responsible for compliance activities at a local level. The National Compliance Director will have direct**

oversight and authority over the Local Compliance Directors. Reports prepared by the Local Compliance Directors will be forwarded to the National Compliance Director, the applicable Regional Compliance Committees, and the applicable Regional Compliance Directors.

**15. Written Standards.**

a. *Code of Conduct.* YFCS represents that it has established a written Code of Conduct and shall continue to maintain its Code of Conduct for the duration of this Agreement. Within 90 days after the Effective Date of this Agreement, YFCS shall: (a) to the extent necessary, amend the Code of Conduct to ensure that it meets any additional requirements listed below; and (b) distribute it to at least all "Covered Persons."<sup>2</sup> New Covered Persons shall receive the Code of Conduct within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later. YFCS shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. YFCS shall periodically review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such review. Any revised Code of Conduct shall be distributed within 30 days after any revisions are completed. At a minimum, the Code of Conduct shall set forth:

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<sup>2</sup> "Covered Persons" shall include: (a) all owners, officers, directors, and employees of Southwood, and all owners, officers, and employees of YFCS who have direct or indirect responsibility for (i) the provision of care to Southwood patients and/or residents, or (ii) billing services on behalf of Southwood (including, without limitation, billing and coding services and the development of policies and procedures relating to the delivery of patient and/or resident care); and (b) all contractors, subcontractors, agents, and other persons who provide patient and/or resident care items or services or who perform billing or coding functions on behalf of Southwood.

i. YFCS's commitment to full compliance with all Federal health care program requirements, including YFCS's commitment to prepare and to submit accurate claims consistent with such requirements;

ii. YFCS's requirement that all of its Covered Persons are expected to comply with all Federal health care program requirements and with the requirements of this Agreement, including YFCS's Policies and Procedures that are implemented pursuant to this Agreement;

iii. the requirement that all of YFCS's Covered Persons are expected to report -- to the National Compliance Director or to another appropriate YFCS-designated individual -- suspected violations of any Federal health care program requirement or of any of YFCS's own Policies and Procedures;

iv. the possible consequences to both YFCS and Covered Persons of: (i) a failure to comply with Federal health care program requirements; (ii) a failure to comply with YFCS's own Policies and Procedures; and (iii) a failure to report any such noncompliance; and

v. the right of all individuals to use the Disclosure Program described in this Agreement, and YFCS's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

b. *Compliance Policies and Procedures.* Within 90 days after the Effective Date of this Agreement, YFCS shall revise its written Policies and Procedures regarding YFCS's: (i) operation of its compliance program; and (ii) compliance with Federal health care program requirements. At a minimum, the revised Compliance

**Policies and Procedures shall: (i) address the subjects relating to the Code of Conduct identified in Paragraph 15(a) of this Agreement; and (ii) include measures that are designed to ensure that YFCS fully complies with all Medicaid and other Federal health care programs' statutes, regulations, and guidelines applicable to YFCS.**

**c.     *Physical Restraint Policies and Procedures.* In addition to its general Compliance Policies and Procedures, YFCS represents that, within 90 days after the Effective Date of this Agreement, it will put into effect at all Southwood PRTF facilities -- including but not limited to the Prosperity PRTFs -- the restraint Policies and Procedures that are embodied in Appendix "A" hereto, which is incorporated herein by reference. For at least the duration of this Agreement, YFCS shall maintain the Appendix "A" Policies and Procedures at all Southwood PRTF facilities to ensure that at such facilities: (i) no prone restraints are used; (ii) physical restraints are used only pursuant to accepted professional standards of care and only when less-restrictive alternatives are not effective; (iii) physical restraints are not used as punishment or for the convenience of staff; and (iv) appropriate orders, from a physician or a Licensed Independent Practitioner, are obtained and followed consistently with CMS's conditions of participation as codified at 42 C.F.R. § 483.358. Within 90 days after the Effective Date of this Agreement, the relevant portions of the Policies and Procedures in Appendix "A" shall be made available to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.**

**d.     *Background Check Policies and Procedures.* YFCS further represents that, within 90 days after the Effective Date of this Agreement, it will put into**

effect at all Southwood facilities, including but not limited to the Prosperity PRTFs, the background check Policies and Procedures that are embodied in Appendix "B" hereto, which is incorporated herein by reference. For at least the duration of this Agreement, YFCS shall maintain the Appendix "B" Policies and Procedures at all Southwood facilities. Within 90 days after the Effective Date of this Agreement, the relevant portions of the Policies and Procedures in Appendix "B" shall be made available to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

e. *Therapeutic Care Policies and Procedures.* YFCS further represents that, within 90 days after the Effective Date of this Agreement, it will put into effect at the Prosperity PRTFs the therapeutic care Policies and Procedures that are embodied in Appendix "C" hereto, which is incorporated herein by reference. For at least the duration of this Agreement, YFCS shall maintain the Appendix "C" Policies and Procedures for the Prosperity PRTFs. Within 90 days after the Effective Date of this Agreement, the relevant portions of the Policies and Procedures in Appendix "C" shall be made available to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

f. *General Policy Against Single Staff Member Being Alone With Individual Resident.* YFCS further represents that, within 90 days after the Effective Date of this Agreement, it will put into effect at the Prosperity PRTFs a Policy that prohibits any Southwood non-physician, non-therapist, non-nurse, non-teacher, non-social worker staff

member from working alone with an individual Southwood resident. For at least the duration of this Agreement, YFCS shall maintain this Policy at the Prosperity PRTFs. Within 30 days after the Effective Date of this Agreement, this Policy shall be made available in writing to all individuals whose job functions relate to that Policy. Appropriate and knowledgeable staff shall be available to explain the Policy.

