

SETTLEMENT AGREEMENT AND GENERAL RELEASE

In consideration of the mutual promises and covenants of the parties herein, **MARVIN WARNER** (“WARNER”) and the **WEST VIRGINIA DEPARTMENT OF AGRICULTURE** (“WVDA”) for themselves, their affiliates, predecessors, successors and assigns, and their current and former officers, attorneys, agents and employees in their official as well as personal capacities (**together, with WARNER, for purposes herein, the “Parties”**) hereby agree as follows:

1. Reasons for Agreement

a. WARNER has instituted litigation against WVDA, currently pending in the Circuit Court of Kanawha County, West Virginia as Civil Action No. 16-C-1334 (the “Civil Action”).

b. WVDA has denied all allegations of liability asserted by WARNER.

c. The Parties wish to resolve and settle the allegations made by WARNER in the Civil Action, as well as any other claims WARNER may have or could have brought against WVDA, or any of its affiliates, subsidiaries, parents, employees, former employees, insurers, or agents prior to the effective date of this agreement.

2. Settlement of Claims

a. WARNER agrees to accept the sum of Three Hundred Thirty Thousand Dollars (**\$330,000**) monetary payment in settlement of any and all claims he may have against WVDA, with the settlement proceeds paid as follows:

- i. A check made payable by WVDA for general damages to "Marvin Warner" in the amount of Thirty Thousand Dollars (\$30,000), for which an IRS Form 1099 will be issued for the 2017 tax year,

- ii. A check made payable by AIG to "Marvin Warner" in the amount of One Hundred Fifty Six Thousand One Hundred Seventy Six Dollars and One Cent (\$156,176.01), for which an IRS Form 1099 will be issued for the 2017 tax year; and
- iii. A check made payable by AIG to "Atkinson & Polak PLLC," WARNER's counsel, in the amount of One Hundred Forty Three Thousand Eight Hundred Twenty Three Dollars and Ninety Nine Cents (\$143,823.99), representing payment for WARNER's attorneys' fees and costs for representing his interests in this matter. Atkinson & Polak PLLC agrees to provide a Form W-9 verifying its federal tax identification number.

b. WVDA and WARNER agree that the foregoing allocation and characterization of the settlement proceeds is fair and appropriate. The parties note that the applicable insurance policy contains the following provision: "This insurance does not apply to . . . any claim(s) made against the 'insured' for damages attributable to wages, salaries and benefits." Moreover, WVDA, in making this settlement, reserves its arguments that it is immune from wage loss claims due to the doctrine of sovereign immunity.

c. WARNER agrees that he will direct his counsel to take the necessary steps to ensure that the Civil Action is dismissed with prejudice with respect to all parties and causes of action.

3. General Release

WARNER agrees that he will not instigate, initiate, or promote any actions, suits, charges, complaints, causes of action, or claims related in any way to or resulting from his employment with the West Virginia Department of Agriculture against WVDA, or engage in any

activity detrimental to its businesses or persons, unless required to do so by law. WARNER further does hereby knowingly, voluntarily and unconditionally release, acquit and forever discharge WVDA of and from any and all claims asserted in the Complaint, from any and all claims he could have asserted therein, and from any and all claims, liabilities, rights and causes of action he may have on account of or arising out of his employment with WVDA, of every kind and nature, both in law and equity, whether based on federal or state law, statute, ordinance, regulation, or common law principle, including but not limited to claims based on the Age Discrimination in Employment Act (“ADEA”), Fair Labor Standards Act (“FLSA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the Family and Medical Leave Act (“FMLA”), the Americans with Disabilities Act (“ADA”), the West Virginia Human Rights Act (“WVHRA”), and the West Virginia Wage Payment and Collection Act (“WVWPCA”), and for claims of emotional distress or mental or physical injury, whether known or unknown, suspected or unsuspected, and any claim for monetary, legal, compensatory, punitive, liquidated or other damages, equitable relief, reinstatement, costs, expenses of any kind, interest, or attorneys’ fees, from the beginning of the world to the date of this Agreement. In the event that WARNER institutes any proceeding released in this Agreement, his claims shall be dismissed immediately upon the presentation of this Agreement, and he shall reimburse WVDA for all legal fees and expenses incurred in defending such claims and obtaining the dismissal thereof. It is expressly understood and agreed that this release is intended to include and apply to all damages and injuries of any kind and that it includes not only all damages allegedly resulting from his employment with WVDA and its termination, but also covers all past, present, and future effects of said injury, whether such effects are known or may become known in the future.

