

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 27th day of August 2021 between Connecticut, acting through the Office of the Connecticut Attorney General, (“the Attorney General”), and Women’s Health USA, Inc. (“WHUSA”), In Vitro Sciences, LLC (“IVS”), and the Center for Advanced Reproductive Services, P.C. (“CARS”) (collectively “the Respondents”). The Attorney General, and the Respondents are collectively referred to herein as “the Parties”.

WHEREAS, the Attorney General has been investigating alleged violations of state and federal antitrust laws in the provision of *in vitro* fertilization/assisted reproductive technology (“IVF/ART”) physician services in Connecticut (the “Attorney General’s Investigation”);

WHEREAS, the Attorney General is prepared to make the following allegations based upon the Attorney General’s Investigation (“Allegations”), which allegations the Respondents neither admit nor deny:

ALLEGATIONS

1. WHUSA, founded in 1997, is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal address at 22 Waterville Road, Avon, Connecticut 06001. WHUSA is a national provider of strategic and management business services to women’s health physicians and practices focused on obstetrics and gynecology and IVF/ART physician services. WHUSA represents physicians in contract negotiations with health insurance firms and other third-party payors (collectively, “Payors”).
2. IVS is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal address at 22 Waterville Road, Avon, Connecticut 06001. IVS is a national provider of strategic and management business services to IVF/ART physician practices. IVS provides myriad services to IVF/ART physician practices including, but not limited to, representing such practices in contract negotiations with Payors.
3. CARS is a for-profit company organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal address at 22 Waterville Road, Avon, Connecticut 06001. CARS, an academic affiliate of the University of Connecticut School of Medicine, is a full-service fertility physician practice specializing in a range of IVF/ART treatment services. CARS physicians provide training for academic fellows in reproductive endocrinology and fertility, as well as instruction for medical students participating in obstetrics/gynecology rotations. In addition to IVF treatment, CARS provides comprehensive fertility-related medical services and support, including specialized programs focused on LGBTQ Family Building, Egg Donation, and Oncofertility.
4. CARS is a group practice consisting of approximately eight (8) physicians. These physicians practice reproductive endocrinology and fertility medicine at the following Connecticut locations: Farmington, Hartford, Branford, and New London. CARS’s physicians currently provide approximately thirty-one percent (31%) of the IVF/ART services performed

in Connecticut.

5. RMACT is a for-profit independent company, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal address at 761 Main Avenue, Norwalk, Connecticut 06851. RMACT is a full-service fertility physician practice specializing in a range of IVF/ART treatment services. RMACT is a group practice consisting of approximately seven (7) physicians. These physicians practice reproductive endocrinology and fertility medicine at the following locations: Danbury, Trumbull, Norwalk and Stamford, Connecticut and Poughkeepsie, New York. RMACT's physicians provide approximately thirty-two percent (32%) of the IVF/ART services in Connecticut.

6. From at least the late 1990s through 2019, IVS was a subsidiary of WHUSA. WHUSA and IVS had overlapping ownership, management, shared office space, employees, telephones, information technology systems and financial resources. In October 2019, IVS was spun-off from WHUSA and became a separate entity.

7. From at least the late 1990s up to and including the present, IVS exercised direct or indirect control of CARS's business operations and finances, effectuated through a management agreement between the parties. IVS controlled or had a high degree of influence in, *inter alia*, (a) the day-to-day business operations of CARS, including business planning, and development of new programs (*e.g.*, laboratory, x-ray and outpatient surgery services); (b) ownership of CARS's accounts receivables and outside income (*e.g.*, honoraria, royalties, revenues from teaching); (c) sole discretion over the selection of payors CARS contracted with; (d) control over CARS's physician's outside professional activities; and (e) assignment of CARS's rights and title to inventions or other proprietary rights. In addition, IVS served as CARS's exclusive agent to negotiate reimbursement contracts with payors. For its services to CARS, IVS received a significant percentage of the net revenues CARS received for providing IVF/ART treatments and services.

8. RMACT was originally formed in or around 2000 as a wholly-owned subsidiary of CARS and was operated for approximately four (4) years as a division of CARS. RMACT was known then as the Center for Advanced Reproductive Medicine (CARM). RMACT separated from CARS in approximately 2004.

9. In approximately 2004, in connection with the spin-off from CARS, RMACT entered into a management and administrative services agreement with IVS. Pursuant to the agreement IVS was responsible for, *inter alia*: (a) managing RMACT's banking relationships; (b) arranging for financing; (c) negotiating reimbursement contracts with payors; and (d) billing and collection services. For services provided to RMACT, IVS received a fixed management fee and a percentage of the net revenues RMACT received for providing IVF/ART treatments and services. RMACT has received some or all of these services from IVS since 2004 up to and including the present.

Overview of the IVF Market

10. Assisted reproductive technology (ART) is used to treat infertility. *In vitro* fertilization (IVF) is the most common and effective type of ART.

