

## AGREEMENT TO SETTLE CLAIMS

*D.T., by and through his parents, K.T. and W.T., on his own behalf and on behalf of similarly situated individuals v. NECA-IBEW Family Medical Care Plan, the Board of Trustees of the NECA/IBEW Family Medical Care Plan, Salvatore J. Chilia, Robert P. Klein, Darrell L. McCubbins, Geary Higgins, Lawrence J. Moter, Jr., Kevin Tighe, Jerry Sims, and any other individual member of the Board of Trustees of NECA/IBEW Family Medical Care Plan*

*No. 2:17-cv-00004-RAJ U.S. District Court, Western District of Washington at Seattle*

This Agreement to Settle Claims (“Agreement”) is between plaintiff D.T., by and through his parents K.T. and W.T. (“Named Plaintiffs”), the “Settlement Class” (as defined in Section 1.9), and defendants NECA-IBEW Family Medical Care Plan (the “Plan”) and the Board of Trustees of the NECA/IBEW Family Medical Care Plan, Salvatore J. Chilia, Robert P. Klein, Darrell L. McCubbins, Geary Higgins, Lawrence J. Moter, Jr., Kevin Tighe, Jerry Sims, and any other individual member of the Board of Trustees of NECA/IBEW Family Medical Care Plan (“Trustees”) (collectively, “Defendants”). Named Plaintiffs and Defendants are referred to collectively as the “Parties.” This Agreement is a full expression of the agreements between the Parties.

### RECITALS

This Agreement is made with reference to the following facts:

1. Named Plaintiffs allege that Defendants violated the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“Federal Mental Health Parity Act”) and breached their fiduciary duties by excluding coverage and benefits under the Developmental Delay Exclusion of the Plan for Applied Behavioral Analysis therapy (“ABA” or “ABA therapy”) to treat Autism Spectrum Disorder (“ASD”) and for neurodevelopmental therapy (speech, occupational and physical therapies) (“NDT”) for the treatment of ASD and other developmental Qualified Mental Health Conditions. Defendants categorically deny these allegations. The action, brought in the United States District Court for the Western District of Washington, seeks relief on behalf of a class of similarly situated participants and beneficiaries in the Plan.
2. Pursuant to a CR 2A Agreement entered into on January 10, 2020, the Parties wish to resolve all claims with respect to coverage of or benefits for ABA and NDT for Named Plaintiffs and the proposed Settlement Class Members.

### AGREEMENT

#### **1. Definitions.**

- 1.1 “ABA,” “ABA therapy,” or “Applied Behavioral Analysis services” shall mean: the design, implementation and evaluation of environmental modifications, using behavioral interventions for the treatment of ASD. The goal of the therapy is to produce clinically significant improvements in

core deficits associated with ASD (*i.e.*, significant issues with communication, social interaction or injurious behaviors). It includes the use of direct observation, measurement and functional analysis of the relationship between the environment and behavior and uses behavioral stimuli and consequences. ABA therapy to treat ASD shall be considered a treatment for a “Mental or Nervous Disorder” under the terms of the Plan.

- 1.2 “*Action*” shall mean *D.T. et al. v. NECA-IBEW Family Medical Care Plan, et al.*, Case No. 2:17-cv-00004-RAJ, a class action pending in the United States District Court for the Western District of Washington.
- 1.3 “*Agreement Execution Date*” shall mean: the date on which the last signatory has signed this Agreement.
- 1.4 “ASD” shall mean: a diagnosis of an Autism Spectrum Disorder under DSM-IV-TR 299.0, 299.10 or 299.80 and/or DSM-V 299.0, and/or ICD-10 F84x or any subsequent revisions thereto.
- 1.5 “*Claims Processor*” shall mean: NECA-IBEW Family Medical Care Plan office staff.
- 1.6 “*Case Contribution Award*” shall mean: any monetary amount awarded by the Court in recognition of the Named Plaintiffs’ assistance in the prosecution of this Action and payable pursuant to Section 12.2.
- 1.7 “*Settlement Class Released Claims*” shall mean: any and all claims of any nature whatsoever that were brought, or that could have been brought against the Releasees, by the Named Plaintiffs on behalf of the Settlement Class Members relating to the coverage of or benefits for ABA and NDT services for the treatment of ASD and/or other developmental qualified mental health conditions, including but not limited to claims for any and all benefits, losses, opportunity losses, damages, attorneys’ fees, costs, expenses, costs of other coverage, contribution, indemnification or any other type of legal or equitable relief, claims under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and claims under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“Federal Mental Health Parity Act”). In the event Defendants reimpose exclusions or restrictions after November 1, 2025, however, claims relating to any such exclusions or limitations after November 1, 2025 are not released.
- 1.8 “*Class Counsel*” shall mean: SIRIANNI YOUTZ SPOONEMORE HAMBURGER, PLLC.
- 1.9 “*Settlement Class Members*” or “*Settlement Class*” shall mean: All individuals who: (1) have been, are or will be participants or beneficiaries under the NECA-IBEW Family Medical Care Plan at any time between January 4, 2011 and March 31, 2021, inclusive; and (2) while they were eligible for benefits under the Plan and during the Settlement Class Period incurred out-of-pocket expenses or incurred but not yet paid expenses for neurodevelopmental therapy (speech, occupational or physical therapy) or