4. Employment

WARNER acknowledges and agrees that his employment with WVDA has ended irrevocably and forever and will not be resumed again at any time. WARNER further agrees that from and after the date this Agreement becomes effective, he is ineligible for future employment with WVDA or any affiliated state agency (including, but not limited to, the West Virginia Conservation Agency or non-elected employment with any West Virginia Conservation District) and will not knowingly seek a consulting, independent contractor or employment relationship with the same. In the event that WARNER applies for or obtains such employment, he agrees that his application shall be disregarded and/or his employment shall be terminated on the basis of this Agreement; provided, however, that if WARNER inadvertently applies for any position for which he is ineligible as provided above, he may withdraw the application without penalty or determination that he is in violation of this Agreement.

5. No Admission

WARNER understands and agrees that neither WVDA nor any of its agents, jointly or severally, admit fault or liability and that WVDA expressly denies any fault or liability in connection with these claims and that WVDA has agreed to settle this matter only to avoid the expense and inconvenience of further litigation.

6. Taxes and Liens

WARNER acknowledges and agrees that WVDA has not made any representations regarding his tax obligations, if any, as a result of this Agreement and that he has relied solely on his judgment and/or financial advisors in that regard. WARNER agrees that to the extent that any federal, state, or local taxes (which may be owed by WARNER) of any kind may be due or payable as a result of this Agreement, WARNER shall be solely and entirely responsible for

timely reporting, paying, and discharging of such taxes, penalties, and interest, if any, which may be owed on such amounts. It is further agreed that WARNER is responsible for any statutory or other liens or claims which might be placed or made against any settlement proceeds (which may be owed by WARNER) by operation of law. WARNER further agrees to reimburse, indemnify, and otherwise hold harmless WVDA in the event of any claim against it for payment of such taxes, liens, or claims (which may be owed by WARNER) including all loss, cost, damage, or expense including, but without limitation, attorneys' fees associated with defending against such claim for taxes.

7. Medicare Status and Satisfaction of any Medicare Reimbursement Obligations

a. "CMS" means the Centers for Medicare & Medicaid Services within the U.S. Department of Health and Human Services, including any agents, representatives, or contractors of CMS, such as the Coordination of Benefits Contractor ("COBC") or Medicare Secondary Payer Recovery Contractor ("MSPRC").

b. "Conditional Payments" shall have the meaning ascribed to it under the MSP Statute and implementing regulations.

c. "MMSEA" means the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), which, in part, amended the Medicare Secondary Payer statute at 42 U.S.C. § 1395y(b)(7) and (8). This portion of MMSEA is referred to herein as "Section 111 of MMSEA".

d. "MSP Statute" means the Medicare Secondary Payer ("MSP") statute. 42 U.S.C. § 1395y(b).

e. "Released Matter" means any released accident, occurrence, injury, illness, disease, loss, claim, demand, or damages that are subject to this Agreement and releases herein.

f. "Releasees" means WVDA and its past, present and future officers, directors, employees, parents, subsidiaries, divisions, affiliates, insurers, and attorneys; and its and their respective predecessors, successors, and assigns.

g. WARNER represents that he is not enrolled in the Medicare program, was not enrolled in the Medicare program at the time of the Released Matter or anytime thereafter through the date of this Agreement, and has not received Medicare benefits for medical services or items related to, arising from, or in connection with the Released Matter.

h. WARNER represents and warrants that the information provided in this litigation to Releasees for confirmation of WARNER's Medicare status, including WARNER's name, gender, date of birth, and Social Security Number, is complete, accurate, and current as of the effective date of this Agreement.

i. WARNER represents and warrants that no Medicaid payments have been made to or on behalf of WARNER and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to any Released Matters. WARNER further agrees that he, and not Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interests, or causes of action that may exist or have been asserted or that may in the future exist or be asserted.

