

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among: (1) 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) and the Defense Health Agency (DHA), acting on behalf of the TRICARE Program (collectively, the United States); (2) Boston Heart Diagnostics Corporation (BHD); and (3) Christopher Riedel (Riedel) and FBH1 LLC (FBH1) (collectively, the Relators), through their authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

### RECITALS

A. BHD, a Delaware corporation with its principal place of business in Framingham, Massachusetts, is a clinical diagnostic laboratory that performs cardiovascular disease-focused laboratory testing service and bills federal health insurance programs for those services.

B. On August 28, 2012, Riedel filed a *qui tam* action in the United States District Court for the District of Columbia captioned *United States ex rel. Riedel v. Boston Heart Diagnostics Corporation*, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Riedel Action). On October 4, 2017, FBH1 filed a *qui tam* action in the United States District Court for the Eastern District of California captioned *United States ex rel. FBH1 LLC v. Boston Heart Diagnostics Corporation*, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the FBH1 Action). Collectively, the Riedel Action and the FBH1 Action will be referred to as the “Civil Actions.”

C. The United States contends that BHD submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395–1395kkk-1 (Medicare); the Medicaid Program, 42 U.S.C. §§ 1396–1396w-5 (Medicaid); and the TRICARE Program, 10 U.S.C. §§ 1071–1110b (TRICARE).

D. The United States contends that it has certain civil claims against BHD arising from the following conduct, by which BHD submitted, caused the submission of, and/or conspired to submit false or fraudulent claims to Medicare, Medicaid, and TRICARE:

- a. BHD offered and/or paid remuneration directly and/or indirectly to physicians in the form of purported processing and handling fee payments from January 1, 2011 to December 31, 2016 to induce those physicians to order clinical laboratory services from BHD, in violation of the Anti-Kickback Statute (AKS), 42 U.S.C. § 1320a-7b(b);
- b. BHD routinely offered to waive and/or waived or offered to discount or discounted patient cost-sharing obligations, such as copayments and deductibles, from January 1, 2011 to December 31, 2016 to induce referrals to BHD for clinical laboratory services, in violation of the AKS;
- c. BHD offered and/or paid, and/or conspired to offer and/or pay, remuneration directly and/or indirectly to physicians in violation of the AKS, in the form of management service organization (MSO) distribution payments from April 1, 2015 to December 31, 2016, to induce the physicians to order clinical laboratory services from Rockdale Blackhawk LLC d/b/a Little River Healthcare (LRHC), a critical access hospital, to which BHD had agreed to provide clinical laboratory services in exchange for per-test compensation. BHD employees and LRHC's independent marketers set up companies known as MSOs. To generate more referrals to LRHC for clinical laboratory services and thus greater compensation for itself, BHD coordinated with the MSO marketers to make payments to referring physicians that were disguised as investment returns but were

actually based on, and offered in exchange for, the physicians' referrals to LRHC. BHD helped the MSOs identify physician targets, referred interested physicians to the MSOs to secure their business, and participated with the MSOs in sales pitches to offer to physicians MSO payments in exchange for referrals;

- d. BHD offered and/or paid, and/or conspired to offer and/or pay, remuneration directly and/or indirectly to physicians in violation of the AKS, in the form of management service organization (MSO) distribution payments from September 1, 2015 to July 31, 2017, to induce the physicians who ordered clinical laboratory services for commercially-insured patients from Jones County Regional Healthcare d/b/a Stamford Memorial Hospital and Denton Transitional LTCH, L.P. d/b/a Integrity Transitional Hospital (collectively, "the Hospitals") to refer Medicare-, Medicaid-, and TRICARE-insured patients to BHD for clinical laboratory services. BHD employees and the Hospitals' independent marketers set up companies known as MSOs. BHD coordinated with the MSO marketers to make payments to referring physicians that were disguised as investment returns but were actually based on, and offered in exchange for, the physicians' referrals to the Hospitals and BHD. BHD helped the MSOs identify physician targets, referred interested physicians to the MSOs to secure their business, and participated with the MSOs in sales pitches to offer to physicians MSO payments in exchange for referrals;
- e. BHD caused LRHC to submit, and/or conspired with LRHC to have submitted, claims for outpatient clinical laboratory services from April 1,

2015 to December 31, 2016 for patients who were not outpatients of LRHC;  
and

- f. BHD paid remuneration directly and/or indirectly to physician practice groups by providing free in-office dieticians for their patients in connection with BHD's Lifestyle Program from September 30, 2015 to June 15, 2018 in order to induce those physicians to order clinical laboratory services from BHD, in violation of the AKS.