- applied behavior analysis therapy to treat a “Qualified Mental Health Condition” (see Section 1.19 below).
- 1.10 “*Settlement Class Period*” shall mean January 4, 2011 through March 31, 2021, inclusive.
- 1.11 “*Court*” shall mean the United States District Court for the Western District of Washington.
- 1.12 “*Defendants*” shall mean: The NECA-IBEW Family Medical Care Plan the Board of Trustees of the NECA/IBEW Family Medical Care Plan, Salvatore J. Chilia, Robert P. Klein, Darrell L. McCubbins, Geary Higgins, Lawrence J. Moter, Jr., Kevin Tighe, Jerry Sims, and any other individual member of the Board of Trustees of NECA/IBEW Family Medical Care Plan.
- 1.13 “*Developmental Delay Exclusion*” shall mean, for the purposes of this Agreement and as used in Section 8.1, Section 3.1.B.7 of Defendants’ Plan of Benefits and applicable Summary Plan Descriptions.
- 1.14 “*Effective Date*” shall mean: the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or waived.
- 1.15 “*Final*” shall mean: The Settlement contemplated under this Agreement shall become “Final” thirty (30) days after any and all appeals periods applicable to the Action have expired and no other proceeding for review of the Action has been initiated.
- 1.16 “*Named Plaintiffs*” shall mean: [REDACTED] (“D.T.”) and his parents [REDACTED] (“K.T.”) and [REDACTED] (“W.T.”).
- 1.17 “*Neurodevelopmental therapy*” or “*NDT*” shall mean speech, occupational and physical therapies provided to treat Qualified Mental Health Conditions.
- 1.18 “*Parties*” shall mean: Named Plaintiffs and Defendants.
- 1.19 “*Qualified Mental Health Condition*” shall mean a condition listed in Appendix A to this Settlement Agreement and excluded under the Plan’s Development Delay Exclusion.
- 1.20 “*Releasees*” shall mean: Defendants and each of their affiliates, subsidiaries, parents, fiduciaries, trustees, recordkeepers, partners, attorneys, administrators, representatives, agents, directors, officers, employees, insurers, reinsurers, predecessors, actuaries, vendors, service providers, agents, and the successors-in-interest of each.
- 1.21 “*Reimbursement Claim*” as used herein shall mean a claim for NDT and/or ABA services to treat a Qualified Mental Health Condition, which is submitted for reimbursement as a part of this Settlement Agreement that was (a) previously submitted and denied under the Plan’s Developmental Delay Exclusion, during the Settlement Class Period, and verified that it subsequently was not paid by another payor, entity, plan, or person; (2) not

previously submitted to the Defendants for consideration, and an uncovered, incurred, out-of-pocket expense related to ABA and/or NDT therapy to treat a Qualified Mental Health Condition during the Settlement Class Period, or (3) out-of-pocket expenses incurred (co-payments and deductibles) related to alternative insurance obtained and paid for to provide coverage for ABA and/or NDT therapies to treat a Qualified Mental Health Condition during the Settlement Class Period.

- 1.22 “*Settlement*” shall mean: the settlement to be consummated under this Agreement.
- 1.23 “*Settlement Amount*” shall mean: the sum of \$1,700,000.00, which shall be the maximum amount of Reimbursement Claims to be paid from the Plan’s existing VEBA Trust to Settlement Class Members.
- 1.24 “*Taxes*” shall mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

## **2. *Conditions to Effectiveness of the Settlement.***

- 2.1 *General.* The Settlement provided for in this Agreement shall become effective when each and every one of the following conditions in Sections 2.2 and 2.3 have been satisfied or waived.
- 2.2 *Court Approval.* The Settlement contemplated under this Agreement shall be approved by the Court as provided herein. The Parties agree jointly to recommend to the Court that it approve the terms of the Agreement and the Settlement contemplated hereunder. The Parties agree to promptly take all steps and efforts contemplated by the Agreement, including facilitating or completing the following:
  - 2.2.1 *Certification of Settlement Class.* The Court shall have certified the Settlement Class for settlement purposes only. Class Counsel shall make a motion for certification of the Settlement Class under Federal Rule of Civil Procedure 23(b)(1) as part of the motions to approve this Agreement. In agreeing to the certification of this class for settlement purposes, Defendants do not admit that the Named Plaintiffs could have met the requirements for class certification for this particular class under Rule 23 in the normal course of the litigation.
  - 2.2.2 *Motion for Preliminary Approval and Notices.* The Court shall have preliminarily approved the Agreement (“Preliminary Approval Order”), authorized the issuance of notice (“Settlement Class Notice”) to participants and beneficiaries enrolled in the Plan at any time from January 4, 2011 and March 31, 2021, inclusive, who have

submitted claims to the Plan with a Qualified Mental Health Condition during the Settlement Class Period (“Settlement Class Notice Recipients”). The Class Notice shall be in a form agreed upon by the parties. In the event that the parties do not agree upon the form of a Class Notice, they will “meet and confer” to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, then the Court will decide the content of the Notice. Class Counsel shall make a motion for preliminary approval, authorization to send the Settlement Class Notice, and for approval of and continuing jurisdiction over the proposed settlement claims process (“Preliminary Motion”). The order for preliminary approval shall be in a form agreed upon by the parties. In the event that the parties do not agree upon the form of the order for preliminary approval, they will meet and confer to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, the parties may submit competing forms of the order to the Court. The Court must approve the form of the Settlement Class Notice and conclude that the notice to be sent fairly and adequately describes the terms of the Agreement, including the estimated attorneys’ fees and litigation costs to be sought by Class Counsel. The Settlement Class Notice must also establish a deadline for Class Counsel to move for payment of attorney fees and litigation costs, give notice of the time and place of the hearing for final approval of the Settlement, and describe how a Settlement Class Member may comment on, object to, or support the Settlement.

2.2.3 *Issuance of Settlement Class Notice.* By the date and in the manner set by the Court in its Preliminary Approval Order, Defendants shall have caused the Court-approved notice to be delivered to the relevant Settlement Class Members.