11. IVF success varies with many factors. Generally, IVF treatment has excellent success rates, although some medical practices demonstrate higher success rates than their peers. According to the 2017 statistics collected by the Society of Assisted Reproductive Technologies (“SART”), for women younger than thirty-five (35), the percentage of live births per IVF cycle was about fifty-four point seven percent (54.7%). Success rates decrease with age, with a twelve (12%) percent rate of success for women age forty-one (41) to forty-two (42). RMACT and CARS consistently demonstrate high IVF success rates relative to comparable practices.

12. A full cycle of IVF treatment covers ovarian stimulation and egg recovery, insemination, and embryo replacement. One full cycle of IVF takes about three (3) weeks. A recent research study based on women undergoing IVF showed that approximately two-thirds (2/3) of patients will be successful after six (6) or more cycles of IVF.

13. The average cost of a single IVF cycle in the United States is between ten-thousand dollars (\$10,000) and fifteen-thousand dollars (\$15,000), and is dependent upon insurance coverage, patient characteristics, and the treatment center. IVF with egg donation is the costliest, with one cycle being anywhere from twenty-five thousand dollars (\$25,000) to thirty thousand dollars (\$30,000).

Health Insurance Coverage for IVF Treatment and Services in Connecticut

14. Connecticut passed an infertility insurance mandate that requires insurers and employers to offer coverage for the treatment of infertility; infertility being defined as the inability to sustain or conceive a pregnancy for more than a year in individuals under the age of forty (40). However, under Connecticut law, coverage is only for the first four (4) ovulation inductions (*e.g.*, two IVF cycles). In addition to other coverage limitations, advanced treatments like IVF are only reimbursed if other less expensive medically correct options have been tried first. *See*, Conn. Gen. Stat. § 38a-509 and § 38a-536.

15. The State of Connecticut Health Benefit Plan (“Benefit Plan”) for state employees, retirees, and eligible dependents is a self-funded governmental health benefit plan. The State of Connecticut has contracted with two insurance carriers, Anthem Blue Cross and Blue Shield (Anthem BCBS) and UnitedHealthcare/Oxford, to provide claims processing, disease management, and other administrative services. Infertility Services, which include medically necessary care for the diagnosis and treatment of IVF, are covered under the Benefit Plan. The Benefit Plan is a self-funded governmental health plan meaning the State assumes the financial risk for providing health care benefits to its plan members. In practical terms, the Benefit Plan pays for IVF/ART treatment and services out-of-pocket.

16. To comply with Connecticut’s infertility mandate, and to offer a competitively marketable health insurance product in the state of Connecticut, a Payor’s health insurance plan must include in its physician network, providers of IVF/ART physician services.

The Messenger Model

17. Physicians and medical group practices (referenced herein as “physicians”) often contract with Payors to establish the terms and conditions, including price terms and reimbursement rates, under which the physicians will render services to the Payors’ plan

members. Physicians entering into such contracts often agree to lower reimbursement to obtain access to additional patients made available through the Payors' contractual relationship with their plan members. These contracts may reduce Payors' costs, enable them to lower the price of health insurance, and reduce their members' out-of-pocket medical care expenditures. Among the factors considered by Payors in negotiating rates for IVF treatment is a medical group's success rate.

18. Competing physicians sometimes use a neutral "messenger" to facilitate the establishment of contracts between themselves and Payors in ways that do not constitute or facilitate an unlawful agreement on prices, reimbursement rates, and other competitively significant terms. Such a messenger may not, however, jointly negotiate prices and other competitively significant terms on behalf of the participating physicians. Nor should a messenger facilitate the physicians' coordinated response to contract offers by, for example, electing not to convey a Payor's offer to them based on the messenger's opinion of the offer.

19. Before 2004, when RMACT was a division of CARS, both practices operated under the same tax identification number and reimbursement rates for RMACT services were determined by the contract negotiated for CARS. In 2004, when RMACT became a separate corporation, it began operating under a new tax identification number and IVS negotiated contracts on behalf of RMACT with various Payors, including Anthem BCBS and UnitedHealthcare/Oxford, that mirrored the existing contract for CARS. For at least the past sixteen (16) years, IVS has represented both CARS and RMACT in joint contract negotiations with Payors, including Anthem BCBS and UnitedHealthcare/Oxford.

20. During the time period covered by the Attorney General's Investigation, both CARS and RMACT received reimbursement from Anthem BCBS and UnitedHealthcare/Oxford for IVF/ART treatment and services provided to Benefit Plan members.

21. Except to the extent that competition has been restrained as alleged below, CARS and RMACT have been, and are now, in competition with one another for the provision of IVF/ART treatment services in certain geographic areas in Connecticut.

Alleged Conduct at Issue

22. Beginning with the spin-off of RMACT in 2004, up to and including the present, IVS jointly negotiated reimbursement rates that CARS and RMACT – two competing physician practices currently providing the majority of IVF/ART physician services in Connecticut – received for their services provided to plan members insured by Connecticut Payors.

23. The management and administrative services agreement entered into by RMACT in 2004 in connection with its spin-off from CARS included a provision in which RMACT agreed not to provide any IVF/ART treatment services in certain geographic areas in Connecticut that had the effect of preventing RMACT from competing with CARS in its IVF/ART physician services market territory.