The payments in subsections (a), (c), (d), and (f) created financial relationships between the recipient physicians and BHD, LRHC, and/or the Hospitals; those physicians referred Medicare beneficiaries to BHD and/or LRHC for clinical laboratory services; and BHD (or LRHC, in conspiracy with BHD) furnished the clinical laboratory services ordered by the physicians and submitted claims to Medicare for those services. The arrangements in the preceding sentence did not satisfy the requirements of an exception to the physician self-referral law, 42 U.S.C. § 1395nn (commonly referred to as the "Stark Law"), and violated the Stark Law.

The conduct set forth in Paragraph D is referred to below as the "Covered Conduct."

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

F. This Settlement Agreement is neither an admission of liability by BHD nor a concession by the United States that its claims are not well founded. BHD denies the United States' allegations in Paragraph D.

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 Settlement Agreement, the Parties agree and covenant as follows:

## TERMS AND CONDITIONS

1. BHD shall pay to the United States the sums specified in this Paragraph (collectively, the Settlement Amount), under the terms and conditions specified herein.
  - a. BHD shall pay to the United States the sum of Twenty Three Million Two Hundred Thousand Dollars (\$23,200,000.00) (Initial Payment), no later than fifteen (15) business days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.
  - b. BHD shall pay to the United States the sum of Three Million Four Hundred Seventy Thousand Dollars (\$3,470,000.00) (Scheduled Payment), no later than ninety (90) calendar days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.
  - c. If, in any year before December 31, 2024, BHD's annual net revenue (including the revenue of any other property, entity, or venture in which BHD has an ownership interest) exceeds Ninety-Seven Million Eight Hundred Thousand Dollars (\$97,800,000.00), BHD shall pay the United States an amount equal to fifteen percent (15%) of annual net revenue above Ninety-Seven Million Eight Hundred Thousand Dollars (\$97,800,000.00), plus interest at 3.125% per annum, calculated quarterly (Revenue Payment). Within one hundred twenty (120) days following the December 31 close of the year, BHD shall submit, for itself and any other property, entity, or venture in which BHD has an ownership interest, annual audited financial

statements and any other supporting documentation (Annual Financials) for the purposes of calculating the Revenue Payment. BHD shall pay all owed Revenue Payments to the United States by electronic funds transfer, pursuant to written instructions by the United States, within one hundred fifty (150) days following the December 31 close of the year.

- d. In the first five years after the Effective Date, BHD agrees to provide sixty (60) days' advance, written notice to the United States of any sale, transfer, merger, or liquidation of any asset or assets of BHD (or any other property, entity, or venture in which BHD has an ownership interest) (Sale Event) that individually or collectively have a fair market value of at least Eight Hundred Fifty Thousand Dollars (\$850,000.00). Upon the occurrence of a Sale Event: (i) all payments owed by BHD shall be accelerated to be immediately due and payable within fifteen (15) days of the closing on the Sale Event; and (ii) BHD shall make an additional payment to the United States by electronic funds transfer, pursuant to written instructions by the United States, within fifteen (15) days of the closing on the Sale Event, of twenty seven and a half percent (27.5%) of the following amount: the total proceeds from the Sale Event less state, federal, and local taxes, and transaction fees directly incurred by BHD in effectuating the Sale Event (Sale Event Payment).
- e. All payments by BHD under subparagraphs (a)–(d) up to Eighty-Three Million Dollars (\$83,000,000.00) (Restitution Amount) are restitution to the United States.

- f. BHD shall have no obligation to make any payment pursuant to subparagraphs (a)–(d) in excess of treble the Restitution Amount.