g. *Record-keeping Policies and Procedures.* YFCS further represents that, within 90 days after the Effective Date of this Agreement, it will put into effect at all Southwood facilities, including but not limited to the Prosperity PRTFs, the record-keeping Policies and Procedures -- including on physician, therapeutic leave, and restraints documentation -- that are embodied in Appendix "D" hereto, which is incorporated herein by reference. For at least the duration of this Agreement, YFCS shall maintain the Appendix "D" Policies and Procedures at all Southwood facilities. Within 90 days after the Effective Date, the relevant portions of the Policies and Procedures in Appendix "D" shall be made available to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

h. *Miscellaneous Policies and Procedures.* YFCS further represents that, within 90 days after the Effective Date of this Agreement, it will put into effect at and for the Prosperity PRTFs the further Policies and Procedures that are embodied in Appendix "E" hereto, which is incorporated herein by reference. Those further Policies and Procedures address, for the Prosperity PRTFs: "Assessment" (for admissions and discharges); "Discharge"; "Residential Program Family/Child/Adolescent

as Treatment Team Members”; “Family Therapy and Family Contact”; “Residential Program Therapeutic Leave”; “Program Visiting and Communication”; “Clinical Reviews and Clinical Data Reporting”; “Bedtimes”; “Child/Adolescent/Family Grievance and Appeal/Patient Advocate”; “Educational Policy”; “Recreation Policy”; “Consultant Services” (Dietary); and other subjects. For at least the duration of this Agreement, YFCS shall maintain these Appendix “E” Policies and Procedures for the Prosperity PRTFs. Within 90 days after the Effective Date, the relevant portions of the Policies and Procedures in Appendix “E” shall be made available to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

**16. YFCS’s Commitments For The Prosperity PRTFs<sup>3</sup>**

**a. *Census.*** Within 90 days after the Effective Date of this Agreement, YFCS will notify OCYF that YFCS is reducing the resident licensed capacity for Southwood’s three Prosperity PRTF units from the currently licensed capacity of 66 to a total of 48. During the term of this Agreement, YFCS will not seek to exceed a licensed capacity of 48 residents for the Prosperity PRTFs except upon relocation of the Prosperity PRTFs to another location and, in that event, subject only to the United States’ agreement, which shall not unreasonably be withheld.

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<sup>3</sup> For purposes of Paragraphs 15 and 16 of this Agreement, “Prosperity PRTFs” or “Prosperity Campus PRTFs” means the Prosperity Campus PRTFs even if those PRTFs relocate from Prosperity, Pennsylvania to another site or sites during the term of this Agreement.



**b. *Mental Health Staffing Level.*** During the term of this Agreement, YFCS shall maintain for the Prosperity PRTFs: (a) a Child Care Specialist staff-to-resident ratio of at least 1:5 during hours when residents are awake; and (b) a Child Care Specialist or Child Care Associate staff-to-resident ratio of at least 1:8 during hours when residents are asleep. "Child Care Specialist" and "Child Care Associate" shall include only individuals who are so described in Southwood's Prosperity Campus Program Descriptions. Nurses, milieu coordinators, therapists, case managers, shift supervisors, directors, and other individuals who are not Child Care Specialists or Child Care Associates shall not be included as "staff" for purposes of meeting these mental health staffing level requirements.

**c. *Limited Admissions From Juvenile Justice System.*** During the term of this Agreement, YFCS and/or Southwood shall -- prior to the admission to any Prosperity PRTF of any child or adolescent who was detained in any State's juvenile justice system within the previous 2 years -- carefully review and screen the appropriateness of such admission consistently with the criteria that are listed in the Assessment Policy that is attached hereto as Appendix E. For any such child who has been ordered admitted by a court, such admission shall be subject to disapproval on program suitability grounds by the Independent Review Organization ("IRO") that this Agreement requires. Defendants shall immediately notify the IRO of such court-ordered admission of any such individual and shall provide the IRO with all related review materials as they become available.

**d. *Prosperity Location.*** YFCS has been seeking to relocate the Prosperity PRTFs. On or about April 1, 2009, Southwood entered into a 15-month lease extension for the Prosperity Campus. YFCS and Southwood commit to continue to search, during the extended lease term, for a better location for the Prosperity PRTF programs. Southwood will promptly advise the United States of any successful effort to locate a new location for the programs.

**e. *Medical Director.*** For the term of this Agreement, YFCS commits to employ as the Southwood Medical Director, with oversight of psychiatric care at the Prosperity PRTFs, a psychiatrist who is Board-certified or Board-eligible in child and adolescent psychiatry.

**f. *Attending Psychiatrist(s).*** During the term of this Agreement, YFCS commits to provide each resident of the Prosperity PRTFs, each month, with at least two one-on-one sessions with a Southwood attending psychiatrist who is Board-certified or Board-eligible in child and adolescent psychiatry.

**g. *Psychiatric Peer Review.*** By September 30, 2009, and every six months thereafter for the duration of this Agreement, YFCS agrees to have a psychiatrist who is Board-certified or Board-eligible in child and adolescent psychiatry and who is not otherwise employed or retained by YFCS perform an independent peer review of psychiatric care at the Prosperity PRTFs, including but not limited to a representative chart review.

**h. *Oversight by Regional Clinical Program Director.*** YFCS agrees that it will, during the full term of this Agreement, employ in its MidWest Region a Regional Clinical Program Director with responsibility for oversight of the Prosperity PRTFs who either holds a Ph.D. in psychology or (i) holds a Master's degree in psychology, (ii) is either a licensed professional counselor or a licensed mental health counselor, (iii) has a minimum of ten years experience in a relevant behavioral health field, and (iv) otherwise has the requisite background and experience appropriate for the position. This individual shall spend at least one full day per month at the Prosperity PRTFs.

**i. *Family Intervention Specialists/Therapists.*** YFCS agrees that, during the full term of this Agreement: (a) therapists at the Prosperity PRTFs shall work no more than 45 hours per week, except when required for emergencies or when other therapist-employees are on leave, and in months in which those exceptional circumstances occur shall work no more 60 hours during any week and shall work no more than 195 hours during the month; and (b) the case load of each therapist at the Prosperity PRTFs shall not exceed ten (10) residents.

