

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into among the following Parties:

A. The United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Eastern District of Pennsylvania, and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States");

B. Fresenius Medical Care Holdings, Inc., (d/b/a Fresenius Medical Care North America), NMC Diagnostic Services, Inc. ("DSI"), BioTrax International, Inc., a Delaware Corporation, ("Biotrax"), SRC Holding Company, Inc. ("Spectra"), Clinical Diagnostic Systems, Inc. ("CDS"), and National Medical Care, Inc., ("NMC") and its subsidiary entities that provide dialysis services ("Dialysis Facilities") (collectively "NMC Companies"), through their authorized representatives; and

C. Franklin W. West, of Seattle, Washington; Robert Kane, of Doylestown, Pennsylvania; Elizabeth Strelow, of Wallingford, Pennsylvania; and Christopher Piacentile, of Fort Lee, New Jersey (collectively the "Relators").

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. The NMC Companies primarily are in the business of providing dialysis services to patients with End-Stage Renal Disease ("ESRD") throughout the United States. The NMC

Companies, through DSI and Biotrax, also provide mobile noninvasive physiological testing services (hereinafter "Diagnostic Tests") to the patients of their own dialysis facilities, patients of unrelated dialysis facilities, and until approximately July, 1998, non-dialysis patients of other medical providers. Biotrax's predecessor in interest, a New Jersey corporation n/k/a BTX Holdings, Inc., was primarily in the business of providing Diagnostic Tests to the patients of dialysis facilities and to the patients of other medical providers prior to its acquisition by the NMC Companies in 1994.

B. The United States contends that the NMC Companies submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997).

C. Covered Conduct. The United States contends that it has certain civil claims against the NMC Companies under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, for engaging in the following conduct from January 1, 1992 through December 31, 1998 ("Covered Conduct"):

1. Preinterpreted Test Reports, Purchased Test Reports and Rental Payments.

Certain of the NMC Companies, as defined in paragraph II(D) of this Agreement, induced physicians treating non-dialysis patients ("Independent Physicians") and Dialysis Facilities to purchase certain medically unnecessary Diagnostic Tests by providing them with kickbacks in violation of the False Claims Act, 31 U.S.C. §3729-3733. The kickbacks took the form of preinterpreted test reports, sham rental payments and, from January 1, 1992 until August 1, 1995,

purchased interpretations. In the case of preinterpreted test reports and purchased interpretations, the NMC Companies encouraged physicians to bill the interpretations to the Medicare program as if they had performed the interpretations themselves. The NMC Companies submitted and caused to be submitted false claims to the Medicare program because the services were unlawfully induced by kickbacks and because the tests were not medically necessary. The scope of the conduct alleged in this paragraph is limited to the following tests:

- a. Echocardiograms
CPT Codes 93307, 93308, 93320, 93321, and 93325;
- b. Carotid Ultrasounds
CPT Codes 93875, 93880, and 93882;
- c. Nerve Conduction Velocity Studies
CPT Codes 95900, 95903, 95904, 95934 and 95935;
- d. Lower Limb Arterial Studies (not to include diagnostic tests performed on hemodialysis access sites);
CPT Codes 93920, 93921, 93922, 93923, 93924, 93925, 93926, and 93930;
- e. Bone Density Studies
CPT Codes 78350, 78351, 76070, and 76075; and
- f. Holter Monitor Studies
CPT Codes 93224, 93225, 93226, and 93227.

2. Electrocardiograms. Certain of the NMC Companies, as defined in Paragraph II(D) of this Agreement, submitted or caused to be submitted false claims to the Medicare program for performing and interpreting electrocardiograms (“EKGs”) (CPT codes 93041 and 93042). EKGs are performed routinely as part of echocardiograms to help with the placement of the sensors. Although they are reimbursable under Medicare when performed separately, they are not reimbursable when performed as part of an echocardiogram. Beginning in January, 1995, Biotrax billed separately for the performance and interpretation of EKGs that were done as part of an echocardiogram and were never separately ordered by a physician.

