SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively, the "United States"), the bankruptcy estates of DTech Liquidating, Inc. (f/k/a DermTech, Inc.) ("DTech, Inc.") and DTech Op Liquidating, Inc. (f/k/a DermTech Operations, Inc.) ("DTech Ops, Inc.") (together, "DTech"), and Kim Luong ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Prior to June 18, 2024, DTech, Inc., a Delaware corporation that had its principal place of business in San Diego, California, and DTech Ops, Inc., a wholly owned subsidiary of DTech Inc., were registered to do business in the State of California. DTech was a U.S.-based, public company that developed and marketed a novel, noninvasive test for skin cancer (the "Melanoma Test").

B. On July 31, 2023, Relator filed a *qui tam* action in the United States District Court for the Southern District of California captioned *United States ex rel. Kim Luong v. DermTech, Inc. et al.*, No. 3:23-cv-01404-WQH-BLM, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleged that DTech knowingly submitted false claims to Medicare for the Melanoma Test and knowingly avoided obligations to refund money to Medicare.

C. On June 18, 2024, DTech, Inc. and DTech Ops, Inc. each filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in the cases styled, *In re DermTech, Inc.*, Case No. 24-11378-MFW (Bankr. D. Del. 2024) and *In re DermTech Operations, Inc.*, Case No. 24-11379-MFW (Bankr.

D. Del. 2024). On June 20, 2024, the Bankruptcy Court issued an order directing joint administration of the two Chapter 11 cases (hereinafter the "Bankruptcy Case").

D. On December 16, 2024, the United States filed proof of claim No. 107 ("POC No. 107") in the amount of $18,980,556 and secured to the extent of any setoff rights under 11 U.S.C. §§ 506(a) & 553.

E. On December 16, 2024, the United States filed proof of claim No. 108 ("POC No. 108") in the amount of $18,980,556 and secured to the extent of any setoff right under 11 U.S.C. §§ 506(a) & 553.

F. On November 7, 2024, DTech filed the *Joint Chapter 11 Plan of DermTech, Inc. and DermTech Operations, Inc.* [Docket No. 318]. On December 13, 2024, DTech filed the *First Amended Joint Chapter 11 Plan of DermTech, Inc. and DermTech Operations, Inc.* [Docket No. 384]. On January 17, 2025, DTech filed the *Modified First Amended Joint Chapter 11 Plan of DermTech, Inc. and DermTech Operations, Inc.* [Docket No. 441] (as the same may be amended, modified, or supplemented from time to time, the "Plan").

G. The United States contends that DTech submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll ("Medicare").

H. The United States contends that it has certain civil claims against DTech arising from alleged false Medicare Part B claims submitted or caused to be submitted by DTech to Medicare and DTech's knowing avoidance of its obligation to refund money to Medicare, based on the following alleged conduct during the period from January 1, 2020, through March 24, 2023.

i. The Melanoma Test measures two genomic markers associated with melanoma, LINC00518 and PRAME, to predict whether a patient may have skin cancer.

From October 20, 2022, to March 24, 2023, the United States alleges that DTech knowingly used an unvalidated, expanded acceptability range for the positive control for the LINC00518 gene. DTech billed Medicare Part B for these tests and reported these test results to patients. DTech reverted the range after DTech was alerted by its accrediting agency that there had been a complaint made about an improper range expansion. DTech conducted a limited retrospective analysis of the issue and refunded Medicare Part B for twelve of the over five thousand tests billed during that five-month period. DTech allegedly submitted false claims to Medicare Part B for these unvalidated tests and subsequently failed to repay Medicare Part B for these tests.

ii. The original version of the Melanoma Test was known as "PLA 1.0" and was in use from January 1, 2020, to February 28, 2022. When a sample lacked sufficient patient RNA to be tested, the Melanoma Test was supposed to generate a "Quantity Not Sufficient" (QNS) result. However, the PLA 1.0 Melanoma Test often generated positive or negative results, rather than "Quantity Not Sufficient" (QNS) results, when patient samples lacked sufficient patient RNA to be tested. The United States contends that about 18% of all PLA 1.0 results were affected. DTech allegedly submitted false claims to Medicare Part B for these tests and subsequently failed to repay Medicare Part B for these tests.

