AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL AND CLASS ACTION TRIBUNAL

In the Matter of the Arbitration Between

----------X

JOHN IVAN SUTTER, M.D., P.A., on behalf of himself, and all others similarly situated,

AAA No.: 18 20 0202 0593

Claimant,

-v-

OXFORD HEALTH PLANS, INC.,

Respondents.

----------/

FINAL AWARD APPROVING CLASS SETTLEMENT, CERTIFYING SETTLEMENT CLASS, AWARDING CLASS COUNSEL FEES AND EXPENSES AND JOHN IVAN SUTTER, M.D. A CLASS REPRESENTATIVE INCENTIVE AWARD

The Arbitrator having reviewed and considered the Joint Motion for Final Approval of Settlement, filed June 15, 2015 ("Approval Motion"), in the above-captioned class arbitration (the "Arbitration"); and having reviewed and considered the terms and conditions of the proposed settlement (the "Settlement") as set forth in the Settlement Agreement, dated February 20, 2015, which was filed with the Arbitrator on February 20, 2015 (the "Settlement Agreement"); and having reviewed and considered the applications of Settlement Class Counsel, Eric D. Katz of Mazie Slater Katz & Freeman, LLC, for an award of attorneys' fees and expenses and for a class representative fee for Claimant, Dr. John Sutter, filed on June 15, 2015, and having held a Final Fairness Hearing on August 12, 2015 after being satisfied that Notice to the Settlement Class had been provided in accordance with the Arbitrator's Award Preliminarily Approving Proposed Settlement of Class Arbitration, Conditionally Certifying Settlement Class,

Setting Form and Content of Settlement Class Notice, and Scheduling Final Fairness Hearing entered on April 1, 2015 (the "Preliminary Approval Award"); and having taken into account the lack of any objections and the responses submitted prior to the Final Fairness Hearing in accordance with the provisions of the Preliminary Approval Award and the presentations and other proceedings at the Final Fairness Hearing; and having considered the proposed Settlement in the context of all prior proceedings conducted in this arbitration, including the preliminary approval hearing on April 1, 2015, the Arbitrator makes the following **FINDINGS**:

1. Capitalized terms used in this Final Award that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

2. The Arbitrator has jurisdiction over the subject matter of this Arbitration and over all of the parties and Settlement Class Members who have not requested exclusion from the Settlement Class.

3. Notice to members of the Settlement Class has been provided in accordance with the notice requirements specified by the Arbitrator in the Preliminary Approval Award. Such Notice: (i) constituted the best notice to members of the Settlement Class that was practicable under the circumstances; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the terms of the proposed Settlement, their right to object and to appear at the Final Fairness Hearing or to exclude themselves from the Settlement, and the binding effect of a class judgment; (iii) was reasonable and constituted due, adequate and sufficient notice to persons affected by and/or entitled to participate in the proposed Settlement and Final Fairness Hearing; and (iv) fully complied with the requirements of due process and Rule 8 of the American Arbitration Association's Supplementary Rules for Class Arbitration.

4. The Arbitrator has held a hearing to consider the fairness, reasonableness and

adequacy of the Settlement, and has been advised there are no objections to the Settlement. No objectors attended or appeared at the final Fairness Hearing. Because there were no timely objections filed within the deadline set by the Preliminary Approval Award, no class member has established standing to appeal this final award. *Devlin v. Scardelletti*, 536 U.S. 1, 14 (2002); *In re Lupron Mktg. & Sales Prac. Litig.*, 677 F.3d 21, 29 (1st Cir. 2012).

5. The proposed Settlement is the product of good faith, arm's-length negotiations between Claimant and Respondent. The provisions providing that Respondent will also pay up to $1.25 million for Class Counsel's attorneys' fees and reimbursement of expenses, and up to $25,000 to Dr. Sutter as a class representative fee, were negotiated separately. The amounts to be paid by Oxford for Settlement Class Counsel's fees and expenses and the class representative fee will neither impact the Settlement Fund nor diminish in any way the benefits to the Class.

6. The proposed Settlement, as provided for in the Settlement Agreement, is in all respects fair, reasonable, adequate and proper and in the best interest of the Settlement Class. *See* Rule 8(a)(3), AAA Suppl. Rules for Class Arb. In reaching this conclusion, the Arbitrator has considered a number of factors, including: (1) the complexity, expense, and likely duration of the case; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 105 (D.N.J. 2012). Upon review of the parties' briefs, declarations, and supporting documents, as

well as consideration of the law and cases cited therein, these factors overwhelmingly support final approval of the Settlement.