**j. *Nurses.*** YFCS agrees that, during the full term of this Agreement: (a) on-site Registered Nurse ("RN") coverage shall be provided to Prosperity Campus residents 16 hours per day, 7 days per week; (b) during the remaining 8 hours, which shall be overnight hours only and shall not be before 9:00 p.m. or after 6:00 a.m., an RN shall be available on-call at all times; and (c) no Prosperity Campus nurse shall work more than 45 hours per week at Southwood locations, except when required for emergencies or when other nurse-employees are on leave, and in months in which those

exceptional circumstances occur shall work no more 60 hours during any week and shall work no more than 195 hours during the month.

k. *Milieu Coordinator/Manager.* Within 90 days after the Effective Date of this Agreement, and thereafter for the duration of this Agreement, YFCS shall employ at the Prosperity PRTFs a Milieu Coordinator/Manager, as described -- and who meets the requirements set forth -- in Appendix "F" hereto, which is incorporated herein by reference.

l. *Resident Education.* YFCS represents that it has closed the Southwood School (also known as the McGuffey Boys' School) and that, for the duration of this Agreement, and for as long as the Prosperity PRTFs remain at their current location, residents will attend only a school that has been designated by the McGuffey School District, which shall be a school that Southwood does not own or operate.

m. *Recreation.* Within 90 days after the Effective Date of this Agreement, YFCS shall: (a) consult with an independent recreational therapist about recreational options at the Prosperity Campus; and (b) employ or contract with an activities director for the Prosperity Campus. Such an activities director shall have a background in physical education or recreational therapy and shall work at the Prosperity Campus at least five weekend days (that is, Saturdays and/or Sundays) each month, only two of which days may be on the same weekend. On each of the five weekend days each month, the activities director must work at the Prosperity Campus for at least 4 hours. Should YFCS be unable to commit to a new location for the Prosperity PRTFs within 6 months after the Effective Date of this Agreement, YFCS shall -- within one year of the

Effective Date -- rehabilitate the Prosperity Campus garage into recreational space for Prosperity residents, unless YFCS, despite reasonable good-faith efforts, is unable to obtain the property landlord's agreement to such renovations.

**17. Compliance Training And Education**

**a. *General Compliance Training.*** Within 90 days after the Effective Date of this Agreement, YFCS shall provide at least one hour of General Compliance Training to each Covered Person. This training, at a minimum, shall explain YFCS's Compliance Program, including the Code of Conduct and the Policies and Procedures as they pertain to general compliance issues, and shall cover, among other subjects, documentation requirements, HIPAA and privacy standards, and other pertinent topics related to compliance with Federal and state laws and regulations, including but not limited to Federal health care program requirements. New Covered Persons shall receive the General Compliance Training described above within 60 days after becoming a Covered Person or within 90 days after the Effective Date of this Agreement, whichever is later; provided, however, that for purposes of this Paragraph 17 Defendants shall not be obligated to provide compliance training to contractors who are retained for thirty or fewer days unless such contractors have provided more than 30 days of services to Southwood within the 12 months preceding the contract start date. After receiving the initial General Compliance Training described above, each Covered Person shall receive at least one hour of General Compliance Training annually.

**b. *Specific Compliance Training – Clinical Staff.* Within 120 days after the Effective Date of this Agreement, each “Clinical Covered Person”<sup>4</sup> shall receive at least 2 hours of Specific Clinical Compliance Training in addition to the General Compliance Training. This Specific Clinical Compliance Training shall include a discussion of: (i) policies, procedures, and practices designed to enhance the quality of care, including those described in Subparagraphs 15(c), (e), (f), (g), and (h) of this Agreement and the corresponding Appendices to this Agreement; and (ii) such other topics and areas that are important to the Clinical Covered Persons’ job duties. Clinical Covered Persons shall receive this training within 60 days after the beginning of their employment or of becoming Clinical Covered Persons, or within 120 days after the Effective Date of this Agreement, whichever is later. A Clinical Covered Person who has completed the Specific Clinical Compliance Training shall review or supervise a new Clinical Covered Person’s work, to the extent that the work relates to the delivery of resident/patient care items or services, until such time as the new Clinical Covered Person completes his or her Specific Clinical Compliance Training. After receiving the initial Specific Clinical Compliance Training described in this Paragraph, each Clinical Covered Person shall receive at least one (1) hour of Specific Clinical Compliance Training annually.**

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<sup>4</sup> For purposes of this Agreement, “Clinical Covered Persons” means Covered Persons who are involved in the delivery of patient and/or resident care items or services.

**c.      *Specific Compliance Training – Claims Submission.* Within 120 days after the Effective Date of this Agreement, each “Financial Covered Person”<sup>5</sup> shall receive at least 2 hours of Specific Financial Compliance Training in addition to the General Compliance Training. This Specific Financial Compliance Training shall include a discussion of: (i) Federal health care program requirements regarding the accurate coding and submission of claims; (ii) policies, procedures, and other requirements applicable to the documentation of medical records; (iii) the personal obligation of each individual involved in the claims submission process to ensure that such claims are accurate; (iv) applicable reimbursement statutes, regulations, and program requirements and directives; (v) the legal sanction for violations of the Federal health care program requirements; and (iv) examples of proper and improper claims submission practices. Financial Covered Persons shall receive this training within 60 days after the beginning of their employment or of becoming Financial Covered Persons, or within 120 days after the Effective Date of this Agreement, whichever is later. A Financial Covered Person who has completed the Specific Financial Compliance Training shall review or supervise a new Financial Covered Person’s work, to the extent that the work relates to the preparation or submission of claims for reimbursement from any Federal health care program, until such time as the new Financial Covered Person completes his or her Specific Financial Compliance Training. After receiving the initial Specific Financial Compliance Training described in this Paragraph, each Financial Covered Person shall receive at least one (1)**

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<sup>5</sup> For purposes of this Agreement, “Financial Covered Persons” means Covered Persons who are involved in the preparation and/or submission of claims for reimbursement from any Federal health care program.

hour of Specific Financial Compliance Training annually.

d. *Qualifications of Trainer.* Persons providing compliance training required by this Paragraph 17 shall be knowledgeable about the subject area.

e. *Update of Training.* YFCS shall annually review its compliance training and, where appropriate, update the training to reflect: (a) changes in Federal health care program requirements; (b) any issues discovered during internal audits; and (c) any other relevant information.