2.2.3.1 Defendants, at their expense, shall cause the Settlement Class Notice to be issued to all Settlement Class Notice Recipients by direct first-class United States mail, forwarding requested.

2.2.3.2 Class Counsel shall create a webpage on the firm website which contains at least the following material:

- a. A description of the Action, including a summary of the litigation.
- b. The Settlement Class definition.
- c. A timeline and schedule of events, including deadlines for submitting claims, and objecting.

- d. how to contact class counsel for additional information;
- e. Settlement documents, or links to documents, including:
  - i. Settlement Class Notice;
  - ii. instructions to claim forms;
  - iii. claim forms;
  - iv. motions for preliminary approval; and
  - v. all court orders on preliminary approval.
- f. Litigation documents, or links to documents, including:
  - i. Plaintiff's complaint; and
  - ii. Defendants' answer.
- g. Updates. The webpage shall be updated as the following become available:
  - i. Class counsel's application(s) for attorney fees, costs and Case Contribution Award (with all supporting materials); and
  - ii. Motion(s) for Final Approval of the settlement (including any objections and class counsel's response to those objections).

2.2.4 *Fairness Hearing.* On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in a hearing ("Fairness Hearing") during or after which the Court will determine by order (the "Final Order") whether: (i) the proposed Settlement between the Parties is fair, reasonable and adequate and should be approved by the Court; (ii) final judgment should be entered ("Judgment"); (iii) the requirements of Rule 23 and due process have been satisfied in connection with the distribution of the Settlement Class Notice; (iv) to approve the payment of attorney fees and costs to Class Counsel and a Case Contribution Award as set forth herein, pursuant to Sections 12.1 and 12.2; and (v) that notice to the appropriate state and federal officials has been provided as required by CAFA through the mailing of the CAFA Notice and that Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715. The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Order at the Fairness

Hearing which contains the terms described herein and will not do anything inconsistent with obtaining such a Final Order.

2.2.5 *Motions for Final Approval.* On the date set by the Court in its Preliminary Approval Order, Named Plaintiffs shall have filed a motion (“Final Approval Motion”) for a Final Order which contains the terms described herein. The Parties shall confer on the terms of the Final Order that Named Plaintiffs will propose to the Court.

2.3 *No Termination.* The Settlement shall not have terminated pursuant to Section 10.

### 3. ***Releases.***

3.1 *Releases of the Releasees.* Upon the Effective Date of Settlement, Named Plaintiffs, on their own behalf and, to the full extent permitted by law, on behalf of the Settlement Class Members, absolutely and unconditionally release and forever discharge Releasees from any and all Settlement Class Released Claims that Named Plaintiffs or the Settlement Class have directly, indirectly, derivatively, or in any other capacity ever had or now have whether known or unknown, supported or unsupported. Provided, however, that in the event Defendants reimpose exclusions or restrictions after November 1, 2025, claims relating to any such exclusions or limitations that may be imposed are not released.

3.2 Settlement Class Members shall be conclusively deemed to have covenanted not to sue Releasees for any and all Settlement Class Released Claims and shall forever be enjoined and barred from asserting any Settlement Class Released Claims. This in no way applies to any action taken by the Named Plaintiffs or Settlement Class Members to enforce the terms of the Agreement. Provided, however, that in the event Defendants reimpose exclusions or restrictions after November 1, 2025, claims relating to any such exclusions or limitations that may be imposed are not released. In addition, this release does not impact the claims of participants and beneficiaries in the NECA-IBEW Family Medical Care Plan who required ABA and/or NDT services to treat their Qualified Mental Health Conditions during the Class Period, but who did *not* incur an out-of-pocket expense related to those services.

3.3 *Defendants’ Releases of Named Plaintiffs, the Settlement Class, and Class Counsel.* Upon the Effective Date of Settlement, Defendants, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class Members and Class Counsel from any and all claims based on the institution or prosecution of the Action.

3.4 Defendants shall be conclusively deemed to have covenanted not to sue Named Plaintiffs, the Settlement Class Members and Class Counsel for any and all such released claims relating to institution or prosecution of the Action. This in no way applies to any action taken by Defendants to enforce the terms of the Agreement.

**4. *Representations and Warranties.***

4.1 *The Named Plaintiffs.* Named Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Settlement Class Released Claims against any Releasees, and further covenant that they will not assign or otherwise transfer any interest in such claims.

4.2 *The Parties.* The Parties, and each of them, represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations; in executing this Agreement they are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement, and all of the matters pertaining thereto as they deem necessary or appropriate; and this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other person does hereby represent and warrant to the other parties that he or she has the authority to do so.

4.3 *Settlement Class Members.* As a condition of receiving any monetary payment pursuant to this Agreement, a Settlement Class Member must represent and warrant, as part of the claims process, that he or she (1) has not assigned or otherwise transferred any interest in any Settlement Class Released Claims against any Releasees, (2) will not do so until they have received payment pursuant to this Agreement and the claims against the Releasees have been released, and (3) the out-of-pocket expenses submitted as part of the claims process have not been paid by any other entity, payor, plan or person.

**5. *No Admission of Liability.*** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any liability or wrongdoing by any of the Releasees. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an



action or proceeding to enforce this Agreement or arising out of or relating to the Final Order and motions for preliminary and final approval.