3. CAN Tests. Certain NMC Companies, as defined in paragraph II(D) of this agreement, submitted and caused the submission of false claims to the Medicare program for performing and interpreting cardiac autonomic neuropathy (“CAN”) tests which were not reimbursable under the Medicare program under any code, but which certain NMC Companies billed under CPT Code 95925 . The NMC Companies marketed these tests to physicians as reimbursable by Medicare. They billed for the technical component of the test under CPT 95925, which is the billing code for somatosensory tests.

4. Markup Conduct. Certain of the NMC Companies, as defined in Paragraph II(D) of this Agreement, submitted and caused the submission of false claims to the Medicare program by inducing Dialysis Facilities owned by the NMC Companies to purchase the Diagnostic Tests listed in Paragraph II(C)(1) of this Agreement by selling the tests at less than the

Medicare reimbursement rate and encouraging the Dialysis Facilities to bill Medicare at the full reimbursement rate and keep the difference ("Markup Conduct").

5. The United States also contends that NMC and Biotrax are liable, under the doctrine of de facto merger, for the Covered Conduct engaged in by BTX Holdings, Inc., (then known as Biotrax International, Inc., a New Jersey corporation) prior to the date of the sale of its assets to Biotrax and NMC.

D. The allegations of the United States concerning the conduct as described in Paragraph II(C) of this Agreement are limited to the specified diagnostic tests marketed, sold or billed by the following NMC Companies only, as defined by their Medicare provider numbers:

BIOTRAX INTERNATIONAL

309486	BioTrax International, Inc., Pennsylvania/NMC
309592	BioTrax International, Inc. , New Jersey/NMC
307780	BioTrax International, Inc., New Jersey
618073	BioTrax International, Inc., New Jersey
55184	BioTrax International, Inc., Georgia
3361500	BioTrax International, Inc., Tennessee
43222463	BioTrax International, Inc., Oklahoma
950000657	BioTrax International, Inc., Railroad Medicare
C3U601	BioTrax International, Inc., New York
C3U602	BioTrax International, Inc., New York
PL0216	BioTrax International, Inc., Texas
309544	BioTrax International, Inc., Maryland
950000024	BioTrax Connecticut, Inc.
PGBBK	BioTrax International, Inc., Arizona
67023	BioTrax International, Inc., Colorado
690000279	BioTrax International, Inc., Connecticut
309543	BioTrax International, Inc., Delaware
95WCCZ	BioTrax International, Inc., Georgia
249110	BioTrax International, Inc., Indiana
0272380001	BioTrax International, Inc., Indiana

9337101	BioTrax International, Inc., Kentucky
0240201	BioTrax International, Inc., Kentucky
950000030	BioTrax International, Inc., Railroad Medicare
959002482	BioTrax International, Inc., Rhode Island
3351500	BioTrax International, Inc., Tennessee
950000023	BioTrax International, Inc., Virginia

NMC DIAGNOSTIC SERVICES

543315	NMC Diagnostic Services, Inc., New Jersey
3023	NMC Diagnostic Services, Inc., Colorado
H360-8	NMC Diagnostic Services, Inc., Colorado
S5808	NMC Diagnostic Services, Inc., Colorado
Q9006A	NMC Diagnostic Services, Inc., Florida
Q9006C	NMC Diagnostic Services, Inc., Florida
365940	NMC Diagnostic Services, Inc., Illinois
5D947	NMC Diagnostic Services, Inc., Louisiana
0M05870	NMC Diagnostic Services, Inc., Michigan
NMPH00431	NMC Medical Services, Inc., Ohio
267740	NMC Diagnostic Services, Inc., Indiana
155853	NMC Diagnostic Services, Inc., Massachusetts
Q9006	NMC Diagnostic Services, Inc., Florida
Q9006B	NMC Diagnostic Services, Inc., Florida
950000895	NMC Diagnostic Services, Inc. Railroad Medicare
950000896	NMC Diagnostic Services, Inc. Railroad Medicare
129882	NMC Diagnostic Services, Inc., Massachusetts
950000015	NMC Diagnostic Services, Inc., Mississippi
510-33909	NMC Diagnostic Services, Inc., Alabama
3005-3	NMC Diagnostic Services, Inc., Colorado
65583	NMC Diagnostic Services, Inc., Colorado
950000027	NMC Diagnostic Services, Inc., Connecticut
130195	NMC Diagnostic Services, Inc., Kansas
9003987	NMC Diagnostic Services, Inc., Kansas
9003987A	NMC Diagnostic Services, Inc., Kansas
950000844	NMC Diagnostic Services, Inc., MA Railroad
000009030	NMC Diagnostic Services, Inc., Missouri
9003987B	NMC Diagnostic Services, Inc., Missouri
9003952	NMC Diagnostic Services, Inc., Missouri