18. *Independent Review Organization.*

a. *Retention of IRO for Southwood Program Review and Billing Review.* Within 60 days after the Effective Date of this Agreement, YFCS shall select and retain -- subject to the approval of the United States -- an independent review organization ("IRO") with expertise in: (i) evaluating therapeutic and other care provided to children and adolescents at PRTFs; (ii) PRTF billing, coding, and reporting; and (iii) the general requirements of the Federal health care program(s) from which Southwood seeks payment. As discussed further below, the IRO shall be responsible for reviewing both (i) the quality of Southwood's programs ("program review") and (ii) Southwood's billings ("billing review").

b. *Duration of IRO Review.* The IRO's program review shall be for the full duration of this Agreement. The IRO's billing review shall cease one year after the Effective Date of this Agreement if the IRO determines -- and states in its fourth quarterly report, which as discussed below shall include a Claims Review Report and an Unallowable Cost Report, all of which shall be due within one year of the Effective Date of



this Agreement -- that YFCS and Southwood have been in substantial compliance with their billing obligations. Absent such a determination of substantial compliance, the IRO's billing review shall continue for the duration of this Agreement, and the IRO shall report on its billing review in its fourth-quarter reports at the end of the second and third years of this Agreement, which shall include Claims Review and Unallowable Cost Reports.

c. *IRO's Program Review Responsibilities.* The IRO shall be responsible for: (i) assessing the effectiveness, reliability, and thoroughness of Southwood's internal quality control systems, including whether systems are in place for the Prosperity PRTFs to promote quality of care and to respond to quality of care issues in a timely and effective manner; (ii) ensuring that an effective communication system exists for the transmission of timely information to and from appropriate Southwood and YFCS individuals regarding quality of care at the Prosperity PRTFs; (iii) verifying compliance at the Prosperity PRTFs with Southwood's policies regarding restraints; (iv) reviewing Southwood's training and education programs related to clinical issues; (v) verifying that Southwood's policies and procedures regarding background checks are consistently followed; (vi) reviewing the staffing levels for the Prosperity PRTF programs and making appropriate recommendations about staffing levels; and (vii) ascertaining whether Southwood is compliant with its obligations under this Agreement.

d. *IRO's Billing Review Responsibilities.* The IRO shall also evaluate and analyze YFCS's and Southwood's coding, billing, and claims submissions to the Federal health care programs in connection with services provided by Southwood Psychiatric Hospital, Inc. and the reimbursement received therefor ("Claims Review"), and

shall analyze whether YFCS and/or Southwood sought payment for certain unallowable costs in connection with such services ("Unallowable Cost Review"). The IRO and YFCS shall retain and make available to the United States, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and YFCS) related to claims and unallowable cost reviews. The requirements for the IRO's Claims Review and Unallowable Cost Review are as follows:

i. *Claims Review.* Within one year after the Effective Date of this Agreement, the IRO shall perform Claims Review and prepare a report based upon the review performed ("Claims Review Report"). The Claims Review shall include a Discovery Sample and, if necessary, a Full Sample.

(a) Discovery Sample. The IRO shall randomly select and review a sample of 50 Paid Claims submitted by or on behalf of Southwood in connection with services provided by Southwood ("Discovery Sample"). The Paid Claims shall be reviewed based on the supporting documentation available at YFCS's or Southwood's offices or under YFCS's or Southwood's control and based on applicable billing and coding regulations and guidance to determine whether the claims were correctly coded, submitted, and reimbursed. If the Error Rate for the Discovery Sample is less than 5%, no additional sampling is required, nor is Systems Review required. (Note: The guidelines listed above do not imply that this is an acceptable error rate. Accordingly, Southwood should, as appropriate, further analyze any errors identified in the Discovery Sample.) If the Discovery Sample indicates that the Error Rate is 5% or greater, the IRO shall perform a Full Sample and a Systems Review, as described below.

(b) **Full Sample.** If necessary, as determined by procedures set forth in Paragraph 18(d)(i)(a), the IRO shall perform an additional sample of Paid Claims using commonly accepted sampling methods. The Full Sample shall be designed to: (i) estimate the actual Overpayment in the population with a 90% confidence level and with a maximum relative precision of 25% of the point estimate; and (ii) conform with CMS's statistical sampling for overpayment estimation guidelines. The Paid Claims shall be reviewed based on supporting documentation available at YFCS's or Southwood's offices or under YFCS's or Southwood's control and based on applicable billing and coding regulations and guidance to determine whether the claims were correctly coded, submitted, and reimbursed. For purposes of calculating the size of the Full Sample, the Discovery Sample may serve as the probe sample, if statistically appropriate. Additionally, Southwood may use the Items sampled as part of the Discovery Sample, and the corresponding findings for those 50 Items, as part of its Full Sample, if: (i) statistically appropriate; and (ii) Southwood selects the Full Sample Items using the seed number generated by the Discovery Sample. The United States, in its sole discretion, may refer the findings of the Full Sample (and any related workpapers) received from Southwood to the appropriate Federal health care program payor, including the Medicare contractor (e.g., carrier, fiscal intermediary, or DMERC), for appropriate follow-up by that payor.

(c) **Systems Review.** If Southwood's Discovery Sample identifies an Error Rate of 5% or greater, the IRO shall also conduct a Systems Review. Specifically, for each claim in the Discovery Sample and Full Sample that resulted in an Overpayment, the IRO shall perform a "walk through" of the system(s) and

process(es) that generated the claim to identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide to Southwood its observations and recommendations on suggested improvements to the system(s) and the process(es) that generated the claim.

