

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into between the State of North Carolina (“the State”) and Philips RS North America, LLC, f/k/a Respironics, Inc. (“Respironics”), collectively, “the Parties.”

II. PREAMBLE

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

A. At all relevant times, Respironics, a Delaware corporation with its principal place of business in Pittsburgh, PA, provided various healthcare goods and services, including the manufacturing and selling of ventilators, oxygen concentrators, CPAP machines, and BiPAP machines and other respiratory-related medical equipment (collectively, “Equipment”), used to treat airway disorders.

B. On October 29, 2019, Jeremy Orling, d/b/a Respiratory Care, LLC (the “Relator”), filed a qui tam action in the United States District Court for the District of South Carolina captioned United States et al. ex rel. Respiratory Care, LLC v. Respironics, Inc. et al., Civil Action No. 2:19-cv-02913-BHH (D.S.C.). On November 18, 2019, the Relator filed a Second Amended Complaint. This qui tam action will be referred to as the “Civil Action.”

C. Respironics has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the “United States of America” as that term is defined in the Federal Settlement Agreement (the “United States”) with respect to the Civil Action.

D. The State contends that Respiroics caused claims for payment for Equipment to be submitted to the State’s Medicaid Program (42 U.S.C. §§ 1396-1396w-5, including “managed care entities” as defined by 42 U.S.C. § 1396u-2) by durable medical equipment (“DME”) suppliers.

E. The State contends that it has certain civil and administrative causes of action against Respiroics for engaging in the following conduct (the “Covered Conduct”):

That from November 2014 through April 2020, Respiroics caused DME suppliers to submit false claims to the Medicaid program for Equipment when such claims were tainted by Respiroics’ provision of unlawful remuneration (data, described below) in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2). Specifically, the State contends that in order to induce DME suppliers to choose Respiroics’ Equipment for Medicaid program beneficiaries, Respiroics provided remuneration in the form of giving free of charge to these DME suppliers physician prescribing data known as “HMS” or “Health Market Science” data,” knowing that this data may be of significant value to DME suppliers to assist in the DME suppliers’ own marketing efforts.

F. Respiroics denies the allegations in Paragraph E.

G. This Agreement is neither an admission of facts or liability by Respiroics nor a concession by the State that its allegations are not well founded.

H. The Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Respironics agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) and subject to the non-participating state deduction provision of sub-paragraph (d) below), collectively, the sum of \$24,750,000.00 plus accrued interest (the “Settlement Amount”). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the “effective date” of the Federal Settlement Agreement, as defined therein and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States under the following terms and conditions:

(a) Respironics shall pay to the United States the sum of \$22,625,000.00 plus accrued interest pursuant to the terms of the Federal Settlement Agreement.

(b) The total Medicaid recovery for the Covered Conduct is \$4,826,250.00, consisting of \$2,125,000.00 for the states pursuant to this Agreement and \$2,701,250.00 for the United States federal share of the Medicaid recovery pursuant to the Federal Settlement Agreement. Respironics shall pay to the Medicaid Participating States the sum of \$2,125,000.00 plus accrued interest on that amount of 1% per annum commencing on January 21, 2022 and continuing to and including the day payment is made under this Agreement (the “Medicaid State Settlement Amount”), subject to the non-participating state deduction provision of sub-paragraph (d) below (the “Medicaid Participating State Settlement Amount”), no later than seven (7) business days after the expiration of the 60-day opt-in period for Medicaid Participating States described in sub-paragraph (c) below. The Medicaid Participating State Settlement Amount shall be paid and immediately deposited by electronic funds transfer to the New York State Attorney General’s National Global Settlement Account pursuant to

written instructions from the state negotiating team (the “State Team”), which written instructions shall be delivered to counsel for Respiroics. This electronic funds transfer shall constitute tender and negotiation of the State Amount as defined in Paragraph III. 1. (d) below.

(c) Respiroics shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Respiroics and the State Team have agreed, or in a form otherwise agreed to by Respiroics and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Respiroics’ attorneys within 60 days of receiving this Agreement. Respiroics’ offer to resolve this matter with the State shall become null and void absent written agreement between counsel for Respiroics and the State Team to extend the 60-day period.

(d) The total portion of the amount paid by Respiroics in settlement for the Covered Conduct for the State is \$216,005.90, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$92,510.41 plus applicable interest (the “State Amount”), of which \$42,050.19 is restitution. If the State does not execute this Agreement within 60 days of receiving this Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Respiroics absent written agreement between counsel for Respiroics and the State Team to extend the time period for executing this Agreement.