**6. Coverage Agreements.**

- 6.1 *Removal of Qualified Mental Health Conditions from the Developmental Delay Exclusion.* No later than April 1, 2021, Defendants shall amend the Plan's Plan of Benefits to remove all Qualified Mental Health Conditions from exclusion under the Plan's Art. 3, Section 3.1.B.7, also known as the "Developmental Delay Exclusion." The Plan of Benefits, Art. 10, Section 10.6.B(10)(b) shall also be amended to allow coverage of occupational therapy for the treatment of Qualified Mental Health Conditions. Defendants shall also amend the Plan of Benefits, Art. 10, Section 10.6.B(11) to remove the limitation on coverage of Speech Therapy to coverage for only to "restore speech abilities lost due to stroke or trauma.," and apply the same limitations for both medical/surgical and mental health conditions. Defendants shall also make the corresponding changes to the Plan's Summary Plan Descriptions. Defendants shall direct all third-party administrators and contractors to cease administering the Developmental Delay Exclusion to apply to Qualified Mental Health Conditions. Defendants shall provide Class Counsel with a copy of the amendment(s) to the Plan of Benefits within 30 days of the effective dates of the Amendments. The removal shall be effective no later than April 1, 2021. Defendants shall notify plan participants and enrollees that they may submit claims for coverage of ABA and NDT to treat Qualified Mental Health Conditions as of April 1, 2021. However, Defendants shall have the full authority and right to amend the Plan without restriction as a result of this Agreement after November 1, 2025. Plaintiffs and Settlement Class Members shall have full authority and the right to sue Defendants if any subsequent amendment does not comport with the law.
- 6.2 *Amended Coverage of NDT services.* Defendants agree to cover neurodevelopmental therapies (speech, occupational and physical therapies) to treat Qualified Mental Health Conditions as "Mental or Nervous Disorder Treatment" in the Plan when approved by the Defendants' qualified third-party administrator as medically necessary, and subject to utilization review, authorized treatment plans, preauthorization requirements and contracting with and using a network of participating providers, to the extent authorized by the terms of the Plan and law, as of April 1, 2021 and continuing at least through November 1, 2025. Nothing in this provision limits the ability and right of the Plaintiff or a Class Member to challenge any coverage determination made by Defendants or their qualified third-party administrator relating to requests for coverage after April 1, 2021, pursuant to the Plan's appeal process.
- 6.3 *Coverage of ABA Therapy.* Defendants agree to cover ABA therapy for ASD as a "Mental or Nervous Disorder Treatment" in the Plan when

approved by the Defendants' qualified third-party administrator as medically necessary, and subject to utilization review, authorized treatment plans, preauthorization requirements and contracting with and using a network of participating providers to the extent authorized by the terms of the Plan and law, as of April 1, 2021 and continuing at least through November 1, 2025. Nothing in this provision limits the ability and right of the Plaintiff or a Class Member to challenge any coverage determination made by Defendants or their qualified third-party administrator relating to requests for coverage after April 1, 2021, pursuant to the Plan's appeal process. Defendants shall amend or modify Art. 1, Section 1.38 of the Plan of Benefits to include providers of ABA therapy, such as Board-Certified Behavior Analysts and Behavior Technicians.

6.4 *Certain Limitations and Exclusions Prohibited.* Effective April 1, 2021 and continuing through at least November 1, 2025, subject to and to the extent required by this Agreement, Defendants agree not to use the following automatic exclusions or limitations for ABA therapy to treat ASD and/or NDT to treat Qualified Mental Health Conditions; however, coverage of such services or claims may be subject to utilization review, authorized treatment plans, preauthorization requirements and contracting with and using a network of participating providers to the extent authorized by the terms of the Plan and law, as noted in Sections 6.2 and 6.3:

6.4.1 *Age Exclusion.* Defendants agree that they will not automatically deny ABA and/or NDT coverage for Qualified Mental Health Conditions by asserting that an individual's age automatically disqualifies him or her from coverage. This subsection does not prohibit the Defendants from considering age as one factor in a recognized, clinically appropriate standard of care.

6.4.2 *Treatment Limitations.* Defendants agree that they will not impose treatment limitations, such as visit or dollar limitations, on ABA and/or NDT coverage for Qualified Mental Health Conditions except to the extent permitted by the Federal Mental Health Parity Act, including its related regulations. Specifically, Defendants agree that they will not impose treatment limitations on ABA and/or NDT for Qualified Mental Health Conditions, except to the extent such limitations are imposed on substantially all major medical coverage.

6.4.3 *Habilitative Exclusion.* Defendants shall not automatically deny or limit ABA and/or NDT coverage for Qualified Mental Health Conditions based upon a habilitative exclusion. This section

does not prohibit Defendants' ability to limit treatment due to the practices described in Sections 6.2 and 6.3.

- 6.4.4 *Clinic-based Exclusion.* Defendants agree that they will not automatically deny ABA and/or NDT coverage for Qualified Mental Health Conditions solely on the basis that the therapy is provided in a home or community-based setting, rather than in a professional office or clinic. This section does not prohibit Defendants' ability to deny treatment due to the practices described in Sections 6.2 and 6.3.
- 6.4.5 *Academic or Educational Exclusion.* Defendants shall not automatically deny or limit ABA and/or NDT coverage for Qualified Mental Health Conditions based solely upon an "academic" or "educational" exclusion. This section does not prohibit Defendants' ability to deny treatment due to the practices described in Sections 6.2 and 6.3.
- 6.4.6 *Experimental/Investigational Exclusion.* Defendants shall not automatically deny or exclude ABA and/or NDT coverage for Qualified Mental Health Conditions based upon an "experimental" or "investigational" exclusion. This section does not prohibit Defendants' ability to deny treatment due to the practices described in Section 6.2 and 6.3.
- 6.4.7 *Specific Exclusions.* Defendants agree that they will not create any exclusions automatically denying ABA and/or NDT coverage for Qualified Mental Health Conditions to participants or beneficiaries, except to the extent permitted by the Federal Mental Health Parity Act, including its related regulations and guidance and other applicable law.