(d) **Repayment of Identified Overpayments.** In accordance with Paragraph 22(a) of this Agreement, Southwood shall repay within 30 days (or such additional time as may be agreed to by the payor) any Overpayment(s) identified in the Discovery Sample or the Full Sample (if applicable), regardless of the Error Rate, to the appropriate payor and in accordance with payor refund policies (except to the extent such policies are inconsistent with this Agreement). Southwood shall make available to the United States any and all documentation and the associated documentation that reflects the refund of the Overpayment(s) to the payor. To the extent that Southwood identifies any Underpayment in the Discovery Sample or Full Sample (if applicable), Southwood will seek payment for such Underpayment directly from the relevant payor and separately from the repayment for the Overpayment.

ii. ***Unallowable Cost Review and Report.*** The IRO shall conduct a review of Defendants' compliance with the unallowable cost provisions in Paragraph 12 of this Agreement. The IRO shall determine whether Defendants have complied with their obligations: (a) not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in this Agreement) in connection with services provided by Southwood; and (b) to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from the United

States, or from any State Medicaid/Medical Assistance program for such services. This unallowable cost analysis should include, but not be limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Southwood or by YFCS (on behalf of Southwood), subject to the terms of this Agreement. To the extent that such cost reports, cost statements, information reports, or payment requests, even if already settled, have been adjusted to account for the effect of the inclusion of the unallowable costs, the IRO shall determine if such adjustments were proper, subject to applicable rules governing reopenings and the terms of this Agreement. In making this determination, the IRO may need to review cost reports and/or financial statements from the year 2009 as well as from previous years. The IRO shall prepare a report based upon the Unallowable Cost Review performed. The Unallowable Cost Report shall include the IRO's findings and supporting rationale regarding the Unallowable Cost Review and whether Defendants have complied with their obligation not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in this Agreement) in connection with services provided by Southwood, and their obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from such payors for such services.

e. *IRO's Rights of Access.* The IRO shall have immediate access to YFCS and Southwood personnel and to all Southwood facilities, at any time and without prior notice, to assess compliance with this Agreement. The IRO shall further have immediate access to: (i) internal or external surveys or reports; (ii) hotline complaints; (iii) resident satisfaction surveys; (iv) staffing data in the format requested by the IRO;

(v) incident, abuse, and neglect reports; (vi) Southwood patient and/or resident records; (vii) documents in the possession or control of any YFCS or Southwood quality assurance committee, compliance committee, peer review-committee, medical review committee, or other such committee; and (viii) any other data in the format in which the IRO determines relevant to YFCS's and Southwood's duties under this Agreement. The IRO shall also have immediate access to Southwood patients, residents, and employees for interviews of them outside of the presence of YFCS and Southwood supervisory staff or counsel, provided that such interviews are conducted in accordance with all applicable laws and the rights of such individuals. The IRO shall give full consideration to a resident's or patient's clinical condition before interviewing him or her. The IRO may confer and correspond with YFCS and the United States on an *ex parte* basis.

**f. YFCS's Obligations. YFCS shall:**

- i. ensure that the IRO has immediate access to YFCS and Southwood personnel, to all Southwood facilities and documents, and to all Southwood-related YFCS documents; and assist in obtaining full cooperation by YFCS's and Southwood's current employees, contractors, and agents;**
- ii. provide the IRO a report monthly, or sooner if requested by the IRO, regarding each of any of the following occurrences at the Prosperity PRTFs: (a) death or injury<sup>6</sup> related to the use of restraint(s); (b) death or injury related to the use of medication(s); (c) suicide; (d) death or injury related to abuse or neglect (as**

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<sup>6</sup> Such "injury" shall mean any injury that is reportable to DPW.

defined in the applicable Federal guidelines); (e) fire, storm damage,<sup>7</sup> flooding, or major equipment failure(s); (f) a strike or other work action(s); (g) a manmade disaster that poses a threat to residents (e.g., a toxic waste spill or septic system leak); and (h) any other incident that involves or causes actual harm to a resident when such incident prompts a full internal investigation. Each such report shall contain: (a) the full name and date of birth of each resident involved; (b) the date of any death or incident; (c) a brief description of the events surrounding any death or incident; (d) the identity(ies) of the person(s) involved; (e) the status of the investigation; (f) any corrective action taken in response to the investigation; and (g) any other steps taken to prevent recurrence;

iii. provide access to current residents and patients, and contact information for their families and guardians, and not impede any such person's cooperation with the IRO;

iv. assist in locating -- and, if requested, obtaining cooperation from -- past employees, contractors, and agents, and past residents, patients, and their families;

v. provide the last-known contact information for former residents, patients, their families or guardians, consistent with the rights of such individuals under state or Federal law, and not impede their cooperation;

vi. provide to YFCS's National Compliance Committee, and to the Regional Compliance Committee for the MidWest Region, copies of all

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<sup>7</sup> For purposes of this Paragraph, "damage" shall mean any damage that poses a threat to the health or safety of one or more residents.

**documents and reports provided to the IRO;**

**vii. promptly address any written recommendation made by the IRO either by substantially implementing the IRO's recommendations or by explaining in writing why YFCS has elected not to do so;**

**viii. pay (or cause Southwood to pay) the IRO's bills within 30 days of receipt; provided, however, that while YFCS (or Southwood, as the case may be) must pay all of the IRO's bills within such period, YFCS may bring any disputed costs or bills of the IRO to the attention of the United States; and**

**ix. not sue or otherwise bring any action against the IRO related to any findings made by the IRO or related to any exclusion or other sanction of YFCS or Southwood; provided, however, that this clause shall not apply to any suit or other action based solely upon any dishonest or illegal acts of the IRO, whether acting alone or in collusion with others.**

**g. *IRO's Obligations.* The IRO shall:**

**i. respect the rights, privacy, and dignity of all YFCS and Southwood employees, residents, and patients;**

**ii. if independently required to do so by applicable law or professional licensing standards, report any finding to an appropriate regulatory or law enforcement authority, and simultaneously submit copies of such reports to the United States and to YFCS;**

**iii. at all times act reasonably in connection with its duties under this Agreement when requesting information from YFCS or Southwood;**