2. Contingent upon receipt of the State Amount, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Respiroics in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Action. Contingent upon receipt of the State Amount, the State, if served with the Civil Action and otherwise liable to pay a relator’s share, agrees to pay the

Relator(s) the amount of \$17,576.98 plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letter(s) with the Relator(s) in the Civil Action.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Respiroics set forth in this Agreement, and conditioned upon tender and negotiation of the State Amount, the State agrees to release Respiroics, its predecessors and current and former parents, divisions, subsidiaries, affiliates, successors, transferees, heirs, and assigns (collectively, the “Respiroics Released Entities”), from any civil or administrative monetary cause of action that the State has or could have asserted for any claims submitted or caused to be submitted to the State’s Medicaid Program for the Covered Conduct, including any claims under state False Claims Act laws, and any common law theories of payment by mistake, unjust enrichment, disgorgement of illegal profits and fraud.

4. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the State are specifically reserved and are not released:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability;
- (c) any civil or administrative liability that any person or entity, including the Respiroics Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation, or rule not expressly covered by the release in Paragraph 3 above, including, but not limited to, any and all of the following claims: (i) claims involving unlawful or illegal conduct based on State or federal antitrust violations; and (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability based upon obligations created by this Agreement;

(f) except as explicitly stated in this Agreement, any administrative liability or right, including mandatory exclusion from the State's Medicaid Program;

(g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;

(h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(i) any liability for failure to deliver goods or services due; or

(j) any liability of individuals.

5. Respiroics waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution or the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. In consideration of the obligations of the State set forth in this Agreement, the Respiroics Released Entities waive and discharge the State and any of its agencies, departments, and personnel including, but not limited to, officials, employees, and agents, whether current or former in their official and individual capacities from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Respiroics Released Entities have against the State and any of its agencies, departments, and personnel as previously referenced arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount that Respiroics must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid Program, or any other state program payor, for the Covered

Conduct; and Respiroics agrees not to resubmit to the State's Medicaid Program or any other state program payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of, or not to appeal or cause the appeal of, any such denials of claims.

8. Respiroics shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

9. Respiroics expressly warrants that it has reviewed its financial condition and that it is currently solvent, meaning that a fair valuation of its property (exclusive of exempt property) exceeds the sum of its debts.

10. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

11. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and the Parties do not release any liability as to any other person or entity.

13. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

14. In addition to all other payments and responsibilities under this Agreement, Respiroics agrees to pay the State Team's reasonable expenses and fees, including travel costs, consultant expenses, and administrative fees. Respiroics will pay this amount by separate check

made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

15. This Agreement is governed by the laws of the State and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

16. The undersigned Respironics signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

17. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute acceptable binding signatures for purposes of this Agreement, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

18. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

19. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

21. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by the Parties to this Agreement and shall not, therefore, be construed against any of the Parties for that reason. The recitals in Section I (Parties) and Section II (Preamble) are agreed

to by the Parties. The headings of this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.

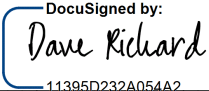
STATE OF NORTH CAROLINA

By: *F. Edward Kirby, Jr.* Dated: 11/1/2022

F. Edward Kirby, Jr.
Name

Director
Title

NCDOJ Medicaid Investigations Division
Organization

By:  Dated: 11/04/22 | 6:06 AM PDT

Dave Richard
Name

Deputy Secretary, NC Medicaid
Title

NC Department of Health & Human Services, Division of Health Benefits
Organization

PHILIPS RS NORTH AMERICA, LLC, f/k/a RESPIRONICS, INC

By: David Ferguson Dated: 12/12/2022

David Ferguson
Name

President and Chief Executive Officer
Title

Philips RS North America LLC
Organization

By: Stuart Cashman Dated: 12/12/2022

Stuart Cashman
Name

Vice President and Treasurer
Title

Philips RS North America LLC
Organization

By: _____ Dated: _____

John C. Dodds
Counsel to Philips RS North America LLC

PHILIPS RS NORTH AMERICA, LLC, f/k/a RESPIRONICS, INC

By: _____ Dated: _____

David Ferguson
Name

President and Chief Executive Officer
Title

Philips RS North America LLC
Organization

By: _____ Dated: _____

Stuart Cashman
Name

Vice President and Treasurer
Title

Philips RS North America LLC
Organization

By: John C. Dodds Dated: 12/12/22

John C. Dodds
Counsel to Philips RS North America LLC