7. The parties have confirmed that only one member of the approximately 20,000-member Settlement Class, Murray Strober, M.D. of Passaic, New Jersey, has timely elected to Opt Out of the Settlement and the Settlement Class and therefore is not bound by the Settlement and the provisions of the Settlement Agreement. All other members of the Settlement Class (as permanently certified below) shall be subject to all of the provisions of the Settlement, the Settlement Agreement, and this Final Award.

8. The Releases and Injunctions provision of this Final Award, which prohibits the assertion of claims against the Released Respondents, as set forth below, is a condition of the Settlement and a significant component of the consideration afforded to Respondent in the Settlement, and that provision is reasonable under the circumstances.

9. On the basis of the foregoing findings and the submissions and proceedings referred to above, the Arbitrator **FINDS** and **CONCLUDES**:

I. Certification of the Settlement Class and Approval of Settlement

10. The Settlement and the Settlement Agreement are hereby approved as fair, reasonable, adequate and in the best interests of the Settlement Class in light of the complexity, expense, and likely duration of the Arbitration and subsequent proceedings to review any rulings from the Arbitration, and the risks involved in establishing liability, damages, and in maintaining a class arbitration. The Arbitrator further finds that the requirements of due process and the AAA Supplementary Rules for Class Arbitration (the "Class Arbitration Rules") have been satisfied.

11. The Arbitrator having found that each of the elements of Class Arbitration Rules

4(a) and 4(b) are satisfied, for purposes of settlement only,[1] pursuant to Class Arbitration Rules 4(a) and 4(b), it hereby unconditionally certifies a class consisting of the following persons (the "Settlement Class"):

> All Physicians and Practice Groups, regardless of specialty, who or which participated in Respondent's provider networks in the State of New Jersey pursuant to a Respondent Provider Agreement and provided Covered Services to any Plan Member during the period from December 11, 1996 through December 31, 2004, and who do not validly and timely Opt Out of this Settlement.

12. The person identified on the list submitted to the Arbitrator (and attached hereto as an exhibit) as having timely and properly elected to Opt Out from the Settlement and the Settlement Class is hereby excluded from the Settlement Class and shall not be entitled to any of the monetary or other benefits afforded to the Settlement Class under the Settlement Agreement. Each and every Settlement Class Member who did not timely and properly file a valid request for exclusion from the Settlement Class is hereby permanently barred and enjoined from commencing or instituting, and/or pursuing, maintaining, prosecuting, or enforcing, either directly or indirectly, in any judicial, administrative or arbitral forum or otherwise, any Released Claim against the Released Respondents. The Arbitrator readopts and incorporates herein by reference his preliminary conclusions as to the satisfaction of the requirements of Class Arbitration Rule 4(a) and 4(b) set forth in the Preliminary Approval Award, and notes again that because this certification of the Settlement Class is in connection with the Settlement, rather than a litigation class, the issue of manageability is relaxed and is not a basis to deny certification. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Sullivan v. DB Invs. Inc.*, 667 F.3d 273, 306 (3d Cir. 2011), *cert. denied sub nom. Murray v. Sullivan*, 132 S. Ct. 1876 (2012).

[1] Solely for the purpose of certifying the Settlement Class, Respondent agreed not to present or pursue any of its affirmative and negative defenses to certification of the Settlement Class or to the claims asserted herein.

13. For purposes of the Settlement only, Claimant John Ivan Sutter, M.D., P.A., is certified as Settlement Class Representative and Settlement Class Counsel, Eric D. Katz of the law firm of Mazie Slater Katz & Freeman, LLC, is appointed Class Counsel to the Settlement Class. The Arbitrator concludes that Settlement Class Counsel and the Settlement Class Representative have fairly and adequately represented the Settlement Class with respect to the Settlement, the Settlement Agreement and all aspects of this Arbitration.

14. Notwithstanding the certification of the foregoing Settlement Class and appointment of Claimant as Settlement Class Representative for purposes of effecting the Settlement, if this Final Award is modified, vacated, reversed or set aside on further judicial review or the Settlement Agreement is terminated in accordance with the terms and provisions of the Settlement Agreement, the foregoing certification of the Settlement Class and appointment of Settlement Class Representative and Settlement Class Counsel shall be void and of no further effect, and the Parties to the Settlement shall be returned to the status each occupied before entry of this Final Award, without prejudice to any legal argument, position or privilege that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