24. IVS's and CARS's performance of the joint negotiation and geographic restrictions contained within IVS's management services agreements, had the effect of restricting competition for IVF/ART treatment services in Connecticut.

WHEREAS, based on this information, the Attorney General is prepared to allege that Respondents and RMACT unreasonably restrained competition by fixing prices for IVF/ART treatments and services in Connecticut;

WHEREAS, Respondents, without admitting or denying any of the allegations contained herein, are entering into this Settlement Agreement prior to any court making any findings of fact or conclusions of law relating to the Allegations of the Attorney General;

WHEREAS, Respondents have cooperated fully with the Attorney General's Investigation and have agreed to provide appropriate relief for the harm caused;

WHEREAS, pursuant to this Settlement Agreement, without admitting or denying liability, Respondents agree to pay the Benefit Plan and to pay a civil penalty to resolve all claims and potential claims the Attorney General can bring against Respondents;

WHEREAS, pursuant to this Settlement Agreement, without admitting or denying liability, Respondents agree to the business and conduct reforms contained in this Settlement Agreement; and

WHEREAS, the Attorney General finds that the relief and other provisions contained in this Settlement Agreement are appropriate and in the public interest.

NOW THEREFORE, in exchange for the mutual obligations described below, Respondents and the Attorney General hereby enter into this Settlement Agreement, and agree as follows:

DEFINITION – COVERED CONDUCT

25. “Covered Conduct” shall mean, except as provided below, Respondents engaging in any of the following conduct in Connecticut from January 1, 2004 to the effective date of the Settlement Agreement, whether by themselves or in concert with other persons: (i) jointly negotiating Payor contracts which had the effect of fixing the prices or other terms and conditions for IVF/ART treatments and services; (ii) agreeing to territorial restrictions which had the effect of allocating geographic markets for IVF/ART treatments and services; and (iii) engaging in any other anticompetitive conduct relating to the provision of IVF/ART treatments and services.

SETTLEMENT PAYMENTS

26. Respondents shall pay a total of \$1,252,401 in consideration of its settlement with the Attorney General. Respondents' payment consists of the following:

- a. \$952,401 as payment to the Benefit Plan; and
- b. \$300,000 as a Civil Penalty to be paid in accordance with Paragraph 27 below.

27. All payments due under this Settlement Agreement shall be made within forty-five (45) days of the Effective Date of this Settlement Agreement by electronic funds transfer pursuant to instructions provided by the Attorney General.

COMPLIANCE PROVISIONS

28. Respondents agree to adhere to the business and conduct reforms contained in the attached Appendix A to this Settlement Agreement.

RELEASES

29. In consideration of the obligations of Respondents in this Settlement Agreement, and conditioned on Respondent's paying all sums required in Paragraph 26 of this Settlement Agreement, the Attorney General, and the State of Connecticut do hereby fully and finally release Respondents, and their current officers, directors and employees, from any civil or administrative claim, action, suit or proceeding for damages, penalties or other injuries allegedly suffered by the State of Connecticut, that the Attorney General and the State of Connecticut may have asserted pursuant to the Covered Conduct under the Connecticut Antitrust Act, Conn. Gen. Stat § 35-24, *et. seq.*, or the Sherman Act, 15 U.S.C. § 1 *et seq.*, up through and including the effective date of this Settlement Agreement.

30. Notwithstanding the release given in Paragraph 29 of this Settlement Agreement, or any other term of this Settlement Agreement, the following claims of the State of Connecticut are specifically reserved and are not released:

- a. Any liability to the State of Connecticut (or its respective agencies) for any conduct other than the Covered Conduct;
- b. Claims based upon such obligations as are created by this Settlement Agreement;
- c. Any liability arising under laws and regulations that are administered and enforced by the Connecticut Department of Revenue Services;
- d. Claims of natural persons or consumers, including civil liability for personal injury or for other consequential damages arising from the Covered Conduct; and
- e. Any liability arising under laws and regulations that are administered and enforced by the Connecticut Department of Public Health.

31. Respondents fully and finally release the Attorney General and the State of Connecticut, and their respective agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Respondents have asserted, could have asserted, or may assert in the future against the Attorney General and the State of Connecticut, their respective agencies, officers, agents, employees, and servants, related to the Covered Conduct and the Attorney General's Investigation.

32. This Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 33 (waiver for beneficiaries' paragraph), below.

33. Respondents agree that they waive and shall not seek to recover payment for any of the amounts to be paid pursuant to Paragraph 26 of this Settlement Agreement from any health care beneficiaries or their sponsors, legally responsible individuals, or third party Payors.