COL321	NMC Diagnostic Services, Inc., New York
COL322	NMC Diagnostic Services, Inc., New York
950000897	NMC Medical Services, Inc., PA Railroad
302862	NMC Medical Services, Inc., Pennsylvania
959004955	NMC Diagnostic Services, Inc., Rhode Island
3361702	NMC Diagnostic Services, Inc., Tennessee
4001601	Park Imaging, Inc., West Virginia
950000889	NMC Diagnostic Services, Inc., Florida Railroad
2541037	NMC Diagnostic Services, Inc., North Carolina

E. Medical Director Compensation Conduct. The United States, through the Department of Justice and the U.S. Attorney's Office for the District of Massachusetts, contends that it has certain civil claims against the NMC Companies under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes, and/or common law doctrines, for providing kickbacks in the form of profit sharing and subsequent flat fee compensation to the medical directors of NMC Dialysis Facilities in exchange for ordering the Diagnostic Tests listed in Paragraph II(C)(1) of this Agreement (hereinafter referred to as the "Medical Director Compensation Conduct").

F. Administrative Claims and Exclusion. The United States also contends that it has certain administrative claims against the NMC Companies under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct and the Medical Director Compensation Conduct.

G. The NMC Companies deny the allegations of the United States as set forth in Paragraphs II(C)-(F) of this Agreement.

H. West and Kane Qui Tam Action. Relators West and Kane have filed under seal a qui tam complaint on behalf of the United States. United States ex rel. West & Kane v. Biotrax International, Inc., Civ. No. 95-3223 (E.D. Pa.). The NMC Companies specifically deny any and all allegations contained in the qui tam Complaint.

I. Kelly Qui Tam Action. Relator Kelly has filed under seal a qui tam complaint on behalf of the United States. United States ex rel. Kelly v. Biotrax International Inc., et al., Civ. No. 96-1441 (E.D. Pa.). The NMC Companies specifically deny any and all allegations contained in the qui tam Complaint.

J. Chrans Qui Tam Action. Relator Chrans has filed under seal two qui tam complaints on behalf of the United States. Chrans v. Nephrology Associates, P.A., et al., Civ. No. 97-0047 (D. Del.), and Chrans v. BioMedical Applications Inc., et al., Civ. No. 98-2190 (E.D. Pa.). The NMC Companies specifically deny any and all allegations contained in the qui tam Complaints.

K. Strelow Qui Tam Action. Relator Strelow has filed under seal a qui tam complaint on behalf of the United States. United States ex rel. Strelow v. National Medical Care, Inc., et al., Civ. No. 96-7423 (E.D. Pa.). The NMC Companies specifically deny any and all allegations contained in the qui tam Complaint.

L. Piacentile Qui Tam Action. Relator Piacentile has filed under seal a qui tam complaint on behalf of the United States. United States ex rel. Piacentile v. NMC Diagnostic

Services, Inc., et al., Civ. No. 97-4071 (E.D. Pa.). The NMC Companies specifically deny any and all allegations contained in the qui tam Complaint.

M. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Payment by the NMC Companies to the United States. The NMC Companies agree to pay to the United States \$16,500,000 (the "Settlement Amount"), as follows. The NMC Companies agree to pay one third of the settlement amount within 5 days of the date of the effective date of this Agreement by all parties, an additional one third of the settlement amount by June 30, 1999, and the final one third of the settlement amount by September 30, 1999. The NMC Companies agree to make all three payments of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States. The NMC Companies agree they are bound to the terms and provisions of the Judgment Note attached as Exhibit "A" to this Agreement and which are hereby incorporated to this Agreement by reference.

2. Payment by the NMC Companies to Relators West, Kane, Strelow and Piacentile. The NMC Companies agree to pay as attorneys fees, costs and expenses to Relators West and Kane the sum of \$175,000; to Relator Strelow \$75,000; and to Relator Piacentile

\$53,653. The NMC Companies agree to make these payments within 5 days of the effective date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by each of the specified Relators.

3. Release by United States of Claims Based on Covered Conduct. Subject to the exceptions in Paragraph III(14) of this Agreement, in consideration of the obligations of the NMC Companies set forth in this Agreement, and conditioned upon the NMC Companies' payment as set forth in Paragraph III(1) of this Agreement, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the NMC Companies from any civil or administrative monetary claim the United States has or may have 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, breach of contract and fraud, for the Covered Conduct. No individuals are released by this Agreement for the Covered Conduct as set forth in Paragraph II(C) of this Agreement.

4. Release by United States of Certain Claims Based on Medical Director Compensation Conduct. Subject to the exceptions in Paragraph III(14) of this Agreement, in consideration of the obligations of the NMC Companies set forth in this Agreement, and conditioned upon the NMC Companies' payment as set forth in Paragraph III(1) of this Agreement, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the NMC Companies from any civil or administrative monetary claim the United

States has or may have 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, breach of contract and fraud, concerning the sale of the Diagnostic Tests specified in Paragraph II(C)(1) of this Agreement by the companies listed in Paragraph II(D) to Dialysis Facilities owned by the NMC Companies to the extent such claims constitute Medical Director Compensation Conduct.

5. Intervention, Declination, and Dismissal of Qui Tams. The United States agrees that by the 10th day following the execution of this Agreement by all parties, it will file in the United States District Court for the Eastern District of Pennsylvania the following:

- a. A Notice of Election of Intervention and Settlement in the West action;
- b. A Notice of Election of Intervention and Settlement in the Strelow action;
- c. A Notice of Election of Intervention and Settlement in the Piacentile action;
- d. A Notice of Election of Declination in the Kelly action; and
- e. A Notice of Election of Declination in the Chrans actions.

6. The United States agrees that by the 10th day following the execution of this Agreement it will file a motion to dismiss the West, Strelow, and Piacentile actions (i) with prejudice to the extent those complaints encompass the claims of the United States as described in Paragraph II(C) of this Agreement; (ii) without prejudice as to the remaining allegations of those

actions; and (iii) allowing the court to retain jurisdiction for the purpose of enforcing this Agreement.

7. Agreement by Relators to Dismiss their Actions. Relators West, Kane, Strelow and Piacentile agree that on the 10th day following the execution of this agreement, they will file a motion to dismiss with prejudice their respective cases, but allowing the court to retain jurisdiction for the purpose of enforcing this Agreement only. The United States agrees to consent to the motions.

8. In consideration of the obligations of the NMC Companies set forth in this Agreement, and conditioned upon payment as set forth in Paragraph III(1) of this Agreement, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the NMC Companies under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct and Medical Director Compensation Conduct, except as reserved in Paragraph III(14) of this Agreement, and as reserved in this Paragraph. The OIG expressly reserves all rights to comply with statutory obligations to exclude the NMC Companies or others from Medicare, Medicaid or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph III(14) of this Agreement.