15. The Arbitrator has reviewed the terms and scope of the Settlement Agreement, along with the parties' submissions and presentations, and he finds that it is fair, reasonable and adequate. *In re Gen. Motors Corp. Prods. Liab. Litg.*, 55 F.3d 768, 785 (3d Cir. 1995); *see* N.J. Ct. R. 4:32; Fed. R. Civ. P. 23. The Settlement is between Oxford and a class consisting of all physicians and practice groups who or which participated in any of Oxford's physician networks in New Jersey pursuant to a written provider agreement during the period from December 11, 1996 through December 31, 2004, and who during that period or thereafter provided covered services to any Oxford members pursuant to those provider agreements. *See* Settlement

Agreement § 2, at 8. In this arbitration, the Class sought two types of relief relating to allegations that Oxford failed to make prompt payment of claims and that its code editing practices resulted in underpayment of claims. As a direct result of this arbitration, Oxford agreed to establish a settlement fund of $1,380,000.00 in consideration for and to settle the Class's claims related to these two allegations of improper claims processing practices. *Id.* at §§ 3, 3.1.

16. The Arbitrator has also considered and determined that the *Girsh* and *Prudential* factors weigh overwhelmingly in favor of the adequacy and benefit of this Settlement for the Class. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Prudential Ins. Co. Am. Sales Pracs. Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998), *cert. denied*, 525 U.S. 1114 (1999).

17. The Arbitrator has further considered the adequacy of the Plan of Allocation as proposed by the Parties in Section 3.3 of the Settlement Agreement. The amount available to satisfy Claims submitted by Settlement Class Members will be determined according to whether the estimated Gross Receipts for providing Covered Services to Plan Members during any three calendar years identified on a Claim Form were: (1) less than $5,000; (2) more than $5,000 but less than $50,000; or (3) $50,000 or more. The straightforward claim form allows each Settlement Class Member to certify the amount of estimated Gross Receipts based on information and belief without the necessity of reviewing or submitting records or documentation, and thus removes any barrier to submitting claims where this dispute has lasted over thirteen years. Having considered all of the Parties' submissions with respect to the Plan of Allocation, which was incorporated into the Arbitrator-approved class notice, and having been advised of and having taken into consideration the lack of objections by the class members to the Plan of Allocation, the Arbitrator finds the Plan of Allocation to be fair and reasonable under the

circumstances of this Arbitration. The Arbitrator further finds that the allocation formula incorporated into the Plan of Allocation, which was recommended by experienced and competent Settlement Class Counsel, has a reasonable, rational basis and treats each Settlement Class Member in a fair and reasonable manner that does not create conflicts of interest among Settlement Class Members.

18. Settlement Class Counsel and Respondent's Counsel agree to promptly address and resolve in good faith any issue or dispute that may arise from the administration of the Settlement including, without limitation, the Plan of Allocation, and the Physician Amount or Practice Group Amount payable to any Settlement Class Member.

II. Releases and Injunctions Against Released Claims

19. The Released Respondents are and hereby shall be unconditionally, fully, and finally released and forever discharged from the Released Claims by the Class Releasors.

20. The Class Releasors have abandoned forever and discharged any and all claims that exist now or that might arise in the future against any other persons or entities, which claims arise from, or are based on, conduct by any of the Released Respondents in connection with the Released Claims, whether any such claim was or could have been asserted by any Class Releasor on his/her/its own behalf or on behalf of other persons. Nothing in this Final Award is intended to relieve any person or entity that is not a Released Respondent from responsibility for its own conduct or conduct of other persons who are not Released Respondents.

21. The Released Claims that are being released and discharged herein include claims that may not currently exist, or that Claimant and Settlement Class Members may not know or suspect to exist, in their favor at the time of the Settlement Agreement. Claimant and Settlement Class Members have waived any and all provisions, rights, and benefits conferred by California

Civil Code § 1542, or by any law of any State or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

22. The Class Releasors are aware that they may discover claims or facts in addition to or different from those they now know or believe to be true with respect to the Released Claims. Nevertheless, the Class Releasors have fully, finally, and forever settled and released all Released Claims as to all Released Respondents, including those that are presently unknown or unanticipated, and Claimant and each Settlement Class Members expressly waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, contingent or non-contingent claim that is the subject matter of this provision, whether or not concealed or hidden, without regard to the discovery or existence of such different or additional facts.

III. Covenant Not to Sue or Continue Suit

23. Each of the Class Releasors is barred and enjoined from taking any step whatsoever to commence, institute, continue, pursue, maintain, prosecute, or enforce any Released Claims on behalf of himself or herself or any other Person, against the Released Respondents. Each of the Class Releasors has warranted and represented that he/she/it has not assigned, sold, or otherwise transferred any claim that he/she/it previously had that otherwise would fall within the scope of the Settlement Agreement.