2. Conditioned upon the United States receiving the Settlement Amount payments from BHD, the United States agrees that it shall make payments to the Relators as described in this Paragraph (collectively, the Relators' Share):

- a. The United States agrees that it shall pay to Riedel by electronic funds transfer Three Million Seven Hundred Twelve Thousand Dollars (\$3,712,000.00) as soon as feasible after receiving the Initial Payment.
- b. The United States agrees that it shall pay to Riedel by electronic funds transfer Five Hundred Fifty-Five Thousand Two Hundred Dollars (\$555,200.00) as soon as feasible after receiving the Scheduled Payment.
- c. Conditioned on the United States receiving the Revenue Payments, the Sale Event Payment, the Nondisclosure Payment, and/or the Interest Payment, respectively, the United States agrees that it shall pay to Riedel by electronic funds transfer sixteen percent (16%) of each such payment received under the Agreement as soon as feasible after receipt of the payment.
- d. The United States agrees that it shall pay to FBH1 by electronic funds transfer Eighty-Three Thousand Five Hundred Twenty Dollars (\$83,520.00) as soon as feasible after receiving the Initial Payment.
- e. The United States agrees that it shall pay to FBH1 by electronic funds transfer Twelve Thousand Four Hundred Ninety-Two Dollars (\$12,492.00) as soon as feasible after receiving the Scheduled Payment.
- f. Conditioned on the United States receiving the Revenue Payments, the Sale Event Payment, the Nondisclosure Payment, and/or the Interest Payment,

respectively, the United States agrees that it shall pay to FBH1 by electronic funds transfer nine-twenty-fifths of one percent (0.36%) of each such payment received under the Agreement as soon as feasible after receipt of the payment.

3. Pursuant to 31 U.S.C. § 3730(d)(2), BHD shall, no later than fifteen (15) business days after the Effective Date, pursuant to written instructions to be provided by Riedel's counsel, pay One Million Two Hundred Eighty-One Thousand Nine Hundred Thirty-One Dollars and Seventy-Three Cents (\$1,281,931.73) to Riedel's counsel for Riedel's expenses in connection with the Riedel Action and One Hundred Thirty-Three Thousand Two Hundred Five Dollars and Sixty-Five Cents (\$133,205.65) to FBH1's counsel for FBH1's expenses in connection with the FBH1 Action.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and subject to Paragraph 9 (concerning disclosure of assets), Paragraph 18 (concerning default), and Paragraph 19 (concerning bankruptcy) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases BHD 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; the Stark Law, 42 U.S.C. § 1395nn; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject only to the rights granted to the United States should it exercise its rights of rescission in Paragraphs 9, 18, and 19, upon the United States' receipt of the Settlement Amount, Riedel and FBH1 and all of its members, for themselves, family members, transferees, executors, representatives, heirs, successors, attorneys, agents, and assigns, and all other firms, partnerships or corporations that Riedel, FBH1, and/or any of its members now or in the future own or control



(collectively, "Relators' Releasers"), fully and finally release, waive, and forever discharge BHD, and its current and former parent corporations, direct and indirect subsidiaries, predecessors, successors, affiliates, divisions, and joint ventures, and each of BHD's current and former directors, officers, shareholders, owners, employees, successors, assigns and agents (collectively, "BHD Releasees"), from any and all claims, rights, demands, suits, matters, issues, actions or causes of action, liabilities, damages, losses, obligations, and judgments of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, for damages, injunctive relief, or any other remedy against any and all of the BHD Releasees, jointly and severally, that Relators' Releasers, jointly and severally, have asserted, could have asserted, or may be able to assert against BHD Releasees, jointly and severally, from the beginning of time until the Effective Date of this Agreement. This Paragraph is intended to be interpreted as a general release on behalf of the Relators' Releasers. Relators' Releasers represent and warrant that they are not currently aware of any legal claim that is pending at this time against BHD Releasees other than those encompassed within the Covered Conduct and the Civil Actions, for which a full release is granted herein. Relators' Releasers warrant and represent that they have no claims against any BHD Releasees that have not already been asserted and that they have not assigned or transferred any claims against any BHD Releasees to any person, entity, or thing. Relators' Releasers covenant and agree that, from and after the Effective Date, they shall not bring any action or initiate any proceeding with respect to the foregoing released claims, and they shall not cause, induce, assist, or encourage any other person to assert or pursue any such claims. For the avoidance of doubt, the Relators' Releasers and BHD Releasees agree that only the United States can take any of the actions referenced in Paragraph 6, 9, 18 and 19, and Relators' Releasers have no independent right to take any actions pursuant to said Paragraph 6, 9, 18 and 19. Nothing in the foregoing release shall

prevent Relators from receiving the attorneys' fees, costs, and expenses that Relators are entitled to collect as a result of the Civil Actions pursuant to 31 U.S.C. § 3730(d) as specifically provided in Paragraph 3 of this Agreement.