6.5 *Evaluation of Medical Necessity and Access to IRO procedures.*

- 6.5.1 *Medical Necessity.* Nothing herein shall be construed to require coverage for ABA and/or NDT for treatment of a Qualified Mental Health Condition that is not medically necessary for the treatment of a particular individual or not required by the other terms and conditions of the Plan.
- 6.5.2 *Independent Review Organization ("IRO") Rights Preserved.* Nothing herein, or in any clinical review criteria, shall be construed to limit the right of a participant or beneficiary to seek an independent review of any denial of ABA and/or NDT for treatment of a Qualified Mental Health Condition to the extent that the participant or beneficiary has that right under the Plan

or the law. Defendants agree to comply with existing law regarding notification of participants and beneficiaries in any denial of coverage for ABA and/or NDT for treatment of a Qualified Mental Health Condition of their appeal rights, including the right to seek an IRO to the extent that right exists under the Plan or the law.

- 6.6 *Management of Care Permitted.* Nothing herein shall be construed to modify or limit the Defendants' obligations and/or ability to manage care or utilization, or to employ care management techniques for mental health services, including but not limited to medical necessity determinations, authorized treatment plans; preauthorization requirements based on the type of service; concurrent and retrospective utilization review; utilization management practices, discharge coordination, and planning; contracting with and using a network of participating providers, using a qualified provider and coordination of benefits, to the extent authorized by the terms of the Plan and law. Defendants agree to utilize the provider network and clinical coverage criteria of Anthem/Blue Cross Blue Shield of Georgia or that of another third-party administrator. In the event that medical management cannot be put in place by April 1, 2021, the parties shall work together to ensure that participants and beneficiaries are provided with the benefit until medical management is in place.
- 6.7 *Permissible Changes in Coverage.* Defendants may alter coverage of ABA and/or NDT services for Qualified Mental Health Conditions under this Agreement if any of the conditions listed below occur. Such alteration of coverage shall not be an event of termination or a violation of this Agreement and is subject to this Agreement. If such alteration occurs within one year after the Effective Date of this Settlement Agreement, Defendants shall provide notice of any such change to Class Counsel at least 30 days prior to implementation or within a reasonable time given the circumstances.
- 6.7.1 If applicable federal or state law legislation or regulation regarding coverage of ABA and/or NDT services for treatment of a Qualified Mental Health Condition changes in any manner that would make the terms of this Agreement a violation of the law, Defendants shall alter coverage in order to comply with the law.
- 6.7.2 If the Federal Mental Health Parity Act is repealed or modified in any manner that creates legal or coverage obligations that differ from the terms of this Agreement, the Defendants may alter coverage of ABA and/or NDT services for the treatment of a Qualified Mental Health Condition as long as changes comply with the Federal Mental Health Parity Act after its modification

or other existing federal law in place after any repeal of the Federal Mental Health Parity Act. In the event of the repeal or modification of the Federal Mental Health Parity Act, such alterations could include the elimination of the coverage for ABA and/or NDT by Defendants, or the expansion of coverage.

6.7.3 If new evidence-based, clinical best practices result in treatments at least as effective as ABA in treating ASD, Defendants may choose to cover such treatments instead of ABA.

6.7.4 If new peer-reviewed scientific literature demonstrates that any expected harmful effects outweigh expected beneficial effects for ABA and/or NDT services for the particular condition for which it has been prescribed to treat.

6.7.5 If the Plan is changed to no longer provide mental health benefits, whether through modification or termination of the Plan.

6.8 *Modification of Releases if Defendants Alter Coverage.* In the event that Defendants change or alter their coverage of ABA and/or NDT services for treatment of a Qualified Mental Health Condition pursuant to Section 6.7, then Named Plaintiffs and all Settlement Class Members at the time of the change or alteration shall, notwithstanding any releases provided in this Agreement, be permitted to seek any relief, including legal or equitable relief, regarding conduct on or after the date of such change or alteration in order to challenge Defendants' decision to invoke this section.

**7. Coverage Modification Based on Subsequent Judicial Decisions and Statutory/Regulatory Changes.**

7.1 *Reduction or Elimination of Coverage Obligations.* In the event an applicable statute, regulation, or Final Decision from the Ninth Circuit Court of Appeals or the Supreme Court of the United States reduces or eliminates some or all of Defendants' obligations to cover ABA and/or NDT to treat Qualified Mental Health Conditions, Defendants may reduce or eliminate the coverage as stated herein to that required by the Federal Mental Health Parity Act, including its related regulations or Final Decision. A Final Decision is a decision of the Supreme Court of the United States or a decision by the Ninth Circuit Court of Appeals that is not appealed within the time permitted for such appeals or that, if appealed, is not accepted for review.

7.2 *Increase in or New Coverage Obligations.* In the event an applicable statute, regulation, or Final Decision from the Ninth Circuit Court of Appeals or the Supreme Court of the United States increases or imposes

new obligations to cover ABA and/or NDT to treat Qualified Mental Health Conditions beyond those required herein Defendants must provide the coverage required by the statute, regulation, or Final Decision to the extent required by the Federal Mental Health Parity Act, including its related regulations.

- 7.3 *Amicus Permitted.* This Agreement does not restrict the right of the Parties to seek amicus status in any case for any issue. The Parties also reserve all rights to assert any arguments in any amicus brief they do file.