j. To the extent that WARNER's representations and warranties related to WARNER's Medicare status and receipt of medical services and items related to the Released Matters are inaccurate, not current, or misleading, WARNER agrees to indemnify and hold harmless Releasees from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising

from or related to this Agreement, the payment of the Settlement Amount, any Conditional Payments made by Medicare, or any medical expenses or payments arising from or related to any Released Matters that is subject to this Agreement or the release set forth herein, including but not limited to: (a) all claims and demands for reimbursement of Conditional Payments or for damages or double damages based upon any failure to reimburse Medicare for Conditional Payments; (b) all claims and demands for penalties based upon any failure to report, late reporting, or other noncompliance with or violation of Section 111 of MMSEA that is based in whole or in part upon late, inaccurate, or inadequate information provided to Releasees by WARNER or upon any failure of WARNER to provide information; and (c) all Medicaid liens. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of Releasees in connection with such claims, demands, subrogated interests, or causes of action. Regardless of the accuracy of the representations and warranties made above, WARNER agrees to indemnify and hold Releasees harmless for taxes on the payments made to WARNER and any tax consequences related thereto, except those prohibited by law.

k. It is understood and agreed that Releasees expressly rely upon the promises, representations, and warranties made by WARNER in this Agreement; that any breach of such promises, representations, and warranties would constitute a material breach of this Agreement; and that in the event of any such breach, Releasees shall be entitled to any and all relief and damages available at law or in equity.

8. Construction and Severability

The Parties agree that this Agreement shall be deemed to have been made within the State of West Virginia and shall be interpreted, construed, and enforced in accordance with the

laws of the State of West Virginia. The Parties further agree that, should one or more paragraphs of this Agreement be ruled unenforceable, then the remainder of this Agreement shall remain in full force and effect.

9. Entire Agreement

a. The Parties understand and agree that all terms of this Settlement Agreement and General Release are contractual and are not a mere recital, and represent and warrant that they are competent and possess the full and complete authority to covenant and agree as herein provided.

b. WARNER understands, agrees and represents that the covenants made herein and the releases herein executed may affect rights and liabilities of substantial extent and agrees that the covenants and releases provided herein are in his best interest. WARNER represents and warrants that, in negotiating and executing this Settlement Agreement and General Release, he has had an adequate opportunity to consult with competent counsel or other representative of his choosing concerning the meaning and effect of each term and provision hereof, and that there are no representations, promises or agreements other than those expressly set forth in writing herein.

c. The Parties have carefully read this Settlement Agreement and General Release in its entirety; fully understand and agree to its terms and provisions; intend and agree that it is final and binding and understand that, in the event of a breach, either party may seek relief, including damages, restitution and injunctive relief, at law or in equity, in a court of competent jurisdiction.

d. This agreement shall only be amended by a writing executed by all parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Settlement Agreement and General Release as set forth below.

Marvin Warner
MARVIN WARNER
Plaintiff

11-14-17
Date

WEST VIRGINIA DEPARTMENT OF AGRICULTURE
Defendant

By Tom Baul

Date: 11/16/17

Its Chief of Staff

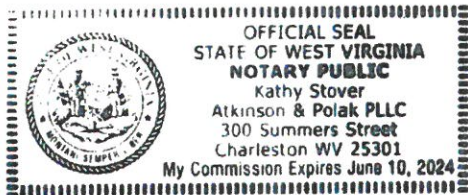
STATE OF WEST VIRGINIA.

COUNTY OF Kanawha, to-wit;

I, Kathy Stover, a Notary Public in and for the County and State aforesaid, do hereby certify that MARVIN WARNER, whose name is signed to the Settlement Agreement hereto annexed, bearing date the 14th day of November 2017, has this day acknowledged the same before me in my said County.

Given under my hand this 14th day of November 2017.

My commission expires 6/10/24.



Kathy Stover
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF Kanawha, to-wit;

I, Anne L Oravec, a Notary Public in and for the County and State aforesaid, do certify that Norm Bailey, individually and on behalf of the WEST VIRGINIA DEPARTMENT OF AGRICULTURE, who signed the Settlement Agreement hereto annexed, bearing date as of the 16th day of November, 2017, has this day in my said County, before me, acknowledged the same to be the act and deed of said agency.

Given under my hand this 16th day of November, 2017.

My commission expires September 5, 2023.

Anne L. Oravec
Notary Public

