SETTLEMENT AGREEMENT

This Settlement Agreement ("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 of the Department of Health and Human Services ("OIG-HHS") (together, the "United States"), and VHS Acquisition Subsidiary Number 7, Inc., d/b/a Saint Vincent Hospital ("SVH") (hereafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. SVH is a for-profit hospital located in Worcester, Massachusetts. In 2013, Tenet Healthcare Corporation ("Tenet"), a multinational healthcare services company based in Dallas, Texas, acquired SVH. Tenet operates approximately sixty-one hospitals and over four-hundred-and-fifty healthcare facilities, including SVH.

B. The United States contends that SVH 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").

C. The Centers for Medicare and Medicaid Services ("CMS") pay hospitals for inpatient services through Medicare Part A's inpatient prospective payment system ("IPPS"). *See* 42 C.F.R. § 412. Under the IPPS, Medicare Part A pays each hospital a predetermined amount based on the diagnosis and specific treatment administered to an admitted patient. *Id.* The IPPS payment amount for each specific treatment is set by CMS after periodically examining a variety of factors, including the hospital's geographic location, the nationally calculated cost of providing medically necessary care to treat the patient's condition, the nationally calculated costs associated with the length of stay required for the patient's condition

and treatment; and the specific hospital's aggregate reported costs from the prior year for having provided medically necessary treatment to all Medicare patients.

To receive the IPPS payment, a hospital must submit a claim for reimbursement using designated Diagnosis Related Group ("DRG") codes to a Medicare Administrative Contractor ("MAC"), which processes Medicare Part A and B medical claims. The DRG codes inform the MAC of the specific treatment the hospital provided for the patient. Simultaneously, the hospital also reports the charges for services and supplies provided in treating the patient.

Assuming the hospital incurred costs that fell below a fixed-cost loss threshold predetermined by CMS, the MAC will only pay the hospital the base IPPS payment for that service. The base IPPS payment, plus the fixed-cost loss threshold, is the maximum amount of loss that a hospital would be expected to incur from administering the specific treatment. The MAC calculates the possible loss by subtracting the base IPPS payment, plus the fixed-cost loss threshold, from the charges reported by the hospital, adjusted to cost, for treating this particular patient.

In certain instances, a hospital may incur a loss in excess of the base IPPS payment plus the fixed-cost loss threshold due to extraordinarily high costs. This typically occurs when a hospital is required to address unforeseen complications stemming from the patient's treatment or from complications arising from a particular patient's comorbidities. The increase in costs could be attributable to the need to provide additional services or to the patient requiring an extended length of stay at the hospital to address any complications. In these instances, CMS authorizes the MAC to pay the hospital an "outlier" payment, in addition to the IPPS payment, to minimize the hospital's loss. *See* 42 C.F.R. § 412.80 – 86.

D. SVH admits, acknowledges, and accepts its responsibility for the following facts:

(1) After acquiring SVH, Tenet was advised by an expert consultant that SVH's charges were too low for the market in which it operated. In response, SVH decided to incrementally raise all of the charges in its chargemaster.

(2) In May 2017, SVH, with Tenet's approval, increased all charges in SVH's chargemaster for inpatient services performed by the hospital by 15%. This was in addition to a regularly scheduled annual increase for the charges in SVH's chargemaster in October of 2017. SVH did not calculate the impact these increases might have on Medicare Part A payment for certain DRG codes.

(3) On or around April 1, 2018, SVH, with Tenet's approval, increased all charges in SVH's chargemaster for inpatient services performed by the hospital by 18%. SVH did not calculate the impact these increases might have on Medicare Part A payment for certain DRG codes.

(4) On or around October 1, 2018, SVH, with Tenet's approval, increased all charges in SVH's chargemaster for inpatient services performed by the hospital another 18%. SVH did not calculate the impact these increases might have on Medicare Part A payment for certain DRG codes.

(5) In 2018 and 2019, SVH submitted claims to Medicare Part A for the following DRG codes (among others listed in the Chargemaster):

(a) DRG 222: Cardiac Defibrillator Implant with Cardiac Catheterization with AMI/HF/Shock with Major Complication or Comorbidity;

(b) DRG 228: Other Cardiothoracic Procedures with Major Complications or Comorbidity;

(c) DRG 229: Other Cardiothoracic Procedures Without Major Complications or Comorbidity;

(d) DRG 266: Endovascular Cardiac Valve Replacement and Supplement Procedures with Major Complications or Comorbidity;

(e) DRG 267: Endovascular Cardiac Value Replacement and Supplement Procedures Without Major Complications or Comorbidity.