- iv. simultaneously provide quarterly reports to YFCS and to the United States concerning the findings made to date;**
- v. include in its fourth-quarter reports to the United States and YFCS a certification or sworn affidavit that it has evaluated its professional independence and/or objectivity, as appropriate to the nature of the engagement, with regard to any Claims Review or Unallowable Cost Review that the IRO has undertaken, and that it has concluded that it was and is, in fact, independent and/or objective;**
- vi. submit bills to YFCS on a consolidated basis no more than once per month, and submit to YFCS and to the United States an annual summary report representing an accounting of the IRO's costs throughout the year;**
- vii. not be bound by any other private entity's or governmental body's findings or conclusions, including, but not limited to those of JCAHO, CMS, DOH and DPW (including OCYF, OMHSAS, and BPI);**
- viii. abide by the legal requirements of YFCS to maintain the confidentiality of each resident's and patient's personal and clinical records; provided, however, that nothing in this subparagraph shall limit or affect the IRO's obligation to provide information, including information from patient and resident clinical records, to the United States, and, when legally or professionally required, to other agencies;**
- ix. abide by the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009, to the extent required by law including, without limitation, entering into a business associate agreement with Covered Entity facilities;**

x. except to the extent required by law, maintain the confidentiality of any proprietary financial and operational information, processes, procedures, and forms obtained in connection with the IRO's duties under this Agreement and not comment publicly concerning the IRO's findings except to the extent authorized by the United States; and

xi. visit the Prosperity PRTFs as often as the IRO believes it necessary to perform its functions.

h. *Limited Effect of IRO's Findings and Conclusions Beyond Settlement Agreement.* The parties agree that private entities and governmental bodies such as JCAHO, CMS, DOH, and DPW -- including OCYF, OMHSAS, and BPI -- shall not be bound by the IRO's findings or conclusions. The IRO's reports shall not be the sole basis for determining deficiencies by any Pennsylvania agency, office, or bureau. The parties agree that: (a) CMS and its contractors shall not introduce any material generated by the IRO, or any opinions, testimony, or conclusions from the IRO, as dispositive evidence into any proceeding involving a Medicare or Medicaid survey, certification, or other enforcement action against YFCS or Southwood; and (b) Southwood and YFCS similarly shall be restricted from using material generated by the IRO, or any opinions, testimony, or conclusions from the IRO, as dispositive evidence in any of these proceedings. Nothing in the previous sentence, however, shall preclude the United States or Defendants from using any material generated by the IRO, or any opinions, testimony, or conclusions from the IRO, in any action under this Agreement or pursuant to any other United States authorities or in any other situations not explicitly excluded in this subparagraph.

i. ***IRO's Resources, Payment, and Removal/Resignation.*** Subject to United States approval, the IRO may retain additional personnel, including but not limited to independent consultants, if needed, to help meet the IRO's obligations under this Agreement. YFCS shall be responsible for all costs incurred by the IRO including, but not limited to, travel costs, office space and equipment, and -- subject to United States approval -- consultants, administrative personnel, and/or additional personnel. The IRO shall charge a reasonable amount for its fees and expenses. Failure to pay the IRO within 30 calendar days of submission of its invoices for services previously rendered shall constitute a breach of this Agreement and shall subject YFCS to one or more of the remedies set forth in Paragraph 26 below. The IRO may be removed solely at the discretion of the United States. If the IRO resigns or is removed for any reason before the termination of this Agreement, YFCS shall select and retain another IRO, subject to the approval of the United States, with the same functions and authorities.

19. **Validation Review by United States.** In the event that the United States has reason to believe that: (a) any Southwood Claims Review or Unallowable Cost Review fails to conform to the requirements of this Agreement; or (b) the IRO's findings or Claims Review results or Unallowable Cost Review results are inaccurate, the United States may, at its sole discretion, conduct its own review to determine whether: (a) the Claims Review or Unallowable Cost Review complied with the requirements of this Agreement; and/or (b) the findings or Claims Review results or Unallowable Cost Review results are inaccurate ("Validation Review"). YFCS shall pay for the reasonable cost of any such review performed by the United States or any of its designated agents. Any Validation

Review of Reports submitted as part of YFCS's final Annual Report must be initiated no later than one year after YFCS's final Annual Report is received by the United States. Before initiating a Validation Review, the United States shall notify Defendants of its intent to do so and provide a written explanation of why the United States believes such a review is necessary. To resolve any concerns raised by the United States, Defendants may request a meeting with the United States to: (a) discuss the results of any Claims Review or Unallowable Cost Review submissions or findings; (b) present any additional information to clarify the results of the Claims Review or Unallowable Cost Review; and/or (c) propose alternatives to the proposed Validation Review. Defendants agree to provide any additional information as may be requested by the United States under this Paragraph in an expedited manner. The United States will attempt in good faith to resolve any Claims Review or Unallowable Cost Review issues with Defendants before conducting a Validation Review. The final determination as to whether or not to proceed with a Validation Review shall, however, be made at the sole discretion of the United States.

20. Disclosure Program. YFCS represents that it has established and shall maintain for the full term of this Agreement a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the YFCS National Compliance Director or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with YFCS's policies, conduct, practices, or procedures with respect to a Federal health care program that the individual believes to be a potential violation of criminal, civil, or administrative law. YFCS shall appropriately publicize the existence of the disclosure mechanism by

means likely to reach all employees and contractors (e.g., via periodic e-mails to employees who have company e-mail addresses or by posting the information in prominent common areas). The Disclosure Program shall continue to emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the National Compliance Director (or designee) shall gather all relevant information from the disclosing individual. The National Compliance Director (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably (a) permits a determination of the appropriateness of the alleged improper practice, and (b) provides an opportunity for taking corrective action, YFCS shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted. The National Compliance Director (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The disclosure log shall be made available to the United States and to the IRO, upon request.