## **8. *Reimbursement Claims Processing***

- 8.1 *Reimbursement Claims Processing.* The Claims Processor shall undertake two types of Reimbursement Claims processing: (a) reprocessing of previously denied Reimbursement Claims and (b) processing of Reimbursement Claims never previously submitted to the Plan for treatment during the Settlement Class Period.
- 8.2 *Reprocessing of Previously Denied Reimbursement Claims.* ABA and NDT therapy claims to treat a Qualified Mental Health Condition denied by Defendants based upon the Developmental Delay Exclusion from January 4, 2011 to March 31, 2021 shall be reprocessed and paid by the Plan pursuant to the terms of the Plan, but without applying any medical management criteria, policies or other requirements that were not articulated during the original processing as a reason for denial. Class members who submitted claims to the Plan, or had claims submitted on their behalf, will only be required to verify the accuracy of these claims using a pre-printed populated claim form provided to them by the claims processor as part of the notice material and verify that the out-of-pocket expenses related to the claims were paid by the Class Member or an incurred but not yet paid expenses for ABA and NDT therapies and have not been paid or reimbursed, or subject to reimbursement by any another entity, payor, plan, or person and were not waived or excused. Verification can occur by returning the completed claim form in a pre-addressed, postage paid envelope. This process must be designed to be as simple and straightforward as possible for class members.
- 8.3 *Processing of Previously Uncovered and Unsubmitted Reimbursement Claims.* Settlement Class Members with previously unsubmitted claims for expenses related to uncovered ABA and NDT therapies to treat a Qualified Mental Health Condition incurred during the Settlement Class Period shall be entitled to submit a Reimbursement Claim using the following procedures:
- 8.3.1 *Payment to Settlement Class Members or Designee.* Payment shall be made to Settlement Class Members directly, or, if indicated in writing on the Claim Form that the Settlement Class Member is a minor child or incapacitated adult, to his or her parent or guardian

who is a Plan participant. If two Plan Participants submit claims for the same minor child or incapacitated adult Settlement Class Member, and both demonstrate that they are the Settlement Class Members' parent or guardian, the Settlement Class Member's claim shall be split between the two Plan Participants.

8.3.2 *Submission of Reimbursement Claims.* Settlement Class Members will be provided with a Reimbursement Claim Form as part of the Settlement Class Notice. The Claim Form shall require the Settlement Class Member (or his or her designee) to indicate and verify: (1) the Qualified Mental Health Condition diagnosis or diagnoses of the Settlement Class Member; (2) the date(s) of treatment (month/year) and the name(s) and contact information of the provider(s) who administered the treatment and location of the treatment; and (3) written proof of the out-of-pocket and unreimbursed charges or debt incurred associated with that treatment, including any alternative insurance, written proof of such insurance coverage, date(s) of such coverage, and the premiums, co-payments and deductibles paid for such coverage; provided, however, if a Settlement Class Member purchased alternative insurance to cover uncovered ABA and/or NDT for treatment of a Qualified Mental Health Condition, and nonetheless chose to obtain ABA and/or NDT services from a provider who was not eligible for reimbursement from the alternative insurance, the Settlement Class Member will not be reimbursed for the costs of ABA or NDT associated with the ineligible provider. Nonetheless, Settlement Class Members may be eligible for reimbursement of their premium payments for alternative insurance purchased as well as co-payments and deductibles associated with eligible providers of ABA and/or NDT services. Total payments to all Settlement Class Members for reimbursement of premiums for alternative insurance, co-payments and deductibles associated with eligible providers of ABA and/or NDT therapy shall not exceed \$250,000 of the Settlement Amount. This sum is a cap on these claims and does not, in any way, increase the Settlement Amount set forth in Section 1.23. Should valid, eligible payments for alternative insurance, copayments and deductibles exceed \$250,000, they shall be paid on a *pro rata* basis.

8.3.3 The Claims Processor shall review the Reimbursement Claim Forms to confirm that the items indicated in Sections 8.3.2 are present in the Claim Form and accompanying proof of claims. The Claims Processor shall also confirm that the Settlement Class Member was enrolled under the Plan during the Settlement Class Period and covered by this Agreement. The Claims Processor shall further confirm that the claimed sums are not duplicative of claims previously paid by Defendants and in compliance with the terms of the Plan besides the Developmental Delay Exclusion. The Claim

Processor also shall receive verification from the Settlement Class Member or his/her designee that the claims were actually incurred by Settlement Class Member and not paid by any other entity, payor, plan, or person.

8.3.3.1 *Opportunity to Cure.* In the event of a deficiency of proof, the Claims Processor shall provide the Settlement Class Member with an explanation of the deficiency and a reasonable opportunity to cure the deficiency.

8.3.3.2 *Assistance in Perfecting Claim.* A copy of all deficiency notices with personally identifiable information removed or redacted and a unique number identifier assigned by the Claims Processor shall also be provided to Class Counsel, who may assist the Settlement Class Member in curing any problems with the Settlement Class Member's claim via communication with, or through, the Claims Processor or with the Settlement Class Member directly, provided the Settlement Class Member provides the Claims Processor with HIPAA-compliant authorization to release his or her contact information and other personal health information to Class Counsel or if he or she contacts Class Counsel directly.

8.3.4 *Disposition of Reimbursement Claims.* The Claims Processor shall provide counsel for the Parties with copies of all Reimbursement Claim Forms submitted by Settlement Class Members (or their designees), along with the disposition of each claim (denied, approved at \$X, etc.) with all personally identifiable information redacted by the Claims Processor and a unique number identifier assigned to each Settlement Class Member who submits a claim. The Claims Processor shall also indicate the final amount of payment by Defendants and the date of payment of all valid claims.

8.3.5 *Compliance.* Class Counsel shall be provided with information in order to confirm and ensure compliance with the requirements of this Agreement.