(6) DRGs 266 and 267 specifically relate to a medical procedure called the Transcatheter Aortic Valve Replacement ("TAVR"), a minimally invasive heart procedure to replace a thickened aortic valve with an artificial valve to address aortic valve stenosis. TAVR claims have two components: a device charge and a procedure charge.

(7) In 2018 and 2019, SVH received outlier payments from Medicare Part A for submitting claims for DRGs 222, 228, 229, 266, and 267. SVH received many, though not all, of these outlier payments because of SVH's across-the-board increased costs in its chargemaster for all DRGSs in 2017 and 2018, without consideration for the possible impact on Medicare Part A reimbursements. SVH received outlier payments even though many of the patients at issue did not require increased levels of care, and the patients did not require a length of stay in excess of the geometric mean length-of-stay for each DRG calculated by CMS. SVH also did not incur extraordinarily high costs in excess of the base IPPS payment plus the fixed-cost loss threshold for the treatment of these patients.

(8) For DRGs 266 and 267, SVH's chargemaster increases resulted in SVH reporting increased costs to Medicare Part A for the TAVR artificial valve device even though SVH's actual costs for the device did not increase between 2017 and 2019.

(9) In mid-to-late 2019, a Medicare Advantage health care plan informed SVH that its charges for DRGs 266 and 267 had resulted in an unusually high number of large outlier payments for these DRGs. The Medicare Advantage health care plan reported that SVH's reported charges for DRGs 266 and 267 ranged from a 720% markup over the cost of the actual

device in February 2017 to a 1350% markup over the cost of the actual device in December 2019.

(10) In late 2019, during the course of reviewing the Medicare Advantage health care plan's complaint, SVH determined that SVH's across-the-board chargemaster increases in 2017 and 2018 had resulted in SVH receiving a higher number of outlier payments for some DRGs, including 266 and 267, from Medicare Part A. SVH further concluded that the chargemaster increases resulted in an adjustment of its actual cost-to-charge ratio by 10 percentage points from the cost-to-charge ratio applied during the payment period, which would trigger a CMS requirement to reconcile inpatient cost outlier payments.

(11) In July 2020, SVH made a voluntary payment to the MAC of approximately $7.4M. This payment was the estimated difference between the outliers SVH received from Medicare Part A and the outliers SVH recalculated based on the cost-to-charge ratios listed in SVH's 2018 and 2019 cost reports. SVH made the payment to curtail the anticipated accumulation of interest on the potential outlier reconciliation.

(12) SVH's voluntary payment to the MAC ultimately reimbursed most, but not all, of the outlier payments that SVH received for DRGs 222, 228, 229, 266, and 267 related to patients who did not require an increased level of care resulting in extraordinarily high costs or extended lengths of stay beyond the geometric mean length-of-stay for each DRG calculated by CMS.

E. The United States contends that it has certain civil claims against SVH arising from the facts described in Recital D. That conduct is referred to below as the "Covered Conduct." The United States contends that such civil claims include claims under the False Claims Act.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. SVH shall pay to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Massachusetts, $1,784,896.25 plus interest at a rate of 3.00% per annum from June 23, 2022 and continuing through the date of payment ("Settlement Amount"), of which $900,516.56 is restitution, no later than fifteen days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the United States' receipt of the Settlement, the United States releases SVH, together with its divisions, subsidiaries, successors, and assigns, 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.

3. Notwithstanding the release given in Paragraph 2 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 or enforcement right, 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.

4. SVH waives and shall not assert any defenses SVH 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.

5. SVH fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that SVH have asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. 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 SVH agrees not to resubmit to any Medicare contractor 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.

7. SVH 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 SVH, 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 of the matters covered by this Agreement;

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

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

(5) the payment SVH makes to the United States pursuant to this Agreement;

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 SVH, and SVH 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 SVH or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: SVH 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 SVH or any of their 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. SVH agree that the United States, at a minimum, shall be entitled to recoup from SVH 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 SVH or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on SVH 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 SVH's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

8. 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 9 (waiver for beneficiaries paragraph), below.

9. SVH agrees that they waive 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.

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

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

12. 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 Massachusetts. 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.

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

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

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

16. This Agreement is binding on SVH's successors, transferees, heirs, and assigns.

17. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

DATED: 12/9/2022 BY: _____

STEVEN SHAROBEM
JESSICA J. WEBER
Assistant United States Attorneys
United States Attorney's Office for the
District of Massachusetts

DATED: 12/8/2022 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

SAINT VINCENT HOSPITAL

DATED: 11/22/22 BY: _____

Ms. Carolyn Jackson
Chief Executive Officer
St. Vincent Hospital

DATED: 11/30/22 BY: _____

Thomas H. Barnard, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Counsel for St. Vincent Hospital