Notice to Parties

34. Unless otherwise stated in writing subsequent to the Effective Date of this Settlement Agreement, all notifications and communications made pursuant to this Settlement Agreement shall be submitted to the persons listed below:

- a. For the Attorney General:
Nicole Demers
Assistant Attorney General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5040
Nicole.Demers@ct.gov

- b. For Respondents:
George Jepsen
Perry Rowthorn
Jepsen Rowthorn LLP
9 Cumberland Road
West Hartford CT 06119
george@jeprow.com
perry@jeprow.com

Miscellaneous Provisions

35. Respondents acknowledge and recognize that the State of Connecticut's remedy at law regarding enforcement of this Settlement Agreement is inadequate and agree that the Connecticut Superior Court has the authority to specifically enforce the provisions of this Settlement Agreement, including the authority to award equitable relief. The exclusive forum for resolving any disputes under this Settlement Agreement shall be the Connecticut Superior Court for the Judicial District of Hartford. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

36. This Settlement Agreement shall be governed by the laws of the State of Connecticut, without regard to its choice of law rules.

37. Nothing in this Settlement Agreement shall be construed to create a waiver of the State of Connecticut's sovereign immunity.

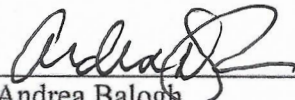
38. This Settlement Agreement constitutes the complete agreement between the Attorney General, the State of Connecticut and Respondents and may not be amended except by a writing signed by the Attorney General and Respondents.

- 39.** The bold-faced paragraph captions in this Settlement Agreement are for convenience only and do not add to, detract from, or change the substantive language or terms of this Settlement Agreement.
- 40.** The undersigned individuals signing this Settlement Agreement on behalf of each Respondent warrant that they are duly authorized by each Respondent to execute this Settlement Agreement.
- 41.** The undersigned individuals signing this Settlement Agreement on behalf of the Attorney General and the State of Connecticut represent that they are signing this Settlement Agreement in their official capacities and that they are duly authorized to execute this Settlement Agreement.
- 42.** The Respondents and the Attorney General agree that should any nonmaterial portion or portions of this Settlement Agreement be found to be void, unenforceable or otherwise invalid by the Superior Court of the State of Connecticut, Judicial District of Hartford after the exhaustion of all rights to appeal, the entire Settlement Agreement shall not be nullified and such invalid portion or portions shall be severed from the remainder of the Settlement Agreement as if they had never been entered into and the remainder of the Settlement Agreement shall be enforced.
- 43.** Respondents are entering into this Settlement Agreement without trial or adjudication of any issue of fact or law. No part of this Settlement Agreement shall constitute evidence against Respondents with respect to any issue of law or fact. No part of this Settlement Agreement shall be treated or construed as an admission of liability or wrongdoing by Respondents.
- 44.** This Settlement Agreement does not constitute an approval by the Attorney General of any of Respondents' business practices, including its physician management services, and Respondents shall make no representation or claim to the contrary.
- 45.** Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.
- 46.** Each party and signatory to this Settlement Agreement represents that it freely and voluntarily enters into this Settlement Agreement without any degree of duress or compulsion.
- 47.** This Settlement Agreement constitutes the complete agreement between the Parties. This Settlement Agreement may not be amended except by written consent of the Parties. Forbearance by the State of Connecticut from pursuing any remedy or relief available to it under this Settlement Agreement shall not constitute a waiver of rights under this Settlement Agreement.
- 48.** This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement.
- 49.** This Settlement Agreement is binding on Respondent's respective successors, transferees, heirs, and assigns.

50. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (“Effective Date of this Agreement”). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

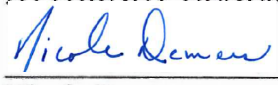
IN WITNESS WHEREOF, the Attorney General and Respondents set their hands and seals on the dates set forth below:

Women's Health USA, Inc.



Andrea Balogh
General Counsel
Women's Health USA
22 Waterville Road
Avon, CT 06001
abalogh@womenshealthusa.com
DATED: August 26, 2021

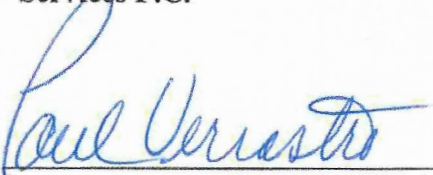
STATE OF CONNECTICUT

WILLIAM TONG
ATTORNEY GENERAL


Nicole Demers
Michael E. Cole
Assistant Attorneys General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
Nicole.Demers@ct.gov

In Vitro Sciences, LLC

**Center for Advanced Reproductive
Services P.C.**



Paul Verrastro
Chief Executive Officer
2 Batterson Park Road
Farmington, CT 06032
DATED: August 26, 2021

IN WITNESS WHEREOF, the Attorney General and Respondents set their hands and seals on the dates set forth below:

Women's Health USA, Inc.