9. Release by Relators West, Kane, Strelow, and Piacentile. In

consideration of the obligations of the NMC Companies set forth in this Agreement, relators West, Kane, Strelow, and Piacentile each release the NMC Companies from any civil claim they may have under the False Claims Act, 31 U.S.C. §§ 3729-3733 or common law theories, including but not limited to payment by mistake, unjust enrichment, breach of contract and fraud, arising from the claims set forth in their respective qui tam actions. Relators West, Kane, Strelow and Piacentile further release the NMC Companies from any claim for attorney's fees, costs, and expenses of every kind and however denominated, except as explicitly provided for in Paragraph III(2) of this Agreement. The relators also agree to accept the amounts in paragraphs III(10), (11) & (12) below as full and final settlement of any claims they may have against the government and each other. They also agree to not seek additional portions of the settlement amount from the government and each other.

10. The United States and relators West and Kane agree that pursuant to 31 U.S.C. § 3730(d)(1) the collective share of the Settlement Amount for the West and Kane action shall be calculated as follows:

a.	Portion of the Settlement Amount Comprising the Proceeds of the West and Kane Action	\$16,243,467.48
b.	Percentage of Share	20 %
c.	Total Share	\$3,248,693.49

11. The United States and relator Strelow agree that pursuant to 31 U.S.C. § 3730(d)(1) the share of the Settlement Amount for the Strelow action shall be calculated as follows:

a.	Portion of the Settlement Amount Comprising the Proceeds of the Strelow Action	\$141,782.52
b.	Percentage of Share	18 %
c.	Total Share	\$ 25,520.85

12. The United States and relator Piacentile agree that pursuant to 31 U.S.C. § 3730(d)(1) the share of the Settlement Amount for the Piacentile action shall be calculated as follows:

a.	Portion of the Settlement Amount Comprising the Proceeds of the Piacentile Action	\$114,750.00
b.	Percentage of Share	18%
c.	Total Share	\$ 20,655.00

13. The United States agrees that within 15 days of each of the payments specified in Paragraph III(1) of this Agreement, the U.S. Attorney's Office for the Eastern District of Pennsylvania shall instruct the Department of the Treasury to pay:

- (i) to relators West and Kane, 1/3 of their collective share specified in Paragraph III(10) of this Agreement;
- (ii) to relator Strelow, 1/3 of the share specified in Paragraph III(11) of this Agreement;

- (iii) to relator Piacentile, 1/3 of the share specified in Paragraph III(12) of this Agreement;

14. Notwithstanding any term of this Agreement, specifically reserved by the United States and excluded from the scope and terms of this Agreement as to any entity or person (including the NMC Companies) are any and all of the following:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct and the Medical Director Compensation Conduct;
- (5) Any claims based upon such obligations as are created by this Agreement;
- (6) Any claims against any individuals, including current and former officers, directors, agents, and employees;

15. The NMC Companies waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct and the Medical Director Compensation Conduct, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. The NMC Companies

agree that this Agreement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

16. The NMC Companies fully and finally release the relators and the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which the NMC Companies have asserted, could have asserted, or may assert in the future against the relators and the United States, its agencies, employees, servants, and agents, related to the Covered Conduct, the Medical Director Compensation Conduct, and the United States' investigation and prosecution thereof.

17. The Amount that the NMC Companies must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph III(1) above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct and the Medical Director Compensation Conduct; and the NMC Companies, to the extent they control or own previously denied claims, agree not to resubmit to any Medicare carrier or intermediary any previously denied claims related to the Covered Conduct, and the Medical Director Compensation Conduct; and agree not to appeal any such denials of claims.

