

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into between the State of Indiana (“the State”) and Progenity, Inc. (“Progenity”), collectively, “the Parties.”

II. PREAMBLE

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

A. Progenity is a company headquartered in California that provides molecular laboratory testing services to patients, through their healthcare providers, focusing on prenatal testing for genetic and chromosomal abnormalities. Prior to August 2013, Progenity operated under the name Ascendant MDx, Inc. Throughout the period referenced in this State Settlement Agreement, Progenity provided services that were reimbursed by Medicaid.

B. On or about November 21, 2016, Demetria Katsanos (“Relator”) filed a *qui tam* in the United States District Court for the Southern District of New York, captioned *United States of America et al., v. Progenity, Inc.*, Civil Action No. 16-CV-9051. The Relator alleged, *inter alia*, that Progenity engaged in illegal kickback schemes to induce physicians to order Progenity tests. This *qui tam* action is referred to as the “Civil Action.”

C. In addition to investigating the allegations in the Civil Action, the United States Attorney’s Office for the Southern District of New York and the State also initiated an investigation into Progenity’s use of Current Procedural Technology (“CPT”) code 88271 in the submission of claims for payment to Medicaid seeking reimbursement for certain cell-free DNA sequencing-based non-invasive prenatal tests (“NIPTs”) that can screen for chromosomal aneuploidies and subchromosomal microdeletions to determine the risk that a fetus will be born

with certain genetic disorders or abnormalities through analysis of fetal DNA present in the woman's blood.

D. Progenity has entered into a separate Stipulation and Order of Settlement and Dismissal (the "Federal Settlement Agreement") with the United States of America through the United States Attorney's Office for the Southern District of New York (the "United States"). Progenity has also entered into a separate settlement agreement (the "*Qui Tam* State Agreement") with certain States named in the Civil Action.

E. The State alleges that it has certain civil and administrative causes of action against Progenity for engaging in the following conduct (the "Covered Conduct"):

1. From March 2014 through April 2016 Progenity knowingly and willfully submitted false claims for payment to the State's Medicaid program (42 U.S.C. Chapter 7 Subchapter XIX), including "managed care entities" as defined by 42 U.S.C. § 1396u-2 by fraudulently using CPT code 88271 to seek reimbursement for NIPTs when this code misrepresented the services Progenity actually provided, and, as a result, Progenity received payments for non-reimbursable tests, or received substantially higher payments than it was entitled to receive for the genetic testing services provided. The conduct described in this paragraph is referred to as the "Miscoding Covered Conduct".

2. Progenity knowingly and willfully induced physicians to order Progenity tests for the State's Medicaid program beneficiaries by: (1) from January 2012 through March 2016, offering and providing remuneration in the form of above fair market value payments, or "draw fees," to physicians or physician offices for blood specimens collected for Progenity tests; (2) from January 2012 through December 2018, offering and providing remuneration in the form of meals and happy hours for physicians and their employees; and (3) from January 2012 through April 2018, routinely offering to reduce or waive, and routinely reducing or waiving, coinsurance and deductible payments that the State's Medicaid program beneficiaries were required to pay without making individualized determinations of financial need or reasonable collection efforts. As a result of the foregoing, Progenity submitted false claims for payment to the State's Medicaid program. The conduct described in this paragraph is referred to as the "Kickback Covered Conduct."

F. The Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

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

1. Progenity admits, acknowledges, and accepts responsibility for the following conduct:

Miscoding:

- a. CPT codes are part of a numerical coding system that physicians and laboratories must use on claim forms to bill payors for healthcare services and to receive payments. The CPT code affects the rate that the payor will reimburse the provider. When there is no existing CPT code that accurately describes a specific service or test, an unlisted or miscellaneous CPT code should be used for a provider to seek reimbursement.
- b. From March 2014 through April 2016, Progenity knowingly submitted false claims for payment to the State's Medicaid program by using CPT code 88271 to obtain reimbursement for NIPTs.
- c. Progenity improperly used CPT code 88271, which applies to fluorescence in situ hybridization ("FISH") procedures, knowing that its genetic tests were cell-free DNA sequencing-based NIPTs that are not FISH procedures and that CPT code 88271 did not accurately represent the tests performed.
- d. Until January 2015, there was no CPT code specific to NIPTs. In the absence of a designated code prior to January 2015, Progenity used CPT code 88271 when seeking reimbursement for certain NIPTs, instead of the miscellaneous CPT code 81479. The Medicaid reimbursement rate for CPT code 88271 during the relevant period was substantially more than the reimbursement rate for the miscellaneous CPT code 81479.
- e. On January 2, 2015, a new CPT code, 81420 (Genomic Sequencing Procedures and Other Molecular Multianalyte Assays), became active. Upon its implementation, CPT code 81420 became the correct code that Progenity should have used to bill for its NIPTs. However, Progenity knew that it would receive significantly higher reimbursement amounts by using CPT code 88271, and continued to knowingly submit false claims to the State's Medicaid program using the incorrect CPT code 88271.