6. Notwithstanding the releases given in Paragraphs 4 and 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. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for fraudulent transfer or conveyance; and
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable

under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the Relators' Share, Relators and their 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 Actions or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Actions.

8. Subject only to the rights granted to the United States should it exercise its rights of rescission in Paragraphs 9, 18, and 19, Relators' Releasers release, waive, and forever discharge BHD Releasees from any liability to Relators' Releasers arising from the filing of the Civil Actions, including, without limitation, for any amounts under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. BHD has provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. BHD warrants that the Financial Statements are complete, accurate, and current as of this Agreement. If the United States learns of asset(s) in which BHD had an interest of any kind at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any false statement or misrepresentation by BHD on, or in connection with, the Financial Statements, and if, as a result of such nondisclosure, false statement, or misrepresentation, the estimated net worth set forth in the Financial Statements was at least Eight Hundred Fifty Thousand Dollars (\$850,000.00) less than BHD's actual net worth at the time BHD provided the Financial Statements to the United States, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct; or, as an alternative, (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the value of the net worth of

BHD's previously undisclosed assets (Nondisclosure Payment). BHD agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of: (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a); or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this Paragraph rescinds this Agreement, BHD waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that: (a) are filed by the United States within 120 calendar days of written notification to BHD that this Agreement has been rescinded; and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of the Agreement.

10. BHD waives and shall not assert any defenses BHD 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.

11. BHD 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 BHD 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 and the United States' investigation and prosecution thereof.

12. Subject only to the rights granted to the United States should it exercise its rights of rescission in Paragraphs 9, 18, and 19, BHD Releasees fully and finally release Relators' Relasors from any and all claims, rights, demands, suits, matters, issues, actions or causes of

action, liabilities, damages, losses, obligations, and judgments of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, for damages, injunctive relief, or any other remedy against any and all of the Relators' Releasers, jointly and severally, that BHD Releasees, jointly and severally, have asserted, could have asserted, or may be able to assert against Relators' Releasers, jointly and severally, from the beginning of time until the Effective Date of this Agreement. This Paragraph is intended to be interpreted as a general release on behalf of the BHD Releasees. BHD Releasees represent and warrant that they are not currently aware of any legal claim that is pending at this time against Relators' Releasers. BHD Releasees warrant and represent that they have no claims against any Relators' Releasers and that they have not assigned or transferred any claims against any Relators' Releaser to any person, entity, or thing. BHD Releasees covenant and agree that, from and after the Effective Date, they shall not bring any action or initiate any proceeding with respect to the foregoing released claims, and they shall not cause, induce, assist, or encourage any other person to assert or pursue any such claims.

13. 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), TRICARE carrier or payer, or any state payer, related to the Covered Conduct; and BHD agrees not to resubmit to any Medicare contractor, TRICARE carrier or payer, or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

14. BHD 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. §§ 1395–1395kkk-1 and 1396–1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of BHD, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) BHD’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and any criminal 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 BHD makes to the United States pursuant to this Agreement and any payments that BHD may make to Relators, 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 BHD, and BHD 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 BHD or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: BHD

further agrees 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 BHD 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. BHD agrees that the United States, at a minimum, shall be entitled to recoup from BHD 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 BHD or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on BHD 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 BHD's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. BHD agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, BHD shall

encourage, and agrees not to impair, the cooperation of its current directors, officers, and employees, and shall use its best efforts to make available such individuals for interviews and testimony, consistent with the rights and privileges of such individuals. BHD agrees not to impair the cooperation of its former directors, officers, and employees. BHD further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-attorney-client-privileged and/or non-attorney-work-product-protected documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf, that have not been produced previously by BHD to the United States in the requested format.