8.3.6 *Arbitration.* Defendants, Class Counsel, or a Settlement Class Member may challenge the decision of the Claims Processor. Any dispute over whether a claim is valid or not with respect to the payment of Reimbursement Claims shall be submitted for final and binding arbitration before Judge George Finkle (ret.) at Judicial Dispute Resolution in Seattle, Washington. The type and manner of the arbitration (in-person, by phone or on the papers) shall be determined by the arbitrator in his sole discretion. Expenses of the arbitrator shall be paid by Defendants from the Settlement Amount.

8.3.7 *Timeline for Disposition of Claims.* The time for Settlement Class Members to submit Reimbursement Claims shall close after 90 days.



The Reimbursement Claims Process shall be completed within 150 days following the Effective Date of the Settlement.

- 8.3.8 *Payment of Valid Reimbursement Claims.* Subject to any reduction pursuant to Section 8.5 or termination pursuant to Section 10 the Claims Processor shall pay all approved claims from the Settlement Amount.
- 8.4 *Reversion.* If, after the payment of all claims, funds remain in the Settlement Amount, then the Claims Processor shall cause the Settlement Amount in the notational account of the VEBA Trust to be released, minus any court-approved or agreed holdback for expenses incurred but not yet paid, taxes, and estimated administrative expenses necessary to complete the activities of and close the Settlement Process, to Defendants within 30 days after Class Counsel submits a final report to the Court regarding Claims processing and disbursement of funds from the Settlement Amount, which shall be no later than 30 days after the Claims Processor processes all valid claims. Any part of the holdback in the notional account remaining after all expenses and other liabilities of the Settlement Amount are paid shall be returned to the rest of the assets in the VEBA Trust upon completion of the Settlement Process.
- 8.5 *Pro Rata Distribution.* If insufficient funds remain in the Settlement Amount notional account to pay all valid claims at 100%, then each such claim shall be paid on a *pro rata* basis with all other valid claims.
- 8.6 *Payment of Reimbursement Claims for D.T.* The Parties agree Named Plaintiff D.T.'s father, K.T., may submit reimbursement claims and may incur additional expenses for ABA and NDT services to treat his ASD before April 1, 2021, just like any other class member. Plaintiff D.T. will be required to submit a Reimbursement Claim for any such expenses.
- 8.7 *Final Report to the Court and Class Counsel.* The Claims Processor shall prepare a final report on the Claims Process to file with the Court and submit to Class Counsel within 30 days of the completion of the Reimbursement Claims Process.
- 8.8 *Claims Processor Payment.* Defendants shall pay the fees and costs incurred by the Claims Processor in fulfilling its duties under this Agreement.

## 9. *Effective Date of Settlement.*

- 9.1 *Effective Date.* This Agreement shall be fully effective and binding on the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or expressly waived in writing.
- 9.2 *Disputes Concerning the Effective Date of Settlement.* If the Parties disagree as to whether each and every condition set forth in Section 2 has been satisfied or waived, they shall promptly confer in good faith and, if

unable to resolve their differences within ten (10) business days thereafter, shall present their dispute for mediation and/or arbitration under Section 14.1.

**10. Termination of Agreement to Settle Claims Due to Lack of Approval.**

- 10.1 *Court Rejection.* If the Court declines to preliminarily or finally approve the Settlement as written, with the exception of approval of the form of the Settlement Class Notice, in whole or in part, then this Agreement shall automatically terminate, and thereupon become null and void. In the event the Court approves a settlement that differs from the terms herein (whether material or immaterial), in whole or in part, or does not afford Defendants a complete release, then either the Defendants or Class Counsel may, in their sole and absolute discretion terminate this Agreement by delivering a notice of termination to counsel for the opposing party within 15 court days of the Court's final order.
- 10.2 *Court of Appeals Reversal.* If the Court of Appeals reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the mandate of the Court of Appeals.
- 10.3 *Supreme Court Reversal.* If the Supreme Court of the United States reverses the Court's order approving the Settlement, then this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the Supreme Court's mandate.
- 10.4 *Pending Appeal.* If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.

**11. Consequences of Termination.** If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:

- 11.1 *Reversion of Action.* The Action shall revert to its status as of January 10, 2020 and the fact and terms of this Agreement shall not be used in the Action for any purpose.
- 11.2 *Releases and Terms Void.* All Releases given or executed pursuant to this Agreement shall be null and void and none of the terms of the Agreement shall be effective or enforceable.

**12. Attorney Fees, Litigation Expenses and Case Contribution Awards.**

- 12.1 *Attorney Fees and Litigation Costs.* Subject to review and approval by the Court, Defendants shall pay Class Counsel their lodestar attorney fees and actual costs in an amount not to exceed \$850,000. The parties acknowledge

that, as of January 10, 2020, attorneys' fees and costs were approximately \$800,000. Class Counsel shall document, and provide to Defendants upon request, a listing of all fees and costs incurred in the settlement approval and hearing process, with appropriate redactions for attorney/client privilege.

12.2 *Case Contribution Award.* Subject to review and approval by the Court, a Case Contribution Award of \$25,000 shall be paid by Defendants to the Class Representative.

13. ***Press Release.*** None of the Parties or their counsel will issue any proactive statements to the media. If any of the Parties are contacted by the media, the Parties can issue mutually agreed-upon reactive statements.

14. ***Miscellaneous***

14.1 *Dispute Resolution.* The Parties agree that any dispute regarding the terms, conditions, releases, enforcement or termination of this Agreement shall be resolved by a mutually-agreed upon mediator in Seattle, Washington, through mediation and, if mediation is unsuccessful, through binding arbitration before retired King County Superior Court Judge George Finkle. If Judge Finkle is unavailable, the Parties shall arbitrate before another mutually-agreed upon arbitrator at Judicial Dispute Resolution in Seattle, Washington.