- f. In addition, Progenity knew that the Medicaid programs for some states, such as Texas, Kansas, and New York, explicitly excluded reimbursement for certain NIPTs, such as those that tested for microdeletions, and allowed reimbursement for other NIPTs only if the patient had one or more high-risk factors, such as being over the age of 35 or having an ultrasound result showing an increased risk of aneuploidy. Progenity submitted claims seeking reimbursement for tests provided to Medicaid beneficiaries in these states even though it was aware that the tests were not eligible for coverage.
- g. As a result of fraudulently using CPT code 88721 and misrepresenting the type of test performed when submitting claims for payment to the State's Medicaid program for NIPTs, Progenity received payments for non-reimbursable tests, or received substantially higher payments than it was entitled to receive for the genetic testing services provided.

Draw Fee Payments:

- h. From January 2012 through March 2016, Progenity knowingly made "draw fee" payments to physicians or physicians' offices for the collection of blood specimens for Progenity tests performed on Federal healthcare program beneficiaries. In total, Progenity paid over \$1.7 million in draw fees during this period.
- i. Progenity entered into agreements with physicians that specified the amount it would receive for each specimen collected for Progenity tests, and then paid the physician or physician's office for those draws at the agreed-upon amount.
- j. The draw fees paid by Progenity exceeded the fair market value of the services performed when collecting blood specimens. Progenity frequently paid physicians \$20 or more for each blood draw. Progenity paid dozens of physicians and physician offices thousands of dollars in above fair market draw fee payments during the relevant time period.

Meals and Happy Hours:

- k. From 2012 through 2018, Progenity knowingly provided meals and happy hours to physicians who ordered Progenity tests for Medicaid program beneficiaries, as well to individuals who worked in physicians' offices. The value of these meals and happy hours exceeded Stark Law limits. In total, Progenity expended millions of dollars on food and drinks for physicians and their staff during this period.
- l. Progenity's sales management directed sales representatives to make frequent contact with physicians' practices, and sales representatives were permitted to provide meals and happy hours in order to facilitate these contacts. Sales staff purchased food and drinks for physicians and their staff at gatherings that often involved little or no educational or informational content. These gatherings included happy hours at bars and other establishments.

- m. During the vast majority of the relevant period, Progenity did not have effective systems in place to ensure that the company's expenses for meals and happy hours for physicians and their employees complied with the Stark Law and the AKS. For example, Progenity did not (i) reliably track the amount it spent on meals and happy hours for physicians or their staff; (ii) maintain accurate sign-in sheets reflecting attendance at Progenity-sponsored gatherings; (iii) keep records of materials or topics that were discussed during Progenity-sponsored gatherings; and (iv) implement and enforce limits on the total nonmonetary compensation that could be provided to physicians.

Waiver of Patient Coinsurance and Deductible Payments:

- n. From January 2012 through April 2018, Progenity knowingly routinely reduced or waived Medicaid program beneficiaries' coinsurance and deductible payments without making the required individualized determinations of financial need or reasonable collection efforts. Progenity offered to reduce or waive coinsurance and deductible payments as part of its sales efforts.
- o. Some of the Progenity tests were costly and required significant patient payments. To market its costly tests, sales representatives informed physicians and their staff, as well as patients, that Progenity would waive coinsurance and deductibles, or limit the patient's payment to a certain maximum out-of-pocket amount regardless of the actual coinsurance or deductible amount. Progenity often referred to this practice as the "Peace of Mind" program. Progenity used the Peace of Mind program to induce physicians to prescribe, and patients to consent to, Progenity tests.