The conduct set forth in this paragraph is referred to herein as the "Covered Conduct."

I. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

J. This Agreement is neither an admission of liability by DTech nor a concession by the United States that its claims are not well-founded.

K. DTech denies the United States' allegations in Paragraph H and the Relator's allegations in the Civil Action.

L. The Parties have negotiated this Agreement in good faith and at arm's length and will seek approval of the Agreement from the Bankruptcy Court overseeing the Bankruptcy Case, which approval may be included in the Bankruptcy Court's order confirming the Plan, which will incorporate the terms of this Agreement and the transactions contemplated hereunder, or which may be sought by separate motion.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The United States shall have an Allowed Class 3 General Unsecured Claim (as defined in the Plan), which shall not be subject to subordination, disallowance, or reconsideration, against DTech in the Bankruptcy Case for the Covered Conduct in the amount of five million thirty-eight thousand eleven dollars ($5,038,011) (the "Allowed Claim"), which includes two million five hundred nineteen-thousand five dollars ($2,519,005) in restitution. The Allowed Claim shall be treated *pari passu* with all other Allowed Class 3 General Unsecured Claims under the Plan.

2. Upon the United States receiving payment of any portion of the Allowed Claim from DTech (or any successor to DTech, including the Liquidating Trust (as defined in the Plan)) and as soon as feasible after receipt, the United States shall pay a twenty-three percent (23%) share of the recovery related to the range expansion issue (described in Paragraph H(i)) and an eleven percent (11%) share of the recovery related to the QNS issue (described in Paragraph H(ii)) to Relator, which equates to a twenty percent (20%) share of the entire recovery

("Relator's Share"), by electronic funds transfer pursuant to 31 U.S.C. § 3730(d). Relator agrees that the United States shall not be obligated to pay Relator more than twenty percent (20%) of the total portion of the Allowed Claim that the United States receives from the Bankruptcy Case.

3. DTech and Relator will determine any claim of Relator for expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d) ("Relator Fee Claim"). As of the Effective Date of this Agreement, Relator and DTech have not reached an agreement related to any Relator Fee Claim. DTech reserves all rights and defenses under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and applicable non-bankruptcy law with respect to any such Relator Fee Claim.

4. Subject to Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the first pro rata distribution from its Allowed Class 3 General Unsecured Claim described in Paragraph 1, the United States releases DTech from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to Paragraph 6 (concerning reserved claims) below and the exceptions set forth in Paragraph 3 above, Relator, for him/herself and for his/her heirs, successors, attorneys, agents, and assigns, and any and all entities formerly, or now, or in the future owned or operated in whole or in part by Relator (together with the Relator, the "Relator Releasors"), jointly and severally releases DTech, their predecessors; current and former parents; divisions; direct and indirect subsidiaries; brother or sister corporations; current or former corporate owners; and their corporate successors and assigns (together the "DTech Releasees") and their current and former affiliates, owners, directors, officers, employees, agents, shareholders, joint venturers, and

successors and assigns of any of these entities, with the exception of the individual defendants in the Civil Action (together with the DTech Releasees, the "DTech Releasee Entities"), jointly and severally, from any and all claims and potential claims, whether known or unknown, from the beginning of time until the Effective Date of this Agreement, including not limited to: (a) all claims included in the Relator's *qui tam* complaint filed in the Civil Action, (ii) any other claims the Relator has on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, or on behalf of any state under their respective state false claims acts or other state law; and (iii) any common law and/or statutory claims, with the express exception of any potential claims concerning conduct that post-dates the Effective Date of this Agreement. The Relator Releasors represent and warrant that they are not currently aware of any legal claim that could lawfully be brought at this time against the DTech Releasee Entities other than those encompassed within the Covered Conduct and the Civil Action, for which a full release is herein granted.