**21. Notification of Government Investigation or Legal Proceeding.**

Within 30 days of discovery, YFCS shall notify the United States, in writing, of any ongoing investigation or legal proceeding known to YFCS that is being conducted or brought by a governmental entity or its agents or a managed care entity involving an allegation that

YFCS or one of its subsidiaries or employees or contractors (in the scope of the contractor's work for YFCS) has violated licensing or program requirements or has committed a crime or has otherwise engaged in fraudulent activities. Pursuant to this obligation, YFCS is required to notify the United States of allegations of "abuse" that it routinely reports to appropriate State authorities only if YFCS discovers that a government law enforcement entity has undertaken a formal, criminal investigation of the allegations in question. Notifications to the United States shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. YFCS shall also provide written notice to the United States within 30 days after the resolution of the matter, and shall provide the United States with a description of the findings and/or results of the investigation or proceedings, if any. In addition, within 15 days after notification, YFCS shall notify the United States, in writing, of any adverse final action taken by a Federal, State, or local government agency or managed care entity or accrediting or certifying agency or organization (including but not limited to JCAHO) regarding quality of care issues. For the purposes of this Paragraph, an "adverse final action": (a) by a licensing agency, means a notice of non-licensure or of provisional licensure; and (b) by an accrediting agency, means a revocation of accreditation or report of tentative non-accreditation.

**22. Reporting.**

**a. *Overpayments.*** For purposes of this Agreement: (i) an "overpayment" shall mean the amount of money that either YFCS or Southwood has received in excess of the amount due and payable under any Federal health care program

requirement for services provided by Southwood; (ii) a “substantial overpayment” shall mean for purposes of this Agreement an overpayment of any amount in excess of \$500; and (iii) an “underpayment” shall mean the amount of money that would have been due and payable to YFCS or Southwood under any Federal health care program requirement, but that YFCS or Southwood did not receive, for services provided by Southwood. If, at any time, YFCS or Southwood identifies or learns of any overpayment, YFCS or Southwood shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days after identification of the overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayment from recurring. Also, within 30 days after identification of the overpayment (or such additional time as may be agreed to by the payor), YFCS or Southwood shall repay the overpayment to the appropriate payor to the extent such overpayment has been quantified. If not yet quantified, within 30 days after identification, YFCS or Southwood shall notify the payor of its efforts to quantify the overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor’s policies.

**b. *Reportable Events.***

**i. Definition of Reportable Events.** For purposes of this Agreement, a “Reportable Event” means anything that involves: (a) a substantial overpayment, as defined in Paragraph 22(a)(ii) of this Agreement; or (b) a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative

laws applicable to any Federal health care program for which penalties or exclusion may be authorized; or (c) a violation of the obligation to provide items or services of a quality that meets professionally recognized standards of health care where such violation has occurred in one or more instances and presents an imminent danger to the health, safety, or well-being of a Federal health care program beneficiary or places the beneficiary unnecessarily in a high-risk situation. A Reportable Event may be the result of an isolated event or a series of occurrences.

ii. Reporting of Reportable Events. If YFCS or Southwood determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, YFCS or Southwood shall notify the United States, in writing, within 30 days after making the determination that the Reportable Event exists. The report to the United States shall include the following information: (a) if the Reportable Event results in a substantial overpayment, the report to the United States shall be made at the same time as the notification to the payor required in Paragraph 22(a) and shall include all relevant information, including but not limited to the payor's name, address, and contact person to whom the overpayment was sent, and the date of the check and identification number (or electronic transaction number) by which the overpayment was repaid/refunded; (b) a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated; (c) a description of YFCS's and/or Southwood's actions taken to correct the Reportable Event; and (d) any further steps YFCS and/or Southwood plan(s) to take to address the



**Reportable Event and prevent it from recurring.**

**23. New Business Units Or Locations. In the event that, after the Effective Date of this Agreement, YFCS changes locations or sells, closes, purchases, transfers, or establishes a new business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs and are currently provided by Southwood through the Prosperity PRTFs, YFCS shall notify the United States of this fact as soon as possible, but no later than within 30 days after the date of change of location, sale, closure, purchase, transfer, or establishment. This provision shall include any situations where services currently provided by Southwood through the Prosperity PRTFs are, during the term of this Agreement, transferred to another subsidiary of YFCS. In the event of such a transfer, this Agreement will remain applicable to the transferred services, wherever provided. This notification shall include the address of the new business unit or location, phone number, fax number, Medicare Provider number (if any), provider identification number and/or supplier number, and the corresponding contractor's name and address that has issued each Medicare number (if any). Each such new business unit or location shall be subject to all of the requirements of this Agreement.**

**24. Annual Reports. The Defendants will submit to the United States Attorney's Office for the Eastern District of Pennsylvania, within thirty (30) days after the first, second, and third anniversary dates of this Agreement, Annual Reports regarding the status of Defendants' compliance with this Agreement. Each annual report shall include:**

**(a) any amendments or revisions to YFCS's Compliance Plan made during the preceding**

year and the reasons for such changes; (b) a description of the training programs implemented pursuant to this Agreement, including a description of the targeted audiences and a schedule of when the training sessions were held; (c) a summary of the findings of all reviews conducted pursuant to the requirements of this Agreement; (d) Defendants' response(s) and corrective actions taken regarding any issues raised by the IRO; and (e) a certification by the National Compliance Director that (to the best of his or her knowledge) all applicable persons have completed the training required under this Agreement, that (to the best of his or her knowledge) Defendants are in compliance with all of the requirements of this Agreement, and that he or she has reviewed the Annual Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

YFCS shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The parties agree that YFCS's obligation to identify "trade secrets and commercial or financial information obtained from a person and privileged and confidential," pursuant to 5 U.S.C. § 552(b)(4), does not waive or preclude the application of other appropriate exemptions from disclosure under FOIA, or the assertion by YFCS of privilege or confidentiality under any other applicable laws. YFCS shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

**25. Service of Reports and Notices.** Unless otherwise specified, all notifications and reports required by this Agreement may be made by certified mail, overnight mail, hand delivery, or other means provided that there is proof that such notification/report was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

**26. Remedies for Breach/Default.** In the event that Defendants, or either of them, fail(s) to comply in good faith with any of the terms of this Settlement Agreement, or should any of Defendants' representations or warrants be materially false, the United States may, at its sole discretion:

a. Seek specific performance of this Settlement Agreement, and the prevailing party shall be entitled to an award of reasonable attorney's fees and costs in its favor; or

b. Exercise any other right granted by law.

