COLLECTIVE BARGAINING AGREEMENT (CBA) SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made by and between Service Employees International Union (SEIU) 775, SEIU Healthcare NW Health Benefits Trust, SEIU Healthcare NW Training Partnership, and the State of Washington, Department of Social and Health Services (DSHS or Department)(collectively the “Signatories”).

I. DEFINITIONS

As used in this Agreement, and for the purpose of this Agreement only, the following terms have the below-stated meanings:

1. This Settlement Agreement and Release is referred to as the “CBA Settlement Agreement.”

2. “Action” means M.T.E., et al. v. Department of Social and Health Services, et al., Cause No. 11-02-01209-1 in Thurston County Superior Court in which plaintiffs M.T.E. and Sheryl Wagner Houlihan allege that DSHS improperly denied benefits and breached its contracts with class members by applying the invalidated children’s assessment rule, WAC 388-106-0213.


4. “Settlement Amount” means the funds to be paid by the State of Washington to resolve the Action.

5. “M.T.E. Settlement Agreement” means the Settlement Agreement to resolve the Action between the M.T.E. Plaintiffs and the Department of Social and Health Services.

6. “CBA Released Claims” means any and all claims under the Collective Bargaining Agreements between the State of Washington and SEIU 775 from June 17, 2005-December 7, 2011, related to the Action and the Settlement Amount, including but not limited to claims for union dues or fees, claims for contributions to the SEIU Healthcare NW Health Benefits Trust or the SEIU Healthcare NW Training Partnership and any and all known or unknown actions, causes of action, claims, counterclaims, cross-claims, third-party claims, defenses, demands, off-sets, set-offs, damages, costs, fees, and expenses, arising from the Action and/or the Settlement Amount. Excluded from this release of claims are any CBA claims associated with this Action related to correcting cumulative career hours, adjustment of wage scale placement, back pay for any wages lost due to incorrect placement on the wage scale and the cash out value on any Paid Time Off owed as a result of incorrect accrual. These excluded claims are disputed claims. By agreeing to this exclusion, the Department does not admit, infer or imply that these claims have any merit whatsoever.
7. "SEIU 775" means Service Employees International Union 775, which acted as the sole collective bargaining representative and negotiated the collective bargaining agreements during all relevant periods of times for the Action.

8. The "Department" means the State of Washington, Department of Social and Health Services.

9. "SEIU Healthcare NW Health Benefits Trust" means the ERISA trust established by the State of Washington and SEIU 775 to receive contributions from the State of Washington and other participating employers to provide health benefits to Individual Providers and other participating home care workers.

10. "SEIU Healthcare NW Training Partnership" means the ERISA trust established by the State of Washington and SEIU 775 to receive contributions from the State of Washington and other participating employers to provide training benefits to Individual Providers and other participating home care workers.

II. RECITALS

1. From June 17, 2005 to December 7, 2011, the time period that WAC 388-106-0213 was in effect, SEIU 775 acted as the exclusive collective bargaining representative for the Settlement Provider Class and negotiated the respective collective bargaining agreements ("CBAs"). The applicable CBAs required that the Department deduct from the payments to bargaining unit members the dues required for Union membership, or, for nonmembers of the Union, a fee equivalent to the dues. The applicable CBAs also required the Department to make contributions on behalf of bargaining unit members to the SEIU Healthcare NW Health Benefits Trust and, for part of the class period, to the Training Partnership.

2. SEIU 775, the SEIU Healthcare NW Health Benefits Trust and the SEIU Healthcare NW Training Partnership take the position that each is entitled to dues, fees and contributions arising out of the claims asserted in the Action. The Department disputes this position.

In consideration of the mutual promises and benefits conferred herein, the Parties agree as follows:

III. AGREEMENT

1. Effective Date. The date of this Agreement shall become effective on the same date that the M.T.E. Settlement Agreement becomes effective. See M.T.E. Settlement Agreement, ¶ 1.10.

2. Court Approval. The Parties recognize and acknowledge that because this CBA Settlement Agreement settles potential claims against the Settlement Amount and because the Court has jurisdiction and oversight over the M.T.E. Settlement Agreement, this CBA Settlement Agreement is also subject to Court approval as part of the preliminary and final approval process in the Action.
3. Disclosure of Provider Class List. If the M.T.E. Settlement Agreement is approved by the Court, the Parties agree that the Union may receive from the Claims Administrator a copy of the Settlement Provider Class list to be provided to the Claims Administrator by the Department under the M.T.E. Settlement Agreement, § 6.4.4.1.2. This agreement does not waive any objection Plaintiffs may have to the Union obtaining that list from the Claims Administrator. The Parties to the underlying lawsuit herein may agree to seek a protective order for the list.

4. Payment. If the M.T.E. Settlement Agreement is approved by the Court, SEIU 775 will receive $115,000 from the Settlement Amount (“Union payment”). SEIU Healthcare NW Health Benefits Trust will receive $30,000 from the Settlement Amount (“Health Benefits Trust payment”). SEIU Healthcare NW Training Partnership will receive $5,000 from the Settlement Amount (“Training Partnership payment”). SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership each agrees that the Union Payment, Health Benefits Trust Payment and the Training Partnership Payment shall constitute full and complete satisfaction of any dues, fees and contributions owing under the respective CBAs as a result of payment of the Settlement Amount in the M.T.E. Settlement Agreement. SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership each acknowledges and agrees that the source of the funds to pay for the Union, Health Benefit Trust and Training Partnership Payments shall be solely from the Settlement Amount and that this CBA Settlement Agreement in no way creates individual liability on the part of any class member. The Union, Health Benefit Trust and Training Partnership payments will not be characterized by Defendants as wages and no class members will be apportioned any part of the settlement for tax purposes.