6. Notwithstanding the releases given in Paragraph 4 or 5 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Any claim that the United States may have to avoid any transfer of property of DTech or any obligation incurred by DTech;

d. Any rights of setoff the United States may have against any of the Parties;

e. Any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;

f. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

g. Any liability based upon obligations created by this Agreement;

h. Any liability of individuals;

i. Any liability for failure to deliver goods or services due; and

j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and his/her heirs, successors, attorneys, agents, and assigns do not and shall not object to this Agreement but agree and confirm that this Agreement, including the Allowed Claim amount, is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). For the avoidance of doubt, Relator and the Relator Releasors, jointly and severally, hereby waive the right to challenge the fairness, adequacy, or reasonableness of the Agreement, including the Allowed Claim amount, and waive the opportunity for a hearing on any objection to this Agreement, including the Allowed Claim amount, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his/her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. DTech fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that DTech has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and

servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

9. Conditioned upon Relator's execution of this Agreement and Relator's dismissal with prejudice of the Civil Action against DTech as more fully set forth in Paragraph 20, and subject to the exceptions set forth in Paragraph 3 above, the DTech Releasee Entities, to the full extent of their legal authority to do so, release the Relator Releasors, jointly and severally, from any and all claims and potential claims, whether known or unknown, from the beginning of time until the Effective Date of this Agreement, including but not limited to: (a) all claims related to the Relator's *qui tam* complaint filed in the Civil Action; (ii) claims against Relator under the False Claims Act, 31 U.S.C. §§ 3729-3733; and (iii) any common law and/or statutory claims, with the express exception of any potential claims concerning conduct that post-dates the Effective Date of this Agreement. The DTech Releasee Entities represent and warrant that they are not currently aware of any legal claim that could lawfully be brought at this time against the Relator Releasors other than those encompassed within the Covered Conduct and the Civil Action, for which a full release is herein granted.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and DTech agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, not to appeal any such denials of claims, and to withdraw any such pending appeals.

11. DTech agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social

Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of DTech, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) DTech's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

(4) the negotiation and performance of this Agreement; and

(5) the payment DTech (or its successor, including the Liquidating Trustee (as defined in the Plan)) makes to the United States pursuant to this Agreement and any payments that DTech (or its successor, including the Liquidating Trustee (as defined in the Plan)) may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by DTech , and DTech shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by DTech or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. <u>Treatment of Unallowable Costs Previously Submitted for Payment</u>: DTech further agree that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by DTech or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. DTech agrees that the United States, at a minimum, shall be entitled to recoup from DTech any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by DTech or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on DTech or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine DTech's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

12. DTech agrees to cooperate fully and truthfully with the United States' investigation of individuals not released in this Agreement. Upon reasonable notice, DTech shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. DTech further agrees to retain, and not to abandon, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf, and to furnish those to the United States, upon request.

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

14. DTech agrees that any amended Plan, confirmation order, or any material agreement or other order of the Bankruptcy Court shall not in any manner, by their terms, contain any provisions that amend, modify, supplement, supersede or conflict with, any of the provisions of this Agreement in any manner that is materially adverse to, or materially prejudicial to the United States or the Relator, in each case, with respect to their rights under this Agreement. Further, DTech shall file a motion or other appropriate request (an "Approval Motion") in the Bankruptcy Case seeking approval to enter into and perform this Agreement, which may include seeking such approval as part of an amended Plan. Before filing such Approval Motion, DTech shall give the United States at least a reasonable opportunity to review

and comment on the form of such Approval Motion or the applicable provisions of any amended Plan or confirmation order, which shall be materially consistent with the terms of this Agreement.