2. Progenity agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) and subject to the non-participating state deduction provision of sub-paragraph (d) below), collectively, the sum of \$32,600,000 plus accrued interest (the "Settlement Amount"). The debt shall forever be discharged by payments to the United States and the Medicaid Participating States under the following terms and conditions:

- (a) Progenity shall pay to the United States the sum of \$19,449,316 plus accrued interest pursuant to the terms of the Federal Settlement Agreement.
- (b) The total Medicaid recovery for the Covered Conduct is \$29,189,101, consisting of \$13,150,684 for the states pursuant to this Agreement and \$16,038,417 for the United

States pursuant to the Federal Settlement Agreement. The state Medicaid recovery of \$13,150,684 is divided between the Miscoding Covered Conduct and the Kickback Covered Conduct as follows: the sum of \$7,000,180 plus applicable interest is being paid to resolve claims for the Miscoding Covered Conduct, and the sum of \$6,150,504 plus applicable interest is being paid to resolve claims for the Kickback Covered Conduct. The Medicaid Participating States will allocate each payment received from Progenity proportionally between the amount being paid to resolve claims for the Miscoding Covered Conduct and the amount being paid to resolve claims for the Kickback Covered Conduct. Progenity shall pay to the Medicaid Participating States the sum of \$13,150,684 plus applicable interest subject to the non-participating state deduction provision of sub-paragraph (d) below (the "Medicaid Participating State Settlement Amount"), in seven installments. The initial payment and all additional payments of the Medicaid Participating State Settlement Amount as described in sub-paragraph (d) below shall be paid and immediately deposited by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the state settlement team (the "State Team"), which written instructions shall be delivered to counsel for Progenity.

(c) Progenity shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Progenity and the State Team have agreed, or in a form otherwise agreed to by Progenity and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Progenity's attorneys within 60 days of receiving this Agreement. If this condition is not satisfied within 60 days, Progenity's offer to resolve this matter with the

individual State shall become *null and void* absent written agreement between counsel for Progenity and the State Team to extend the 60-day period.

(d) The total portion of the amount paid by Progenity in settlement for the Covered Conduct for the State is \$191,926.58, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$83,226.61 (the “State Amount”), plus applicable interest, of which \$41,613.31, constitutes restitution to the State under Section 162 of the U.S. Internal Revenue Code. Progenity shall pay the State pursuant to the payment schedule attached hereto as Exhibit A. (“Payment Schedule.”)

(e) If the State does not execute this Agreement within 60 days of receiving this Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall be returned to Progenity absent written agreement between counsel for Progenity and the State Team to extend the time-period for executing this Agreement.

3. Contingent upon receipt of the State Amount, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Progenity in State or Federal Courts for the Covered Conduct.

4. Acceleration Windfall Clause: In the event that, during any calendar year from 2020 through 2023, Progenity receives any civil settlements, damages awards, or tax refunds which exceed the aggregate value of \$5,000,000 in a calendar year (referred to herein as a “Windfall Event”), Progenity shall pay to the Medicaid Participating States 17% of the value of the Windfall Event. This payment shall be made within 15 days of the occurrence of the Windfall Event, and Progenity shall promptly notify the Medicaid Participating States of the Windfall Event

and its value prior to making the payment. Each payment made pursuant to this provision will proportionately reduce the amount due in the last remaining installment payment or payments set forth in Paragraph 2 above. The aggregate amount of accelerated payments made to the Medicaid Participating States pursuant to, and for the life of, this Agreement and the *Qui Tam* State Agreement, shall not exceed \$6,520,000. This provision shall no longer be operative after the Settlement Amount due under Paragraph 2 has been fully paid (\$13,150,684 plus applicable interest). Progenity's notice to the Medicaid Participating States pursuant to this Paragraph shall be effectuated by notifying the State Team. The State Team will notify the Medicaid Participating States. Progenity will make any Windfall Payments using the mechanism set out in Paragraph 2 above.

5. Harry G. Stylli, the Chief Executive Officer of Progenity, has executed a guaranty agreement with the Medicaid Participating States personally guarantying up to \$1,250,000 of the Settlement Amount owed to the Medicaid Participating States by Progenity, a copy of which is attached hereto as Exhibit B.

6. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of Progenity set forth in this Agreement, and conditioned upon the tender and negotiations of the State Amount, the State releases Progenity, including Progenity's subsidiaries and corporate predecessors, successors, and assigns, including Molecular Diagnostic Health Sciences, LLC, Progenity Holding Company, Inc., SPX3, Inc., Avero Laboratory Holdings LLC, Progenity UK Limited, and Progenity Pty Ltd (the "Progenity Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State's Medicaid Program for the Covered Conduct.