**27.** The Defendants warrant that they have reviewed their financial situations and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and that the Defendants shall remain solvent following their payment(s) to the United States of the Settlement Amount and following their expenditures that are necessary to carry out the terms of this Agreement. Further, the Defendants warrant that, in evaluating whether to execute this Agreement, they: (a) have intended that the mutual promises, covenants, and obligations that are set forth herein constitute a contemporaneous exchange for new value given to the Defendants, 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. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to represent, and do represent, a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which the Defendants, or any of them, were or was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

28. In the event that Southwood or YFCS or a third party commences, within 91 days of the effective date of this Agreement or any payment made under this Agreement, 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 Southwood's or YFCS' debts, or seeking to adjudicate YFCS or Southwood or any of their affiliates as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for YFCS or Southwood or for all or any substantial part of YFCS' and/or Southwood's assets, the Defendants agree as follows:

a. The Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547 or 548, and Defendants will not argue or otherwise take the position in any such case, proceeding, or action that: (i) YFCS' or Southwood's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) YFCS or Southwood was insolvent at the time this 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 Agreement do not constitute a contemporaneous exchange for new value given to the Defendants.

**b. In the event that Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Southwood or YFCS for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 8 above. If the United States chooses to do so, the Defendants agree that: (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Southwood and/or YFCS 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 that Southwood and YFCS will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Southwood and YFCS will 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 180 calendar days of written notification to Defendants that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the United States has a valid claim against Defendants for treble damages and penalties, and the United States may pursue its claim, among other ways, in the case, action, or proceeding referenced in the first sentence of this subparagraph 28(b), as well as in any other case, action, or proceeding.**

c. The Defendants acknowledge that their agreements in this Paragraph 28 are provided in exchange for valuable consideration in this Agreement.

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

30. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including for the preparation and performance of this Agreement, with the exception of reasonable and documented legal fees and costs incurred by the Relator, which shall be paid by Defendants pursuant to a separate resolution by agreement among Relator and the Defendants or as ordered by a Court of competent jurisdiction.

31. Defendants and the Relator represent that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion whatsoever.

32. The Parties agree that this Agreement does not constitute an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact. The Parties also agree that the performance under this Agreement of any of the obligations of the Defendants, their affiliates, divisions, subsidiaries, their predecessors, successors, assigns, transferees, and any of their current or former directors, officers, employees, or agents, shall not constitute nor be construed as an admission by any person or entity, with respect to any issue of law or fact.

**33. This Agreement constitutes the complete agreement among the Parties. This Agreement may not be amended except by written consent of the Parties, except that only the United States, YFCS, and Southwood must agree in writing to amendments to Paragraphs other than Paragraph 1, 8, 9, 10, 30, 31, and 38.**

**34. The laws of the United States govern this Agreement. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and/or among them under this Agreement will be the United States District Court for the Eastern District of Pennsylvania.**

**35. The undersigned individuals signing this Agreement on behalf of YFCS and Southwood represent and warrant that they are authorized by those entities to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.**

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

**37. This Agreement is binding upon the successors, transferees, heirs, and assigns of the Defendants.**

**38. YFCS, Southwood, and the Relator all consent to the United States' disclosure to the public of this Agreement and of information about this Agreement.**

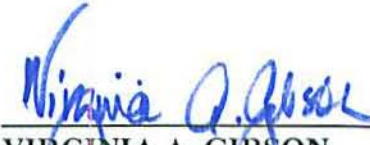
**39. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.**

THE UNITED STATES OF AMERICA


DATED: 4-22-09

BY:   
LAURIE MAGID  
United States Attorney

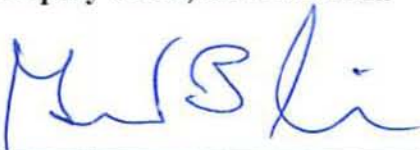
DATED: 4-22-09

BY:   
VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division

DATED: 4-22-09

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


DATED: 4-22-09

BY:   
GERALD B. SULLIVAN  
Assistant United States Attorney



**YOUTH AND FAMILY CENTERED SERVICES, INC.  
AND SOUTHWOOD PSYCHIATRIC HOSPITAL, INC.**

DATED: 4/14/09

BY: 

KEVIN SHEEHAN  
Chief Executive Officer,  
Youth and Family Centered Services, Inc.  
President,  
Southwood Psychiatric Hospital, Inc.  
1705 Capital of Texas Hwy. S.  
Suite 400  
Austin, TX 78746

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

ROBERT B. RAMSEY, III, Esquire  
Buchanan Ingersoll PC  
One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
(412) 562-3890  
(412) 562-1091 (fax)

Counsel for Youth and Family Centered  
Services, Inc. and Southwood  
Psychiatric Hospital, Inc.

**YOUTH AND FAMILY CENTERED SERVICES, INC.  
AND SOUTHWOOD PSYCHIATRIC HOSPITAL, INC.**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
KEVIN SHEEHAN  
*Chief Executive Officer,*  
Youth and Family Centered Services, Inc.  
*President,*  
Southwood Psychiatric Hospital, Inc.  
1705 Capital of Texas Hwy. S.  
Suite 400  
Austin, TX 78746

DATED: 4/14/09

BY: Robert B Ramsey III  
ROBERT B. RAMSEY, III, Esquire  
Buchanan Ingersoll PC  
One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
(412) 562-3890  
(412) 562-1041 (fax)  
  
Counsel for Youth and Family Centered  
Services, Inc. and Southwood  
Psychiatric Hospital, Inc.

**OFFICE OF INSPECTOR GENERAL,  
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES**

DATED:

4/14/09

BY:



**GREGORY E. DEMSKE**  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
U.S. Department of Health and Human Services

**RELATOR**

DATED: 17 April  
2009

BY: [Signature]  
STEFAN P. KRUSZEWSKI, Relator

DATED: 4/17/09

BY: Thomas L. Halkowski  
THOMAS L. HALKOWSKI, Esquire  
Fish & Richardson P.C.  
919 North Market Street  
Suite 1100  
Wilmington, DE 19899-1114  
(302) 652-5070  
(302) 652-0607 (fax)

Counsel for Relator Stefan P. Kruszewski