15. The United States may, in its sole discretion, declare that the occurrence of any of the following events is a default of the DTech's obligations under this Agreement (each "an Event of Default"):

a. the Bankruptcy Case is (i) voluntarily converted to a case under Chapter 7 of the Bankruptcy Code or (ii) dismissed;

b. the Bankruptcy Court enters an order that amends, modifies, supplements, supersedes, or conflicts with, any of the provisions of this Agreement in a way that is materially adverse to the United States, and such order remains in effect for fifteen (15) business days after its entry;

c. the Bankruptcy Court or any other court of competent jurisdiction, issues any ruling, judgment or order enjoining the consummation of this Agreement or denying approval of this Agreement and such order remains in effect for fifteen (15) business days after its entry;

d. the filing of a pleading by DTech seeking to withdraw, amend or modify the Plan, the confirmation order, or any motion to assume or approve this Agreement, which withdrawal, amendment, modification or filing is materially adverse to the United States; or

e. any court of competent jurisdiction enters a judgment or order declaring this Agreement to be unenforceable.

16. Upon the occurrence of an Event of Default, the United States will retain any payments previously made and shall have an allowed Class 3 General Unsecured Claim for the

entire amount asserted in the United States' proof of claim ($18,980,556.00) (to the extent not previously satisfied in whole or in part), and the United States may, at its sole discretion, (i) rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against DTech for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by DTech to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; and/or (iii) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, DTech waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against DTech within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement. DTech agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

17. Upon the occurrence of an Event of Default, the United States shall have the rights and protections contemplated in Paragraphs 12 through 14. An Event of Default may be waived by the written consent of the United States.

18. This 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 19 (waiver for beneficiaries paragraph), below.

19. DTech agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

20. Upon the United States' receipt of the first disbursement of funds from its Allowed Class 3 General Unsecured Claim described in Paragraph 1, the United States and Relator shall promptly sign and file in the Civil Action a Notice of Dismissal of the Civil Action as it pertains to DTech, Inc. and DTech Ops, Inc. pursuant to Rule 41(a)(1). The dismissal shall be with prejudice as to Relator as to all claims against DTech, Inc. and DTech Ops, Inc. in the Civil Action. With respect to the United States, the dismissal for claims against DTech, Inc. and DTech Ops, Inc. shall be with prejudice as to the Covered Conduct and without prejudice as to any other conduct or causes of action.

21. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

22. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

23. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Southern District of California except to the extent that the Bankruptcy Court has exclusive statutory jurisdiction. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

24. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the

United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

25. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

27. This Agreement is binding on DTech's successors, transferees, heirs, and assigns, including the Liquidating Trust described in the Plan.

28. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

29. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public. This Agreement shall become effective on the later of (i) the date that the order approving DTech's performance hereunder becomes final and non-appealable and (ii) the Effective Date of the Plan (as defined in the Plan) (such date, the "Effective Date" of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[Signature pages follow]

THE UNITED STATES OF AMERICA

DATED: 7/24/2025 BY: ______________________
STEPHEN H. WONG
Assistant U.S. Attorney
U.S. Attorney's Office for the
Southern District of California

DATED: 7/24/2025 BY: ______________________
CLARE ELIZONDO
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 7/24/2025 BY: ______________________
SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DTECH LIQUIDATING, INC. AND DTECH OP LIQUIDATING, INC.

7/14/2025 | 9:48:47 AM PDT
DATED: __________ BY: Signed by: Ryan Kelly EC8598DFFF1F488...
RYAN KELLY
Authorized Representative

DATED: 7-14-25 BY: ______________________
KAREN LOVITCH
Counsel for DTech Liquidating, Inc. and DTech Op Liquidating, Inc.

RELATOR

DATED: 7/15/2025 BY: Kim Luong
KIM LUONG

DATED: 7/15/2025 BY: TGJ Cotten
GRAHAM COTTEN
Counsel for Relator

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