Andrea Balogh
General Counsel
Women's Health USA
22 Waterville Road
Avon, CT 06001
abalogh@womenshealthusa.com

STATE OF CONNECTICUT

WILLIAM TONG
ATTORNEY GENERAL



Nicole Demers
Michael E. Cole
Assistant Attorneys General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
Nicole.Demers@ct.gov

In Vitro Sciences, LLC



Derek Larkin
Chief Executive Officer
22 Waterville Road
Avon, CT 06001

DATED: August 26, 2021

**Center for Advanced Reproductive
Services P.C.**

APPENDIX A

I. Definitions

“Women’s Health USA, Inc.” or **“WHUSA”** means Women’s Health USA, Inc., its officers, directors, employees, agents, attorneys, representatives, or other persons or entities acting on behalf of WHUSA, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by WHUSA, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

“In Vitro Sciences, LLC” or **“IVS”** means In Vitro Sciences, LLC, its officers, directors, employees, agents, attorneys, representatives, or other persons or entities acting on behalf of IVS, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by IVS, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

“Center for Advanced Reproductive Services, P.C.” or **“CARS”** means Center for Advanced Reproductive Services, P.C., its officers, directors, employees, agents, attorneys, representatives, or other persons or entities acting on behalf of CARS, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by IVS, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

“Reproductive Medicine Associates of Connecticut, P.C.” or **“RMACT”** is a for-profit independent company, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal address at 761 Main Avenue, Norwalk, Connecticut 06851. RMACT is a full-service fertility physician practice specializing in a range of infertility treatments. RMACT is a group practice consisting of approximately seven (7) physicians. These physicians practice reproductive endocrinology and fertility medicine at the following locations: Danbury, Trumbull, Norwalk, and Stamford, Connecticut and Poughkeepsie, New York.

“Physician Practices” means RMACT and CARS.

“Respondents” means WHUSA, IVS, and CARS.

“Medical Group Practice” means a bona fide, integrated firm in which Physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one Physician practices medicine.

“Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a Payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”

“Payor” means any person that pays, or arranges for the payment, for all or any part of any physician services pursuant to a contract with a Medical Group Practice or individual Physician for any other person. Payor includes any person that develops, leases, or sells

access to networks of Physicians.

“Person” means both natural persons and artificial persons, including, but not limited to, corporations, limited liability companies, unincorporated entities, and governments.

“Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).

“Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address if there is no business address.

“Competitor” means any person reasonably considered, viewed, or recognized as being in competition or potentially in competition with another person for the provision of IVF/ART services.

“Physician Management Services” means the provision of non-clinical business support including, but not limited to, pricing and Payor strategies, revenue cycle management, electronic patient communications, marketing and branding services, financial management services, professional liability risk management, human resources, information technology services, and group purchasing services.

“Pricing and Managed Care Contracting Services” means (a) serving as an agent for RMACT or any other Medical Group Practice to (i) communicate to and from Payors, offers to enter into Payor contracts, and (ii) negotiate Payor contracts, and (b) providing pricing or reimbursement advice, strategies, programs or models for RMACT’s or any other Medical Group Practice’s managed care, insured, or self-pay patients.

“Commercially Sensitive Information” means all confidential information, and all proprietary non-public information (i.e., information that is not generally known or otherwise publicly available) including but not limited to: fees, charges, prices, pricing policies, price changes, or price plans or intentions (charged to Payors or self-pay patients); discounts provided to self-pay patients or Payors; payment rates received from Payors; profits, profit margins or costs; shares of the IVF/ART market; bids, the intent to bid or the terms of bids, and all related documents, data, and materials, including term sheets, initial bid terms, final bid terms, and other documents that support cost, fee, and rate structures underlying the bids; responses to requests for either proposals or other solicitations; IVF/ART service territories or markets; marketing or promotional activities; selection, rejection, or termination of any health care insurers or Payors; employee hiring; medical director fees or staff compensation; strategic plans; competitive intelligence and research; or any other non-public competitively sensitive topics or information.

“Trade or Commerce” is defined in C.G.S. § 35-25 of the Connecticut Antitrust Act.

II. Prohibited Conduct

Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting Trade or Commerce, agree to comply with all provisions of the Connecticut Antitrust Act, C.G.S. § 35-24, *et seq.*, and any other applicable federal antitrust or unfair and deceptive acts and practices laws, and shall cease and

desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Medical Group Practices. Specifically, that includes refraining from:
 - 1. Entering into, maintaining, or enforcing any agreement between or among any other Medical Group Practices to deal, refuse to deal, or threaten to refuse to deal with any Payor;
 - 2. Allocating or dividing customers or markets, either functional or geographical, between any other Medical Group Practices;
 - 3. Entering into, maintaining, or enforcing any agreement, or part of an agreement among two or more Medical Group Practices that restrains any person from cold calling, soliciting, recruiting, hiring, or otherwise competing for (i) employees located in the United States being hired to work in the United States or (ii) any employee located outside the United States being hired to work in the United States;
 - 4. Entering into, maintaining, or enforcing any agreement between or among any other Medical Group Practices regarding any term, condition, or requirement upon which any Medical Group Practice deals, or is willing to deal, with any Payor, including, but not limited to, price terms;
 - 5. Entering into, maintaining, or enforcing any agreement between or among any Medical Group Practices, not to deal individually with any Payor, or not to deal with any Payor through any arrangement other than through Respondents WHUSA or IVS; and
 - 6. Exchanging or facilitating in any manner the exchange or transfer of information between or among any Medical Group Practices concerning any Medical Group Practice's willingness to deal with a Payor, or the terms or conditions, including price terms, on which the Medical Group Practice is willing to deal with a Payor.
- B. Attempting to engage in any action prohibited by Paragraph A, above; and
- C. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs A and B above.
- D. Nothing in this section shall be interpreted to prohibit the sharing of patient clinical information or non-patient specific clinical research and related information intended to improve patient outcomes between or among any Medical Group Practices.
- E. Further, nothing in this section shall prohibit any conduct by WHUSA or IVS that (i) is reasonably necessary in furtherance of the performance of Physician Management Services provided to Medical Group Practices that are not Competitors; (ii) is

reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement with the exception of such joint arrangements between CARS and RMACT as referenced in Paragraph IV; or (iii) solely involves physicians in the same Medical Group Practice.

III. Payor Contract Negotiation

Within sixty (60) days from the date that this Settlement Agreement becomes final, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services affecting Trade or Commerce, IVS shall cease and desist from:

- A. Providing Pricing and Managed Care Contracting Services to RMACT and shall institute procedures to ensure that the provision of Physician Management Services is performed in compliance with the antitrust laws and this Settlement Agreement. Specifically:
 1. Within sixty (60) days from the date this Settlement Agreement becomes final, Respondents IVS and RMACT shall negotiate a new or amended contract to replace the currently applicable Management and Administrative Services Agreement in a manner that complies with all of the terms of this Settlement Agreement. Specifically, the new or amended contract:
 - (a) Shall not include the provision of Pricing and Managed Care Contracting Services;
 - (b) Shall not include any restriction of competition between RMACT and any other Medical Group Practice such as in Paragraph 10 (“Noncompetition”) of the Management and Administrative Services Agreement entered into between RMACT and IVS on July 1, 2014;
 - (c) Shall not include a Billing and Management Fee that is based on any percentage of revenues derived from any managed care or payor contract in effect on the effective date of this Settlement Agreement.
 - (d) Shall establish appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and restrictions (hereinafter “Firewall Protections”) as follows:
 - (i) Prohibit Respondent IVS’s management group and employees not responsible for providing Physician Management Services to RMACT, as specified in Appendix B of this Settlement Agreement, (hereinafter “Restricted Employees”) from having access to, knowingly reviewing, or otherwise requesting, soliciting, seeking, receiving, or obtaining, directly or indirectly any of RMACT’s Commercially Sensitive Information;
 - (ii) Prohibit Respondent IVS’s management group and employees responsible for providing Physician Management Services to

RMACT, as specified in in Appendix B of this Settlement Agreement, (hereinafter “Non-Restricted Employees”) from disclosing, providing, sharing, conveying, discussing, exchanging, transferring, circulating, or otherwise providing access to, directly or indirectly, any of RMACT’s Commercially Sensitive Information to Restricted Employees, CARS, or any other Medical Group Practice;

- (iii) Prohibit the use directly or indirectly, of any Commercially Sensitive Information for any purpose other than as provided in this Settlement Agreement;
- (iv) Require the execution of confidentiality agreements signed by each Non-Restricted Employee at the time that the Firewall Protections are established, which shall be maintained for the duration of this Settlement Agreement; and
- (v) Require each Non-Restricted Employee to certify on an annual basis that he or she understands the prohibitions associated with the Firewall Protections and has complied with the terms of the confidentiality agreement, records of which shall be maintained for the duration of this Settlement Agreement.
- (vi) Nothing in this section shall prohibit Administrative Staff of Respondent WHUSA and IVS from accessing and utilizing Competitively Sensitive Information for purposes necessary to the completion of the employee’s job, provided that any such employee has signed a confidentiality agreement prohibiting the sharing of Competitively Sensitive Information of a Competitor or potential Competitor with any person who is involved in the management of RMACT, CARS, or any other Competitor Medical Group Practice, including any person involved in payor contract negotiations for any Medical Group Practice. “Administrative Staff,” for purposes of this section shall mean those employees who do not exercise any discretion in the completion of their duties, do not have any involvement in payor contract negotiations, and who have no role in the management of RMACT, CARS, or any other Competitor Medical Group Practice.

2. If, within ninety (90) days of the execution of this Settlement Agreement, Respondent IVS and RMACT have not reached agreement on a new or amended contract, then such failure shall be deemed a material breach of the Management and Administrative Services Agreement pursuant to Paragraph 14. c. therein and Respondent IVS shall immediately issue a written notice of termination.

B. Providing Pricing and Managed Care Contracting Services on behalf of any other Physician or Medical Group Practice other than CARS or any other controlled entity,

that provides IVF/ART healthcare services in Connecticut or any other state where CARS provides healthcare services, notwithstanding whether such conduct also is prohibited by Paragraph II of this Settlement Agreement.