16. 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 17 (waiver for beneficiaries paragraph), below.

17. BHD 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 payers based upon the claims defined as Covered Conduct.

18. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to BHD's financial condition as reflected in the Financial Statements referenced in Paragraph 9.

a. In the event that BHD fails to pay any amount as provided within Paragraph 1 by the date on which such payment is due, BHD shall be in Default of its payment obligations (Default). The United States will provide a written Notice of Default, and BHD shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any



additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to BHD, or to such other representative as BHD shall designate in advance in writing. If BHD fails to cure the Default within seven (7) calendar days of receiving the Notice of Default, and in the absence of an agreement with the United States to a modified payment schedule (Uncured Default), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of twelve percent (12%) per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). The amount of interest that is paid pursuant to the preceding sentence is referred to herein as the "Interest Payment."

b. If BHD fails to provide its Annual Financials as required by Paragraph 1(c), the United States will notify BHD in writing of the failure. If BHD fails to remedy such failure within thirty (30) days from the date of receipt of the United States' written notice, BHD shall be in Uncured Default. If BHD fails to provide the advance, written notice of a Sale Event as required by Paragraph 1(d), it shall be in Uncured Default.

c. In the event of Uncured Default, BHD agrees that the United States, at its sole discretion, may (i) declare this Agreement breached and proceed against BHD for any claims, including those to be released by this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating either or both of the Civil Actions; (iii) offset the remaining unpaid balance from any amounts due and owing to BHD and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. At its sole option, the United States may retain any payments previously made, rescind this Agreement and pursue either or both of the Civil Actions or bring any civil and/or administrative claim, action, or proceeding against BHD for the claims that would otherwise be

covered by the releases provided in Paragraphs 4 and 5 above, with any recovery reduced by the amount of any payments previously made by BHD to the United States under this Agreement. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, BHD agrees immediately to pay the United States the greater of: (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a); or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this Paragraph, BHD 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 BHD 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. BHD 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.

d. In the event of Uncured Default, OIG-HHS may exclude BHD from participating in all Federal health care programs until BHD pays the Settlement Amount, with interest, as set forth above. OIG-HHS will provide written notice of any such exclusion to BHD. BHD waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, BHD wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001–.3005. BHD will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default as defined in

this Paragraph is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

19. In exchange for valuable consideration provided in this Agreement, BHD acknowledges the following.

a. BHD has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent for at least ninety-one (91) days after the Effective Date.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to BHD, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which BHD was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If BHD's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, or if, before the Settlement Amount is paid in full, BHD or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (i) seeking any order for relief of BHD's debts, or to adjudicate BHD as bankrupt or insolvent; or (ii) seeking appointment of a receiver, trustee, custodian, or other similar official for BHD or for all or any substantial part of BHD's assets, the United States (a) may rescind its

releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against BHD for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5 above; and (b) the United States has an undisputed, noncontingent, and liquidated allowed claim against BHD in the amount of Two Hundred Forty-Nine Million Dollars (\$249,000,000.00), less any payments received pursuant to this Agreement, provided, however, that such payments are not otherwise avoided and recovered by BHD, a receiver, trustee, custodian, or other similar official for BHD.

f. BHD agrees that any such civil and/or administrative claim, action, or proceeding brought by the United States is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. BHD shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). BHD waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to BHD that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement.

20. After the Effective Date, the Parties shall promptly sign and file in each of the Civil Actions a Joint Stipulation of Dismissal of the Claims Against BHD in the Civil Actions pursuant to Rule 41(a)(1) as follows.

a. The Joint Stipulation of Dismissal in the Riedel Action shall be with prejudice as to the United States’ and Riedel’s claims in the Riedel Action against BHD as to the Covered Conduct in Paragraph D(a)–(b) and consistent with the terms and conditions of this Agreement.

The Joint Stipulation of Dismissal shall be without prejudice to the United States and with prejudice to Riedel as to any other pending claims against BHD in the Riedel Action.

b. The Joint Stipulation of Dismissal in the FBHI Action shall be with prejudice as to the United States' and FBHI's claims in the FBHI Action against BHD as to the Covered Conduct in Paragraph D(e) and consistent with the terms and conditions of this Agreement. The Joint Stipulation of Dismissal shall be without prejudice to the United States and with prejudice to FBHI as to any other pending claims against BHD in the FBHI Action.