14.2 *Governing Law.* This Agreement shall be governed by the laws of State of Washington without regard to conflict of law principles, unless preempted by federal law.

14.3 *Amendment.* Before entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.

14.4 *Waiver.* The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

14.5 *Construction.* None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.

14.6 *Principles of Interpretation.* The following principles of interpretation apply to this Agreement:

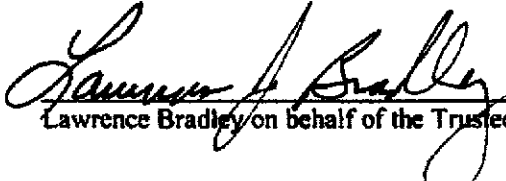
- 14.6.1 *Headings.* The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 14.6.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.
- 14.6.3 *References to a Person.* References to a person include references to an entity, and include successors and assigns.
- 14.7 *Survival.* All representations, warranties and covenants set forth in herein shall be deemed continuing and shall survive the Effective Date of Settlement.
- 14.8 *Entire Agreement.* This Agreement contains the entire agreement among the Parties relating to this Settlement and supersedes any and all prior verbal and written communications regarding the Settlement.
- 14.9 *Counterparts.* This Agreement may be executed by exchange of executed faxed or PDF signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
- 14.10 *Binding Effect.* This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.
- 14.11 *Further Assurances.* Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.
- 14.12 *Tax Advice Not Provided.* No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Settlement Class, nor is any representation or warranty in this regard made by virtue of this Agreement. The Tax obligations of the Settlement Class and the determination thereof are the sole responsibility of each Settlement Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Settlement Class Member.

IN WITNESS WHEREOF, the parties and their respective counsel have executed this Agreement on the dates acknowledged below and hereby certify that they are authorized to sign this Agreement on behalf of their respective parties.

**SIGNATURES:**

**TRUSTEES OF THE NECA-IBEW FAMILY MEDICAL CARE PLAN**

DATED: 11/24/2020

  
Lawrence Bradley on behalf of the Trustees

DATED: 11/17/20

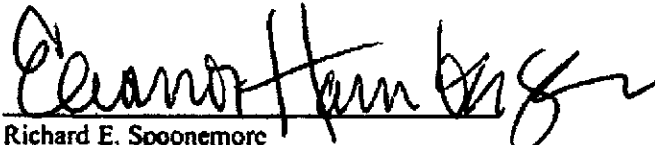
  
, BY AND THROUGH HIS  
PARENT 

DATED: 11/17/20

  
, BY AND THROUGH HIS  
PARENT 

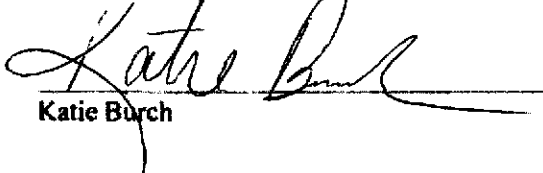
**APPROVED AS TO FORM:**

SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC

  
Richard E. Spoonemore  
Eleanor Hamburger  
Daniel Gross

Attorneys for the Named Plaintiffs and the Settlement Class

POTTS-DUPRE, HAWKINS & KRAMER, CHTD.

  
Katie Burch

FORD HARRISON LLP



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Tiffany Downs

ROBBLEE DETWILER & BLACK, PLLP



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Kristina Detwiler

Attorneys for Defendants NECA-IBEW Family Medical Care Plan, Salvatore J. Chilia, Robert P. Klein, Darrell L. McCubbins, Geary Higgins, Lawrence J. Moter, Jr., Kevin Tighe, Jerry Sims, and any other individual member of the Board of Trustees of NECA/IBEW Family Medical Care Plan

**APPENDIX A TO SETTLEMENT AGREEMENT**  
**D.T. v. NECA-IBEW FAMILY MEDICAL CARE PLAN**  
 No. 2:17-cv-00004-RAJ

Developmental Delay Conditions:

<b>ICD-10 Code</b>	<b>ICD-9 Equivalent</b>	<b>Description</b>
F70		Mild intellectual disabilities
F71		Moderate intellectual disabilities
F72		Severe Intellectual Disabilities
F73		Profound Intellectual Disabilities
F78		Other Intellectual Disabilities
F79		Unspecified Intellectual Disabilities
F800	315.39	Phonological Disorder
F801	315.31	Expressive Language Disorder
F802	315.32	Mixed Receptive-Expressive Language Disorder
F804		Speech and Language Developmental Delay
F8089		Other Developmental Disorders of Speech and Language
F809		Developmental Disorder of Speech and Language Unspecified
F810		Specific reading disorder
F812		Mathematics Disorder
F8181		Disorder of written expression
F8189		Other Developmental Disorders of Scholastic Skills
F819	315.9	Developmental Disorder of scholastic skills unspecified
F82	315.4	Specific Developmental Disorder of Motor Function
F840	299.0	Autistic Disorder
F843		Other childhood disintegrative disorder
F845		Asperger syndrome
F848		Other Pervasive Developmental Disorders
F849		Pervasive Developmental Disorder, unspecified
F88	315.8	Other Disorder of Psychological Development
F89		Unspecified Disorder of Psychological Development
F938		Other Childhood Emotional Disorders
F941		Reactive Attachment Disorder of Childhood
F942		Disinhibited Attachment Disorder of Childhood
F948		Other Childhood Disorders of Social Functioning
F949		Childhood Disorder of Social Functioning Unspecified