IV. Applications for Attorneys' Fees, Expenses, and Class Representative Fee

24. The Arbitrator has thoroughly reviewed the motion for an award of fees,

reimbursement of expenses and an incentive award to Dr. Sutter submitted by Settlement Class Counsel, as well as the exhibits, brief in support of the motion, declarations and other materials submitted in support of that application, including the parties' arbitration provision, which provides that "[a]ll costs and expenses of the arbitration, including actual attorney's fees shall be allocated among the parties to this Agreement according to the arbitrator's discretion." *Quillain v. Tenet HealthSystem Phila., Inc.*, 673 F.3d 221, 231 (3d Cir. 2012). AAA Commercial Arbitration Rules 47 and 54 provide the Arbitrator with additional authority to award attorney's fees and expenses.

25. On the basis of the Arbitrator's review and interpretation of the foregoing and on the presentations at the Final Fairness Hearing and the applicable law, he hereby determines that solely for purposes of settlement, Claimant and the Settlement Class are prevailing parties, insofar as (a) there is a factual causal nexus between Claimant's arbitration and the relief ultimately achieved, and (b) the relief achieved has a basis in law. *N. Bergen Rex Trans., Inc. v. Trailer Leasing Co., Inc.*, 158 N.J. 561, 570 (1999). Consequently, the Arbitrator allocates fees and expenses to Settlement Class Counsel.

26. The Arbitrator finds that Class Counsel's fee request is more than reasonable under the lodestar method, which applies in the class action context when a fee award is based on a fee-shifting contract. *E.g., In re Gen. Motors*, 55 F.3d at 821; *Sutter v. Horizon Blue Cross Blue Shield of N.J.*, 406 N.J. Super. 86, 104 (App. Div. 2009); *Litton Indus., Inc. v. IMO Indus., Inc.*, 200 N.J. 372, 386-87 (2009). Over the course of this 13-year litigation, Settlement Class Counsel has expended 5,079.1 hours of professional time, which was reasonable, necessary, and directly related to the litigation. *Sutter v. Horizon Blue Cross Blue Shield of N.J.*, 2012 WL 2813813, at *7-8 (App. Div. July 11, 2011), *certif. denied*, 213 N.J. 57 (2013); *Cerbo v. Ford of*

Englewood, Inc., 2006 WL 177586, at *23 (Law Div. Jan. 26, 2006). The Arbitrator also finds that Class Counsel's current, firm-wide blended hourly rate of $650 for attorney work is reasonable in light of Class Counsel's experience and skill, the complexity of this matter, and comparable to the rates of similar services by lawyers of reasonably comparable skill in the community. *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *18 (D.N.J. March 26, 2010). Class Counsel's lodestar fees are $3,275,165.00.

27. Settlement Class Counsel, however, has only requested $475,128.54 – less than 15% of counsel's lodestar. The Arbitrator also finds that, based on the parties' submissions and his intimate knowledge of this matter, the eight factors under R.P.C. 1.5(a) are satisfied here. *Litton Indus.*, 200 N.J. at 386-87. The reasonableness of Class Counsel's fee request is further corroborated by a cross-check using the percentage-of-recovery method. *Lubitz v. DaimlerChrysler Corp.*, 2006 WL 3780789, at *20 (Law Div. Dec. 21, 2006); *see In re Gen. Motors*, 55 F.3d at 820-21 (3d Cir. 1995); *Sutter*, 406 N.J. Super. at 104-05. Here, the Settlement creates a fund of $1.38 million for the Class, and Oxford has additionally agreed to pay Class Counsel's fee award if ordered, amounting to $475,128.54. Class counsel's fee award is a reasonable percentage of the total recovery, i.e., the constructive common fund. The Arbitrator also finds that, based on the parties' submissions and presentations, the *Gunter* factors are satisfied here and weigh in favor of granting Settlement Class Counsel's fee award. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 197-99 (3d Cir. 2000).

28. The Arbitrator finds that Settlement Class Counsel has incurred reasonable and necessary expenses in the amount of $774,871.46 in the prosecution of this 13-year action, including expert fees, the costs of arbitration and the Arbitrator's fees as of the date of the filing of Settlement Class Counsel's fee application, and that Settlement Class Counsel is to be

reimbursed by Respondent for all of these expenses, including the aforementioned costs of arbitration and the Arbitrator's fees, in accordance with the provisions of the Settlement Agreement and applicable law. *In re Safety Components, Inc. Secs. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001); *e.g.*, *Litton Indus.*, 200 N.J. at 378, 389; *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 479 (D.N.J. 2008). The parties have agreed that any remaining costs of the arbitration and the Arbitrator's fees incurred or to be incurred since the date of the filing of Settlement Class Counsel's fee application shall be paid out of the retainer previously advanced by the parties to the AAA.