7. Notwithstanding the releases given in Paragraph 6 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and are not released:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability;
- (c) any civil or administrative liability that any person or entity, including the Progenity Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation, or rule not expressly covered by the release in Paragraph 6 above, including, but not limited to, any and all of the following claims: (i) State or federal antitrust violations; and (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability based upon obligations created by this Agreement;
- (f) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;
- (g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;
- (h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- (i) any liability for failure to deliver goods or services due; or
- (j) any liability of individuals.

8. In consideration of the obligations of Progenity set forth in this Agreement, and the Corporate Integrity Agreement (the "CIA") that Progenity has entered into with the Office of the

Inspector General of the United States Department of Health and Human Services in connection with this matter, and conditioned on receipt by the State of the State Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against the Progenity Released Entities for the Covered Conduct, except as reserved in Paragraph 7 above. Nothing in this Agreement precludes the State from taking action against Progenity in the event that Progenity is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

9. Progenity waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution or the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. In consideration of the obligations of the State set forth in this Agreement, the Progenity Released Entities waive and discharge the State and any of its agencies, departments, and personnel, including, but not limited to, officials, employees, and agents, whether current or former in their official and individual capacities from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Progenity Released Entities have against the State and any of its agencies, departments, and personnel, including, but not limited to officials, employees, and agents, whether current or former in their official and individual capacities arising from the State's investigation and prosecution of the Covered Conduct.

11. Progenity has provided information concerning its financial condition to the United States, including but not limited to information relating to its assets, liabilities, expenses, revenues,

profits, and financial projections (the “Progenity Financial Information”), and the State has relied on the accuracy and completeness of the Progenity Financial Information in reaching this Agreement. Progenity warrants that the Progenity Financial Information is complete, truthful, and accurate. If the State learns of any misrepresentation or inaccuracy in the Progenity Financial Information, or of assets in which Progenity had an interest at the time of this Agreement that were not disclosed in the Progenity Financial Information, and if such nondisclosure or misrepresentation changes either the estimated net worth, annual net income, or assets set forth in the Progenity Financial Information by 5% or more, the State may at its option: (i) rescind this Agreement and reinstate the claims asserted against Progenity, or (ii) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth, net income or assets that were previously not disclosed. Progenity agrees not to contest any collection action undertaken by the State pursuant to this provision, and immediately to pay the State all reasonable costs incurred in such an action, including attorneys’ fees and expenses.

12. Progenity shall be in default of this Agreement if it fails to make the required payments set forth in Paragraphs 2 and 4 above on or before the due date for such payments, or if it fails to comply materially with any other term of this Agreement (“Default”). The State shall provide written notice to Progenity of any Default in the manner set forth in the attached Exhibit C. Progenity shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default (“Uncured Default”), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the settlement amount set forth in Paragraph 2 above, beginning ten (10) calendar days after mailing of the notice of Default. The State may also, at its option, (a) rescind this Agreement and

reinstate the claims asserted against Progenity; (b) seek specific performance of this Agreement; (c) offset the remaining unpaid balance of the Settlement Amount set forth in Paragraph 2 above from any amounts due and owing Progenity by any department, agency, or agent of the State; or (d) exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. Progenity shall not contest any offset imposed or any collection undertaken by the State pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Progenity shall pay the State all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that the State opts to rescind this Agreement pursuant to this Paragraph, Progenity shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Miscoding Covered Conduct or Kickback Covered Conduct.

13. The amount that Progenity must pay to the State pursuant to Paragraph 2 above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, or any other state program payor, for the Covered Conduct; and Progenity agrees not to resubmit to the State's Medicaid program or any other state program payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of, or not to appeal or cause the appeal of, any such denials of claims.

14. Progenity agrees that it waives and shall 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.

15. Progenity expressly warrants that it has reviewed its financial condition and that it is currently solvent, meaning that a fair valuation of its property (exclusive of exempt property) exceeds the sum of its debts.

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

17. Progenity agrees to cooperate fully and truthfully with any investigation by the State related to the Covered Conduct of individuals or entities not released in this Agreement. Upon reasonable notice of such an investigation, Progenity shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals and of Progenity. Upon request, Progenity agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in its possession, custody or control, concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

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

19. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability as to any other person or entity.