18. Unallowable Costs. The NMC Companies agree that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of the NMC Companies in

connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) the NMC Companies' investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees), (4) the negotiation of this Agreement, and (5) the payments made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "Unallowable Costs"). These unallowable costs will be separately estimated and accounted for by the NMC Companies, and the NMC Companies agree they will 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 the NMC Companies or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

19. The NMC Companies further agree that within 60 days of the effective date of this Agreement they will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, all Unallowable Costs (as defined in Paragraph III(18)) 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 the NMC Companies or any subsidiaries, and will 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. The NMC Companies agree that the United States will be entitled to recoup from the NMC Companies all overpayments 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 the NMC Companies or any of subsidiaries on the effect of inclusion of Unallowable Costs (as defined in Paragraph III(18)) on the NMC Companies or any subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

20. The NMC Companies covenant to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement, for the Covered Conduct. Upon reasonable notice, the NMC Companies will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, agents, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct. By agreeing to provide such cooperation, the NMC Companies have in no way waived their right to assert that certain materials are protected under the work product doctrine or other available privileges.

21. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

22. The NMC Companies agree that they will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. The NMC Companies waive any causes of action against these beneficiaries or their parents, or sponsors or estates based upon the claims for payment covered by this Agreement.

23. The NMC Companies expressly warrant that they have reviewed their financial condition and that they currently are solvent within the meaning of 11 U.S.C. Section 547(b)(3), and expect to remain solvent following payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to the NMC Companies within the meaning of 11 U.S.C. Section 547(c)(1), and (2) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

24. Except as provided in Paragraph III (2) of this Agreement, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

25. The NMC Companies represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

26. This Agreement is governed by the laws of the United States. The parties agree that jurisdiction and venue for any dispute between the United States and the NMC Companies under this Agreement concerning Medical Director Compensation Conduct will lie

exclusively in the United States District Court for District of Massachusetts. For all other matters, the Parties agree that the exclusive jurisdiction and venue for any dispute arising between and/or among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania.

27. This Agreement constitutes the complete agreement among the Parties.

This Agreement may not be amended except by written consent of the Parties.

28. The undersigned individuals signing this Agreement on behalf of the NMC Companies represent and warrant that they are authorized by the NMC Companies to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

30. This Agreement is effective, conditioned upon the NMC Companies' execution of the Judgment Note (Exhibit "A"), on the date of signature of the last signatory to the Agreement.

31. Relators West, Kane, Strelow, and Piacentile agree that (i) they do not object to this settlement; (ii) that the settlement is fair, adequate, and reasonable under all of the circumstances, pursuant to 31 U.S.C. §3730(c)(ii)(B); and (iii) that no hearing to determine the fairness, reasonableness or adequacy of the settlement is necessary.

32. This Agreement is binding on all successors, transferees and assigns.

FOR THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

JAMES G. SHEEHAN
Assistant United States Attorney
Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____

BY: _____

JOHN N. JOSEPH
Assistant United States Attorney
Deputy Chief, Civil Division
Eastern District of Pennsylvania

DATED: _____

BY: _____

DAVID H. RESNICOFF
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

JOHN HENEBERY
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

DATED: _____

BY: _____

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

FOR THE NMC COMPANIES

DATED: _____

BY: _____
BENJAMIN J. LIPPS
President of Fresenius Medical Care
Holdings, Inc. and National Medical Care, Inc.

DATED: _____

BY: _____
PATRICK MORIARTY
Vice President, NMC Diagnostic Services, Inc.,
BioTrax International, Inc., and Clinical
Diagnostic Systems, Inc.

DATED: _____

BY: _____
E. CRAIG DAWSON
President, SRC Holding Company, Inc.

FOR THE RELATORS

DATED: _____

BY: _____
FRANKLIN W. WEST

DATED: _____

BY: _____
ROBERT KANE

DATED: _____

BY: _____
MARC S. RASPANTI, ESQ.
Counsel to Franklin W. West and Robert Kane
Miller, Alfano & Raspanti, P.C.

DATED: _____

BY: _____
DAVID M. LAIGAIE, ESQ.
Counsel to Franklin W. West and Robert Kane
Miller, Alfano & Raspanti, P.C.

DATED: _____

BY: _____
ELIZABETH STRELOW

DATED: _____

BY: _____
BRIAN P. KENNEY, ESQ.
Counsel to Elizabeth Strelow
Elliot, Reihner, Siedzikowski, & Egan, P.C.