- C. Advising any Physician who participates, or has participated, in RMACT or any other Medical Group Practice (other than CARS) that provides IVF/ART healthcare services in Connecticut or any other state where CARS provides healthcare services, to accept or reject any term, condition, or requirement of dealing with any Payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Settlement Agreement.
- D. Having any of their employees maintain, hold or obtain any position, including but not limited to, a member of the Board of Directors, President, Chief Executive Officer, Chief Financial Officer, Executive Vice-President, of RMACT, or act in a representative capacity for any other Medical Group Practice, other than CARS, that provides IVF/ART healthcare services in Connecticut or any other state where CARS provides healthcare services.
- E. If at any time during the term of this Settlement Agreement Respondent IVS ceases to own or control Respondent CARS (hereinafter “CARS divestiture”), such that following the CARS divestiture Respondent IVS no longer has any ownership or control interest in any Competitor of RMACT, then the foregoing Section III (Payor Contract Negotiation) shall be deemed to be void as to Respondent IVS during and only for so long as Respondent IVS does not have any ownership or control interest in any Competitor of RMACT. Respondent IVS shall provide CTOAG notice as referenced in paragraph V.E.

IV. Merger

Respondents, for three (3) years from the date that this Settlement Agreement becomes final, agree to refrain from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to merge, integrate (clinically or financially), affiliate, enter into a joint venture or otherwise combine CARS and RMACT. Notwithstanding the foregoing, beginning no earlier than eighteen (18) months from the date of this Settlement Agreement, Respondents may submit to the Connecticut Attorney General (CTOAG) a written request to amend this sub-section to permit CARS and RMACT to merge, combine or affiliate prior to the end of the Prohibition Period. Such request should be predicated on a change in the market for IVF/ART services in Connecticut. The decision to amend the Prohibition Period will be in the sole discretion of the CTOAG.

V. Notices and Reports to the Connecticut Attorney General

- A. Respondent IVS, for five (5) years from the date this Settlement Agreement becomes final, shall notify the Office of the CTOAG in writing (“Notification”) at least sixty (60) days prior to entering into any new arrangement with any Medical Group Practice under which Respondent IVS would act as a messenger, or as an agent on behalf of any Medical Group Practice, with Payors regarding contracts in Connecticut. The Notification shall include:

1. the identity of each proposed Medical Group Practice;
 2. the proposed geographic area in which the proposed arrangement will operate;
 3. a copy of any proposed agreement between Respondent IVS and the Medical Group Practice;
 4. a description of the proposed arrangement's purpose and function;
 5. a description of any resulting efficiencies expected to be obtained through the arrangement; and
 6. a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Settlement Agreement.
- B. Notification is not required for Respondent IVS's subsequent acts as a messenger pursuant to an arrangement for which this Notification has been given. Receipt by the CTOAG from Respondent IVS of any Notification, pursuant to this Paragraph V, is not to be construed as a determination by the CTOAG that any action described in such Notification does or does not violate this Settlement Agreement or any law enforced by the CTOAG;
- C. Respondents WHUSA and IVS, for five (5) years from the date this Settlement Agreement becomes final, shall notify the CTOAG at least thirty (30) days prior to any proposed change in WHUSA or IVS, (such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries) or any other change in WHUSA or IVS that may affect compliance obligations arising out of this Settlement Agreement; and
- D. Respondents WHUSA and IVS shall file verified written reports within sixty (60) days after the date this Settlement Agreement becomes final, annually thereafter for five (5) years on the anniversary of the date this Settlement Agreement becomes final, and at such other times as the CTOAG may by written notice require. Each report shall include:
1. a detailed description of the manner and form in which WHUSA and IVS have complied and are complying with this Settlement Agreement, including but not limited to the Respondents' obligation in Paragraph VIII;
 2. the name, address, and telephone number of each Payor in Connecticut with which IVS has had any contact on behalf of CARS;
 3. copies of the delivery confirmations and return receipts required by Paragraphs VI.A and VI.B to the CTOAG; and
 4. copies of the new Management Services Agreement, the confidentiality agreements and certifications referenced in Paragraphs III.A, 1, (d)(iv)&(v).
- E. For five (5) years from the date this Settlement Agreement becomes final, Respondent IVS shall notify the CTOAG if CARS ceases to be owned or controlled by either

Respondent IVS or any other entity acting on their behalf or under their control in any way (hereinafter “CARS divestiture”), such that following the CARS divestiture Respondent IVS does not have any ownership or control interest in any Competitor of RMACT. The Notification shall include:

1. the date of the CARS divestiture;
 2. a copy of (i) any management service agreements IVS enters into with CARS subsequent to the divestiture; and/or (ii) any other documentation memorializing the CARS divestiture; and.
 3. A certification that Respondent IVS does not have an ownership or controlling interest in any other Competitor of RMACT.
- F. For five (5) years from the date this Settlement Agreement becomes final, WHUSA and IVS shall notify the CTOAG any change in its or their respective principal address within twenty (20) days of such change in address.