21. Except as provided in Paragraph 3 above, 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 District of Columbia. 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 BHD's successors, transferees, heirs, and assigns.

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

29. All Parties consent to the United States' disclosure to the public, at the United States' sole discretion, of this Agreement and information about this Agreement.

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

THE UNITED STATES OF AMERICA

DATED: 11/12/19

BY:



CHRISTOPHER TERRANOVA  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice


DATED: \_\_\_\_\_

BY:

PAUL A. MUSSENDEN  
Assistant United States Attorney  
United States Attorney's Office  
District of Columbia

DATED: 11/12/2019

BY:



JAMES GILLINGHAM  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Texas

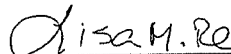
DATED: \_\_\_\_\_

BY:

CATHERINE J. SWANN  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of California

DATED: 10/29/2019

BY:



LISA M. RE  
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

DATED: \_\_\_\_\_

BY:


BRYAN T. WHEELER  
Acting General Counsel  
Defense Health Agency  
United States Department of Defense

THE UNITED STATES OF AMERICA

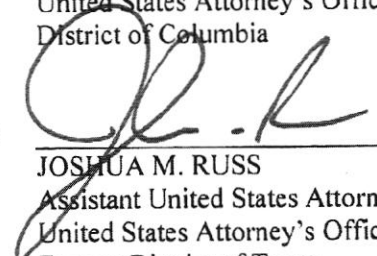
DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
CHRISTOPHER TERRANOVA  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

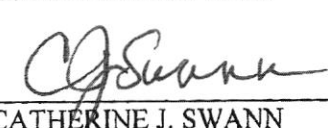
DATED: 29 October 2019

BY:   
PAUL A. MUSSENDEN  
Assistant United States Attorney  
United States Attorney's Office  
District of Columbia

DATED: 10/28/19

BY:   
JOSHUA M. RUSS  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Texas

DATED: 10/29/19

BY:   
CATHERINE J. SWANN  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of California

DATED: \_\_\_\_\_


BY: \_\_\_\_\_  
LISA M. RE  
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


DATED: 10/28/2019

BY: BLEY.PAUL.NICHO LAS.1099873821  
Digitally signed by  
BLEY.PAUL.NICHOLAS.1099873821  
Date: 2019.10.28 17:13:21 -04'00'  
BRYAN T. WHEELER  
for Acting General Counsel  
Defense Health Agency  
United States Department of Defense



BHD

DATED: 10-31-19 BY:   
PAT NOLAND  
President  
Boston Heart Diagnostics Corporation

DATED: 11-13-19 BY:   
WENDY H. SCHWARTZ  
Binder & Schwartz LLP  
Counsel for Boston Heart Diagnostics Corporation

RELATOR CHRISTOPHER RIEDEL

DATED: 10-24-19 BY: C. Riedel  
CHRISTOPHER RIEDEL

DATED: 10/29/19 BY: Justin T. Berger  
JUSTIN T. BERGER  
Cotchett, Pitre & McCarthy LLP  
Counsel for Relator

RELATOR FBH1 LLC

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
CHRISTOPHER RIEDEL  
Manager, FBH1 LLC

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
CHRISTOPHER RIEDEL

DATED: 10-25-19

BY: Claudia Bradshaw  
~~CLAUDIA AYON~~ Bradshaw  
C.B.

DATED: 10-29-19

BY: Justin T. Berger  
JUSTIN T. BERGER  
Cotchett, Pitre & McCarthy LLP  
Counsel for Relator

RELATOR FBH1 LLC

DATED: 10-24-19 BY: C. Riedel  
CHRISTOPHER RIEDEL  
Manager, FBH1 LLC

DATED: 10-24-19 BY: C. Riedel  
CHRISTOPHER RIEDEL

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
CLAUDIA AYON

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
JUSTIN T. BERGER  
Cotchett, Pitre & McCarthy LLP  
Counsel for Relator