29. In sum, Settlement Class Counsel has requested an award of fees and expenses of One Million, Two Hundred Fifty Thousand Dollars ($1,250,000.00). After careful review of all the submissions in this case and considering the recovery to and the benefits bestowed on the Class, the Arbitrator finds Settlement Class Counsel's request for fees and expenses to be more than reasonable. Accordingly, the Arbitrator awards One Million, Two Hundred Fifty Thousand Dollars ($1,250,000.00) in fees and expenses to Settlement Class Counsel to be paid by Respondent in accordance with the provisions of the Settlement Agreement. The award of fees and expenses is independent of and in addition to the benefits to be provided to the Class under the Settlement Agreement and will not reduce in any respect the benefits of the Settlement to the Class provided for by and through the Settlement Agreement.

30. The Arbitrator has also reviewed the application for an incentivee award to Settlement Class Representative, Dr. Sutter. The Arbitrator is aware of the significant commitment and extensive contributions that Settlement Class Representative has made to this case over the last thirteen years. On the basis of his review of the foregoing and the parties' submissions, the Arbitrator hereby awards a fee of $25,000.00 to the Settlement Class

Representative, to be paid by Respondent in accordance with the provisions of the Settlement Agreement. *McCoy*, 569 F. Supp. 2d at 479. The award of the incentive award to Dr. Sutter is independent of and in addition to the benefits to be provided to the Class under the Settlement Agreement and will not reduce in any respect the benefits of the Settlement to the Class provided for by and through the Settlement Agreement.

V. Other Provisions

31. In no event shall the Settlement Agreement, in whole or in part, whether effective, terminated, or otherwise, nor any negotiations, statements or proceedings in connection therewith be construed as, offered as, received as, or be deemed to be evidence of any kind, including but not limited to an admission or concession on the part of any of the Settlement Class Representative, Settlement Class Counsel, any members of the Settlement Class, Respondent, Respondent's Counsel or any other Person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Actions are or are not meritorious, and this Final Award, the Settlement Agreement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Settlement Class Representative, any member of the Settlement Class or any other person has or has not suffered any damage; *provided, however*, that the Settlement Agreement, and this Final Award may be filed in any action by any Released Respondent seeking to enforce the Settlement Agreement or the Final Award by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The terms of the Settlement Agreement and of this Final Award shall be forever

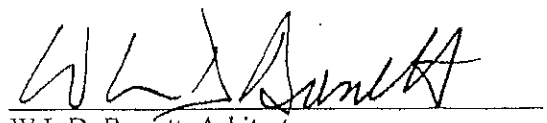
binding on and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that are subject to the Release and other prohibitions that are set forth in Paragraphs 16-23 of this Final Award that are maintained by, or on behalf of, the Class Releasors or any other Person subject to those provisions of this Final Award.

32. In the event that the Settlement Agreement is terminated in accordance with the terms and provisions of the Settlement Agreement, then this Final Award shall be rendered null and void and be vacated and all orders entered in connection therewith by this Arbitrator shall be rendered null and void.

VI. Continuing Jurisdiction

33. Without in any way affecting the finality of this Final Award and provided that the Superior Court of New Jersey, Law Division, Essex County (the "Court") enters a Final Order and Judgment confirming this Final Award approving the Settlement Agreement, the Arbitrator approves of the parties' agreement to request that the Court retain jurisdiction to enforce the Final Order and Judgment, and their agreement that, except as otherwise provided in the Settlement Agreement, each Party and each Settlement Class Member has irrevocably submitted to the exclusive jurisdiction and venue of the Court for any action, proceeding, case, controversy, or dispute relating to the Final Order and Judgment. Notwithstanding the foregoing, in the event that the Settlement Agreement is terminated in accordance with the terms and provisions of the Settlement Agreement, then the Parties shall return to the *status quo* that existed before execution of the Settlement Agreement, and the Arbitration shall proceed before the Arbitrator as it would have in the absence of the Settlement Agreement.

September 4, 2015



W.L.D. Barrett, Arbitrator

State of New York)
) SS:
County of New York)

I, WILLIAM L. D. BARRETT, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

9/4/15
Date

William L.D. Barrett Arbitrator

State of New York)
) SS:
County of New York)

On September 4th, 2015 before me came William L.D. Barrett, to me known and known by me to be the individual described in and who executed the foregoing instrument, and he acknowledged that the same is his Final Award.

September 4, 2015
Dated

Notary Public

HARRY A. FOTIADIS
NOTARY PUBLIC, State Of New York
No. 01F05007963
Qualified In Westchester County
Commission Expires FEB. 05, 2019