VI. Notices to Physician Practices and Payors

- A. Within thirty (30) days after the date on which this Settlement Agreement becomes final, Respondent WHUSA or IVS shall send by first-class mail, with return receipt, a copy of this Settlement Agreement to:
1. each Physician who participates, or has participated, in RMACT and Respondent CARS; and
 2. each officer or director of RMACT and Respondent CARS;
- B. Respondents IVS and CARS shall:
1. Within thirty (30) days after the date on which this Settlement Agreement becomes final, send by first-class mail, return receipt, to the Vice President of each Payor with whom one or both of Respondent Physician Practices has a current contract to provide IVF/ART healthcare services in the State of Connecticut to their respective plan members a written notice informing the Payor that that neither Respondents WHUSA or IVS will represent RMACT in connection with any managed care contracting; and
 2. Offer to terminate, without penalty or charge, and in compliance with any applicable laws, any such contract with such Payor upon receipt of a written request to terminate such contract from such Payor in accordance with the notice specified in Appendix C of this Settlement Agreement.

VII. Failure to Provide Notice

If WHUSA or IVS fails to comply with all or any portion of Paragraphs V and VI of this Settlement Agreement within sixty (60) days of the time set forth in those paragraphs, then upon notification by CTOAG of such failure to comply, Respondents WHUSA or IVS shall, within thirty (30) days thereafter, comply with those portions of Paragraphs V and VI of this

Settlement Agreement with which WHUSA or IVS did not comply. A failure to comply shall be a breach of the Settlement Agreement.

VIII. Antitrust Compliance Program

Respondents shall design, maintain, and operate an antitrust and competition compliance program to assure compliance with this Settlement Agreement and the federal and state antitrust and competition laws, including the Connecticut Antitrust Act, C.G.S. §§ 35-24 *et seq.* and the Connecticut Unfair Trade Practices Act, C.G.S. §§ 42-110a *et seq.*

- A. No later than thirty (30) days from the date this Settlement Agreement is final, Respondents shall retain Antitrust Counsel for the duration of this Settlement Agreement to supervise Respondents' antitrust compliance program.
- B. For a period of five (5) years from the date this Settlement Agreement is final, Respondents shall provide annual training and an overview of the antitrust and competition laws, as they apply to Respondents' activities, behavior, and conduct (via in-person, video medium or web-based program) to its board of directors, officers, medical directors, Physicians and employees to ensure compliance with Respondents' obligations under this Settlement Agreement.

IX. Term

Unless a term limit for compliance is otherwise specified within this Settlement Agreement, the Respondents' obligations under this Settlement Agreement shall terminate five (5) years from the date it is executed.

APPENDIX B

Restricted Employees

Employees performing the following functions:

- Managed Care /Payer Contracting;
- Marketing; and
- Recruiting/Hiring;

including but not limited to those employees holding the following positions:

- CARS CEO - SVP IVS;
- VP Product Strategy & Solutions;
- CEO;
- CFO; and
- President & COO.

Non-Restricted Employees

Employees performing the following functions:

- Billing & Collection
- Financial Reporting
- Corporate Insurance
- Credentialing
- Benefit Administration
- Payroll Processing
- Information Technology
- Compliance

including but not limited to those employees holding the following positions:

- Billing Representative;
- Billing Supervisor;
- Director of Revenue Cycle Systems;
- Vice President Billing Operations;
- Controller;
- Accounting Manager – IVS;
- Manager Financial Planning & Analysis;
- Senior Accountant;
- Accounts Payable Assistant;
- HR Benefits Manager; and
- HR Benefits Analyst.

APPENDIX C

First Class Mail/Return Receipt

[letterhead of CARS]

[name of payor’s VP] [address]

Dear _:

On [DATE] the Office of the Connecticut Attorney General (the “Attorney General”) entered into a Settlement Agreement with, among others, Women’s Health USA, Inc. (“WHUSA”), In Vitro Sciences, LLC (“IVS”), and the Center for Advanced Reproductive Services, P.C. (“CARS”). The Settlement Agreement follows an investigation conducted by the Attorney General of alleged violations of state and federal antitrust laws in the provision of *in vitro* fertilization/assisted reproductive technology (“IVF/ART”) physician services in Connecticut (the “Attorney General’s Investigation”). WHUSA, CARS and IVS neither admit nor deny any violations of law in connection with the Attorney General’s Investigation or the Settlement Agreement.

Pursuant to Paragraph VI.B of the Settlement Agreement, (a) neither WHUSA nor IVS will represent RMACT in connection with any managed care contracting; and (b) within your sole discretion, WHUSA, IVS and CARS must allow you to terminate, upon your 30 days written notice, without any penalty or charge, any contracts with CARS that are currently in effect.

Any notice to terminate the contract must be made in writing, postmarked within 10 business days of receiving this notice, and sent to me at the following address: [IVS address]. If you have any questions about the Settlement Agreement you may contact Assistant Attorney General Nicole Demers, 165 Capitol Avenue, Hartford, Connecticut 06106 or Nicole.demers@ct.gov.

Sincerely,

XXXXXX

XXXXXX

Cc: Nicole Demers
Assistant Attorney General
Office of the Attorney General
165 Capitol Avenue
Hartford, Connecticut 06410
Nicole.demers@ct.gov