5. Termination. If the M.T.E. Settlement Agreement is not preliminarily or finally approved by the Court, this CBA Settlement Agreement shall automatically terminate and thereupon become null and void.

6. Releases: The Signatories agree that payment of the Union, Health Benefit Trust and Training Partnership Payments, as stated in Paragraph III.4 above, satisfies all Claims between the Signatories related to the Action, except those disputed Claims expressly excluded, and the M.T.E. Settlement Agreement approved and entered by the Court. Unless expressly excluded in Paragraph II.6, above upon Final Approval of the M.T.E. Settlement Agreement by the Court and payment of the Dues, Health Contributions and Training Contributions Settlement amounts stated in Paragraph III.4 above, each Signatory shall be deemed to have released all other Signatories and their attorneys from any Claims, contractual or not, known or unknown, past or present, or whether asserted in the Action or not, arising out of or relating in any way to dues, fees and/or contributions under the CBAs arising from the Department’s payment of the Settlement Amount, including any fees or expenses that could be sought in relation to any such Claims.

7. No “Third Party Claims”: SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership acknowledge that no “third party” is an intended “third-party beneficiary” of the Department’s contractual obligation to transmit dues, fees and/or contributions to them, and further states that SEIU 775, SEIU Healthcare NW Health Benefits Trust and SEIU Healthcare NW Training Partnership have not assigned or transferred any rights to any “third party” for dues, fees and/or contributions arising from the Department’s payment of the Settlement Amount.
8. **Protective Order.** The signatories agree that class counsel, on behalf of the class members in *M.T.E. v. DSHS*, may seek from the Court, without opposition, a protective order covering at least: all personal and confidential material provided to and/or relied upon by the Claims Administrator to make claims determinations, including but not limited to (a) protected material in guardianship files; b. Medicaid billing data, and/or private pay billing data; c. the names, addresses, phone numbers, social security numbers and DSHS identification numbers of members of either class, claim forms submitted by them and any other personal information relating thereto; d. all Medicaid client information; and e. other material protected by federal or state statute or regulation or court rule.

9. **Specifically Enforceable.** The Signatories agree that all the provisions herein may be specifically enforced by a court.

10. **Binding Agreement.** This Agreement shall be binding upon the Signatories hereto and their respective successors, heirs, legal representatives and assigns.

11. **Complete Agreement.** This Agreement is a full and complete integration of the Signatories’ agreement, and there are no promises, covenants, or representations concerning the subject of this Agreement not contained herein.

12. **Read and Understood; Advice of Counsel.** Each of the Signatories has read and fully understands this Agreement, relied wholly upon its own judgment, beliefs and knowledge of the nature of the potential Claims or offsets against the Settlement Amount for dues and fees under the respective CBAs, and has consulted and has been advised by independent counsel with respect to the terms in effect hereof.

13. **Attorney Fees and Costs.** Should any complaint be filed or any claim be made arising out of the alleged breach of any of the provisions of this Agreement, the Signatories agree that the “prevailing party” shall be entitled to reasonable attorneys’ fees and expenses arising from any such action.

14. **Nontransfer of Claims.** Each of the Signatories specifically warrants that it has not assigned or transferred any claim or part or portion of a claim released herein, nor has it given security interest in such claim or portion of a claim.

15. **Duty to Execute Further Necessary Documentation.** The Signatories agree to cooperate fully and to execute all documentation that may be necessary to implement the terms of this Agreement. This provision is supplementary to, and not in derogation of, the provisions of this Agreement.

16. **Severability.** In the event any term or provision is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions, which terms and provisions shall remain binding and enforceable.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and, which taken together, shall constitute a single instrument.

18. **Construction of Agreement.** This Agreement has been jointly drafted by
the Signatories following negotiations. It shall be construed according to the fair intent of the language as a whole, and not for or against any party.

19. **Choice of Law.** This Agreement shall be interpreted in accordance with the laws of the State of Washington. Venue for any disputes arising under this Agreement shall be in Thurston County Superior Court.

20. **Authority to Execute.** Each of the undersigned represents and warrants that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement and that this Agreement is valid, binding, and enforceable against the party on whose behalf he/she signed.

IN WITNESS WHEREOF, the SIGNATORIES, by and through their respective duly authorized representatives, affix their signatures hereto as of the dates indicated.

FOR SEIU 775:

By: [Signature]

[Signature]

ADAM GLICKMAN

Its: Secretary-Treasurer for SEIU 775

Dated: 10/30/15

FOR THE DEPARTMENT:

By: [Signature]

John K. McIlhenny, Jr, WSBA No. 32195

Washington Attorney General's Office

Its: Assistant Attorney General

Dated: ______________________________

FOR SEIU HEALTHCARE NW TRAINING PARTNERSHIP AND SEIU HEALTHCARE NW HEALTH BENEFITS TRUST

: By: [Signature]

SETTLEMENT AGREEMENT AND RELEASE - PAGE 5 OF 5
[Signature]

RICHARD E. LEIGH, JR.

Their: General Counsel

Dated: 12/3/15