

## 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) (collectively, the “United States”), Lucy Webb Hayes National Training School for Deaconesses and Missionaries d/b/a Sibley Memorial Hospital (“Sibley”) and The Johns Hopkins Health System Corporation (“Johns Hopkins”)(hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

- A. Sibley is located at 5255 Loughboro Rd NW, Washington, DC 20016.
- B. On November 1, 2010, Sibley became a wholly-owned subsidiary of Johns Hopkins.
- C. The physician self-referral law (commonly referred to as the Stark Law), 42 U.S.C. § 1395nn, *et seq.*, prohibits a physician from making a referral for designated health services to an entity with which the physician (or an immediate family member of the physician) has a financial relationship unless an exception applies and its requirements are satisfied. The physician self-referral law also prohibits the entity from filing claims with Medicare (or billing another individual, entity, or third-party payer) for those referred services.
- D. On October 6, 2011, Sibley (through its outside counsel) disclosed to the United States that it may have violated the Stark Law because certain of its financial relationships with physicians did not satisfy the requirements of any applicable Stark Law exception. Specifically, Sibley disclosed that, from January 1, 2008, through April 19, 2011, Sibley paid above-fair market value compensation to the following ten cardiologists to read cardiovascular/peripheral vascular (“CV/PV”) studies: Joseph Babrowicz, Nancy Davenport, Martin Kanovsky, Allen

Nimetz, Norman Odyneic, Ramin Oskoui, Christopher Rothstein, Gerald Shugoll, Jerry Snow, and Elissa Thompson (collectively “the Cardiologists”), and the Cardiologists referred patients to Sibley for designated health services.

E. Sibley further disclosed that it submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (“Medicare”) for services provided to patients referred to Sibley by the Cardiologists.

F. The United States contends that it has certain civil claims against Sibley and Johns Hopkins arising from Sibley’s submission of claims for payment to Medicare for designated health services provided to patients referred to Sibley by the Cardiologists from January 1, 2008, through April 19, 2011. Specifically, the United States contends that the compensation Sibley paid the cardiologists to read CV/PV studies constituted a financial relationship that did not satisfy the requirements of any Stark Law exception, including because the payments exceeded fair market value for the services rendered. As a result, the United States contends that the Cardiologists’ referrals to Sibley for designated health services, and Sibley’s submission of claims to Medicare for payment for those services was in violation of the Stark Law. That conduct is referred to below as the “Covered Conduct.”

G. This Settlement Agreement is neither an admission of liability by Sibley and Johns Hopkins nor a concession by the United States that its claims are not well founded.

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. Sibley shall pay to the United States \$5,000,000 (“Settlement Amount”), of which \$5,000,000 is restitution, no later than ten 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' Attorney's Office in Washington, D.C.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Sibley and Johns Hopkins from any civil monetary claims the United States has for the Covered Conduct under the common law theories of payment by mistake and unjust enrichment.

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 liability under 31 U.S.C. § 3729-3733 (the False Claims Act);
- 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;
- 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 personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Johns Hopkins and Sibley waive and shall not assert any defenses they 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. Johns Hopkins and Sibley fully and finally release 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 Johns Hopkins and Sibley 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 Johns Hopkins and Sibley agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

7. Johns Hopkins and Sibley agree 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 X, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Johns Hopkins and Sibley's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Johns Hopkins and Sibley make 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 Johns Hopkins and Sibley, and they 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 Johns Hopkins, Sibley or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Johns Hopkins and Sibley further agree that within 90 days of the Effective Date of this Agreement they 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 Johns Hopkins, Sibley 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. Johns Hopkins and Sibley agree that the United States, at a minimum, shall be entitled to recoup from them 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 United States Attorney's Office in Washington, D.C. and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Johns Hopkins, Sibley or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Johns Hopkins or Sibley or any of their 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 Johns Hopkins or Sibley's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

8. Johns Hopkins and Sibley agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Johns Hopkins and Sibley shall encourage, and agree not to impair, the cooperation of

their directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Johns Hopkins and Sibley further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf.

9. 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 10 (waiver for beneficiaries), below.

10. Johns Hopkins and Sibley agree that they waive and shall not seek payment for any of the health care billings that are included in the Covered Conduct covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

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

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

13. 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.

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

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

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

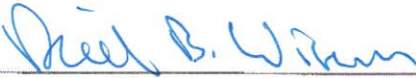
17. This Agreement is binding on Johns Hopkins and Sibley's successors, transferees, heirs, and assigns.


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

19. 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.

20. Upon the Effective Date of this Agreement, the tolling agreement signed by the parties on February 2, 2023, shall be null and void.

THE UNITED STATES OF AMERICA

DATED: 4/17/2023 BY:   
David B. Wiseman  
Assistant Director  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 4/17/2023 BY:   
Heather Graham-Oliver  
Deputy Chief  
Civil Division  
United States Attorney's Office  
for the District of Columbia



SIBLEY MEMORIAL HOSPITAL AND THE JOHNS HOPKINS  
HEALTH SYSTEM CORPORATION

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

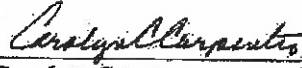
BY:



Kevin W. Sowers, M.S.N., R.N., F.A.A.N.  
President, Johns Hopkins Health System Corporation

DATED: 4/16/2023

BY:



Carolyn Carpenter, M.H.A., F.A.C.H.E.  
Johns Hopkins Health System  
President of the National Capital Region