DATED: _____

BY: _____
CHRISTOPHER PIACENTILE

DATED: _____

BY: _____
MITCHELL R. KREINDLER, ESQ.
Counsel to Christopher Piacentile
Phebus & Winkleman

SETTLEMENT AGREEMENT EXHIBIT A

JUDGMENT NOTE

\$16,500,000

1. FOR VALUE RECEIVED, Fresenius Medical Care Holdings, Inc. (d/b/a Fresenius Medical Care North America), NMC Diagnostic Services, Inc., Biotrax International, Inc., SRC Holding Company, Inc., National Medical Care, Inc., and its subsidiary entities that provide Dialysis Services (Dialysis Facilities) (collectively the "Maker"), promises to pay the United States of America, acting through the United States Department of Justice and the United States Attorneys Office for the Eastern District of Pennsylvania (hereinafter referred to as "Payee"), the principal sum of \$16,500,000, lawful money of the United States of America. This sum represents the "Settlement Amount" as defined in the Settlement Agreement entered into between Maker and Payee on May 13, 1999.

2. Payment shall be made in accordance with Paragraph III(1) of the Settlement Agreement.

3. The principal sum, or any portion thereof, may be prepaid from time to time, on any business day without penalty or premium. Each prepayment shall be accompanied by all other sums then due and payable. No partial prepayment shall affect Maker's obligation to continue to pay until the remaining payment is fully paid.

4. If Maker fails to pay any amount for which it is obligated under this Note, such failure shall constitute a default. Payee agrees to provide Notice of Default, in writing, to Maker, who will then have seven (7) days to make all required payments. Upon expiry of that

seven (7) day period, the entire principal balance of the indebtedness evidenced by this Note shall, at Payee's option, become immediately due and payable without notice to the Maker, and Payee shall begin all legal proceedings necessary or appropriate to collect these amounts.

5. Maker hereby irrevocably authorizes and empowers any attorney or attorneys or the Clerk of the U.S. District Court for the Eastern District of Pennsylvania, or in any jurisdiction which permits the entry of judgment by confession, to appear for the Maker in any such court in an appropriate action there or elsewhere brought or to be brought against Maker by Payee on this Note, with or without declaration files, as to any term or time, and therein to CONFESS OR ENTER JUDGMENT against Maker for all sums due by Maker to Payee under this Notice, including costs of suit and reasonable attorney's fees not to exceed five hundred dollars. For doing so, this Note or a copy hereof verified by Affidavit shall be a sufficient warrant.

6. Maker hereby waives and releases Payee and its attorneys from all errors, defects, and imperfections in any proceeding instituted by Payee under this Note. Maker waives all benefit that might accrue to it by virtue of any present or future laws exempting any property, real or personal, or any part of the proceeds arising from any sale of any such property from attachment, levy, or sale, under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, and agrees that such property may be sold to satisfy any judgment entered on this Note, in whole or in part, and in any order as Payee desires.

7. This Note shall be binding upon Maker, its successors and assigns, and shall inure to the benefit of the Payee, its successors and assigns. This Note shall be governed by

and construed according to the laws of the United States of America and the Commonwealth of Pennsylvania.

8. Maker acknowledges that it has been represented by counsel in connection with the execution and delivery of this Note and that it understands all provisions, including the provision regarding confession of judgment, and Maker waives any right to notice or a hearing to which it might otherwise be entitled before entry of judgment.

IN WITNESS WHEREOF, and intending to be legally bound hereby,
Maker has executed this Promissory Note the date first written above.

FOR THE NMC COMPANIES

DATED: _____

BY: _____
BENJAMIN J. LIPPS
President of Fresenius Medical Care
Holdings, Inc. and National Medical Care, Inc.

DATED: _____

BY: _____
PATRICK MORIARTY
Vice President, NMC Diagnostic Services, Inc.,
BioTrax International, Inc., and Clinical
Diagnostic Systems, Inc.

DATED: _____

BY: _____
E. CRAIG DAWSON
President, SRC Holding Company, Inc.