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

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

22. This Agreement is governed by the laws of the State, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

23. The undersigned Progenity signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

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

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

26. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

28. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by the Parties to this Agreement and shall not, therefore, be construed against any of the Parties for that reason.

29. Any notice to pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as outlined in the attached Exhibit C.

STATE OF INDIANA

By: Allison Taylor Dated: 07/31/2020

Allison Taylor
Name

Indiana Medicaid Director
Title

FSSA - Office of Medicaid Policy and Planning
Organization

By: **Matthew Whitmire** Dated: _____

Digitally signed by Matthew Whitmire
DN: cn=Matthew Whitmire, o=Office of the
Attorney General - Medicaid Fraud Control
Unit, ou=OAG-MFCU,
email=matthew.whitmire@atg.in.gov,
c=US
Date: 2020.08.05 16:04:00 -04'00'

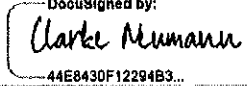
Name

Title

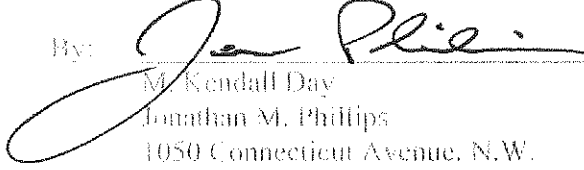
Organization

PROGENITY, INC.

PROGENITY, INC.

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Attorneys for Progenity, Inc.

Dated: October 1, 2020

Exhibit A

PROGENITY, INC

STATE OF INDIANA

| | |
|--|--------------------|
| 1. State's Share of Medicaid Settlement | \$83,226.61 |
| 2. State's Share of Pre-Settlement Interest | \$0.00 |
| 3. State's Share of Post-Settlement Interest | \$2,961.76 |
| 4. Total State's Settlement Amount | \$86,188.37 |

Payment Schedule¹²
Indiana

| Payment Date | Principal | Estimated Interest - Finalized with Settlement Date | Total Payment |
|---------------------------|--------------------|--|----------------------|
| Initial Payment | \$13,588.02 | \$0.00 | \$13,588.02 |
| 12/31/2020 | \$6,794.01 | \$435.24 | \$7,229.25 |
| 12/31/2021 | \$8,492.51 | \$785.56 | \$9,278.07 |
| 12/31/2022 | \$11,889.52 | \$679.40 | \$12,568.92 |
| 12/31/2023 | \$13,588.02 | \$530.78 | \$14,118.80 |
| 12/31/2024 | \$15,286.52 | \$360.93 | \$15,647.45 |
| 12/31/2025 | \$13,588.01 | \$169.85 | \$13,757.86 |
| PAYMENT TOTALS | \$83,226.61 | \$2,961.76 | \$86,188.37 |

¹² Payment schedule subject to change upon occurrence of events as set forth in the Acceleration Windfall Clause, Paragraph 4 of the State Agreements.

EXHIBIT B

GUARANTY AGREEMENT

This Guaranty Agreement is entered into by and among Harry G. Stylli ("Guarantor"), the Chief Executive Officer of Progenity, Inc. ("Progenity"), acting in his personal capacity, and the Medicaid Participating States as defined in the various State settlement agreements (the "State Agreements") executed in the settlement of the below-referenced allegations ("States") (collectively the "Parties").

WHEREAS, the States and Progenity wish to settle allegations of kickbacks and the miscoding of tests billed by Progenity through the execution of State Agreements, and the Exhibits thereto, including this Guaranty Agreement;

WHEREAS, the specific claims being resolved are set forth in the State Agreements;

WHEREAS, Progenity has executed various State Agreements, incorporated by reference herein, wherein Progenity promises to pay the States \$13,150,684 plus applicable interest (the "Settlement Amount") as set forth in Paragraphs 2 and 4 of the State Agreements;

WHEREAS, the Guarantor is not a party to the State Agreements;

IT IS HEREBY AGREED that, in exchange for adequate consideration, the Parties shall undertake the following obligations:

TERMS AND CONDITIONS

1. Statement of Guaranty. Guarantor unconditionally and personally guarantees the prompt payment of the full Settlement Amount by Progenity as set forth in Paragraphs 2 and 4 of the State Agreements, up to the total amount of \$1,250,000. For the avoidance of doubt, under no circumstance will Guarantor's liability exceed \$1,250,000 under this Agreement.
2. Nature of Guaranty. The Guaranty set forth in Paragraph 1 of this Agreement constitutes a personal guaranty of payment of the full Settlement Amount by Progenity as set forth in Paragraphs 2 and 4 of the State Agreements, up to the total amount of \$1,250,000, and shall not be affected by any event, occurrence or circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety (other than full and complete payment of the Settlement Amount). In the event that any payment by Progenity pursuant to the State Agreements is rescinded or must otherwise be returned by virtue of any action by any bankruptcy court, Guarantor shall remain personally liable hereunder with respect to such Settlement Amount as if payment had not been made. Guarantor agrees that the States may resort to Guarantor for payment of any of unpaid portion of the Settlement Amount, up to \$1,250,000, without regard to whether the States shall have proceeded against any other person or entity primarily or secondarily obligated with respect to any of the Settlement Amount.

3. Acceleration. Guarantor agrees that, within ten days of receipt of written notice from the United States that Progenity (i) has failed to make any payment required by the Stipulation, and (ii) has not cured its Default as provided for under Paragraph 12 of the Non-*Qui Tam* State Agreements and Paragraph 15 of the *Qui Tam* State Agreements, Guarantor will be obligated to pay in full the amount then due under the State Agreements, up to the total amount of \$1,250,000. Guarantor understands that the failure to adhere fully to the terms of this paragraph would be a material breach of this Guaranty Agreement.
4. No Waiver; Cumulative Rights. No failure on the part of the States to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the States of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the States or allowed by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the States from time to time.
5. Effective Date. This Guaranty Agreement shall become effective on the Effective Date, as defined in State Agreements.
6. Subrogation. Guarantor shall not exercise any subrogation rights it may acquire against Progenity as a result of this Guaranty Agreement until all of the Settlement Amount owed to the States has been paid in full.
7. Waiver of Notice. Guarantor waives notice of the acceptance of this Guaranty, presentment, demand, notice of dishonor, protest, and all other notices whatsoever.
8. Duration. This Guaranty shall continue in full force and effect until all of the Settlement Amount has been paid in full.
9. Entire Agreement. Each Party hereto represents and warrants that this Agreement constitutes a valid and binding agreement enforceable against each Party in accordance with its terms. This Agreement embodies the entire guaranty agreement between the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This Agreement supersedes all previous communications, representations or agreements either verbal or written between Guarantor and the States.
10. Severability. Should any one or more provisions of this Agreement be determined to be illegal, unenforceable, void or voidable, all other provisions shall remain in effect.
11. Assignment. No Party hereto may assign its rights, interest or obligations hereunder to any other person or entity without prior written consent of the other Party. The provisions of this Agreement shall be binding on the Parties hereto and their successors and assigns. This Agreement is to continue in full force and effect notwithstanding a change in the composition, ownership or corporate structure of Progenity.

12. Miscellaneous. This Agreement shall not be amended except in a writing signed by all Parties. Each signatory hereto represents and warrants that he or she is authorized to execute and deliver this Agreement on behalf of the Party for whom he or she is purporting to act. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

13. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with federal common law. The Parties consent to the jurisdiction of the United States District Court for Southern District of New York in any action to enforce any term of this Agreement.

GUARANTOR

Dated: June 27, 2020


HARRY A. STYLLI

STATE OF INDIANA

By: Allison Taylor Dated: 07/31/2020

Allison Taylor
Name

Indiana Medicaid Director
Title

FSSA - Office of Medicaid Policy and Planning
Organization

By: **Matthew Whitmire** Digitally signed by Matthew Whitmire
DN: cn=Matthew Whitmire, o=Office of the Attorney General - Medicaid Fraud Control Unit, ou=OAG-MFCU, email=matthew.whitmire@atg.in.gov, c=US
Date: 2020.08.05 16:04:34 -04'00' Dated: _____

Name

Title

Organization

EXHIBIT C

IF NOTICE TO [STATE]:

Matthew G. Whitmire
Name

Director
Title

Office of the Indiana Attorney General – Medicaid Fraud Control Unit
Organization

8720 Castle Creek Parkway East Drive, Suite 250, Indianapolis, IN 46250
Address

317-915-5303
Telephone

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