

**CORPORATE INTEGRITY AGREEMENT  
BETWEEN THE  
OFFICE OF INSPECTOR GENERAL  
OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
U.S. HEALTHCARE SUPPLY, LLC; SPECTRUM DIABETIC SERVICES, LLC;  
HERITAGE DIABETIC SUPPLY, INC; DEPENDABLE DIABETIC SUPPLY,  
LLC; U.S. DIAGNOSTICS, INC.; U.S. DIAGNOSTICS NJ; EDWARD J. LETKO;  
AND JON P. LETKO**

**I. PREAMBLE**

U.S. Healthcare Supply, LLC, along with its subsidiaries, Spectrum Diabetic Services, LLC, Heritage Diabetic Supply, Inc, and Dependable Diabetic Supply, LLC (referred to collectively as the “U.S. Healthcare Supply DMEPOS Companies”), U.S. Diagnostics, Inc., U.S. Diagnostics NJ, Edward J. Letko, and Jon P. Letko (referred to collectively, together with the U.S. Healthcare Supply DMEPOS Companies, as “U.S. Healthcare Parties”) hereby enter into this Corporate Integrity Agreement (CIA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS) to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (Federal health care program requirements).

As specified below, certain provisions of this CIA shall also apply to any entity other than the U.S. Healthcare Supply DMEPOS Companies, U.S. Diagnostics, Inc., and U.S. Diagnostics NJ: (1) in which Edward J. Letko or Jon P. Letko has an ownership or control interest, as defined in 42 U.S.C. § 1320a-3; and (2) that submits claims to the Federal health care programs or provides items or services that are payable, directly or indirectly, by Federal health care programs (referred to collectively at the “Letko Entities”).

Contemporaneously with this CIA, the U.S. Healthcare Parties entered into a Settlement Agreement with the United States in which the U.S. Healthcare Parties agreed to pay \$12 million, plus applicable interest, to the United States in exchange for a release from liability under the False Claims Act and other civil and administrative authorities for specified conduct detailed in Paragraph C of the Settlement Agreement (hereinafter referred to as the Covered Conduct). In the Settlement Agreement, the United States alleged that it had certain administrative claims against the U.S. Healthcare Parties for the Covered Conduct, and OIG expressly reserved all rights to institute, direct, or maintain any administrative action seeking exclusion against the U.S. Healthcare Parties from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C.

§ 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

In consideration of the obligations of the U.S. Healthcare Parties set forth in the Settlement Agreement and this CIA, and conditioned upon the U.S. Healthcare Parties' full payment of the Settlement Amount under Paragraph 1 of the Settlement Agreement and compliance with the provisions of this CIA throughout the CIA's term, OIG agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the U.S. Healthcare Parties under 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct. OIG expressly reserves all rights to comply with any statutory obligations to exclude the U.S. Healthcare Parties from Medicare, Medicaid, and all other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct.

## **II. TERM AND SCOPE OF THE CIA**

A. The period of the compliance obligations assumed by the U.S. Healthcare Parties under this CIA shall be five years from the effective date of this CIA. The "Effective Date" shall be the date on which the final signatory of this CIA executes this CIA. Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a "Reporting Period."

B. Sections VII, X, and XI shall expire no later than 120 days after OIG's receipt of: (1) the U.S. Healthcare Parties' final Annual Report or (2) any additional materials submitted by the U.S. Healthcare Parties pursuant to OIG's request, whichever is later.

C. For purposes of this CIA, the term "Covered Persons" includes:

1. all owners, officers, directors, and employees of the U.S. Healthcare Supply DMEPOS Companies; U.S. Diagnostics, Inc.; and U.S. Diagnostics NJ; and
2. all contractors, subcontractors, agents, and other persons who furnish patient care items or services or who perform billing or coding functions on behalf of the U.S. Healthcare Supply DMEPOS Companies; U.S. Diagnostics, Inc.; or U.S. Diagnostics NJ, excluding vendors whose sole connection with any of the

aforementioned entities is selling or otherwise providing medical supplies or equipment to the entity.

### **III. CORPORATE INTEGRITY OBLIGATIONS**

The U.S. Healthcare Parties shall establish and maintain a Compliance Program that includes the following elements:

A. Compliance Officer and Committee, and Management Compliance Obligations

1. *Compliance Officer.* Within 90 days after the Effective Date, the U.S. Healthcare Supply DMEPOS Companies shall appoint a Compliance Officer and shall maintain a Compliance Officer for the term of the CIA. The Compliance Officer shall be an employee and a member of senior management of the U.S. Healthcare Supply DMEPOS Companies, shall report directly to the Chief Executive Officer of the U.S. Healthcare Supply DMEPOS Companies, and shall not be or be subordinate to the General Counsel or Chief Financial Officer or have any responsibilities that involve acting in any capacity as legal counsel or supervising legal counsel functions for the U.S. Healthcare Supply DMEPOS Companies. The Compliance Officer shall be responsible for, without limitation:

- a. developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with Federal health care program requirements;
- b. monitoring the day-to-day compliance activities engaged in by the U.S. Healthcare Supply DMEPOS Companies, as well as any reporting obligations created under this CIA.

Any noncompliance job responsibilities of the Compliance Officer shall be limited and must not interfere with the Compliance Officer's ability to perform the duties outlined in this CIA.

The U.S. Healthcare Supply DMEPOS Companies shall report to OIG, in writing, any changes in the identity of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this CIA, within five days after such a change.

2. *Compliance Committee.* Within 90 days after the Effective Date, the U.S. Healthcare Supply DMEPOS Companies shall appoint a Compliance Committee. The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this CIA (e.g., senior executives of relevant departments, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of the U.S. Healthcare Supply DMEPOS Companies's risk areas and shall oversee monitoring of internal and external audits and investigations). The Compliance Committee shall meet at least quarterly. The minutes of the Compliance Committee meetings shall be made available to OIG upon request.

The U.S. Healthcare Supply DMEPOS Companies shall report to OIG, in writing, any actions or changes that would affect the Compliance Committee's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

3. *Management Certifications.* In addition to the responsibilities set forth in this CIA for all Covered Persons, certain employees for the U.S. Healthcare Supply DMEPOS Companies (Certifying Employees) are expected to monitor and oversee activities within their areas of authority and shall annually certify that the applicable department for the U.S. Healthcare Supply DMEPOS Companies is in compliance with applicable Federal health care program requirements and the obligations of this CIA. These Certifying Employees shall include, at a minimum, the following individuals at U.S. Healthcare Supply, LLC, Spectrum Diabetic Services, LLC, Heritage Diabetic Supply, Inc, and Dependable Diabetic Supply, LLC: any Covered Person with the title and job responsibilities of Chief Executive Officer, President, Compliance Officer, Chief Operating Officer, Chief Financial Officer, director, or manager. For each Reporting Period, each Certifying Employee shall sign a certification that states:

“I have been trained on and understand the compliance requirements and responsibilities as they relate to [insert name of department], an area under my supervision. My job responsibilities include ensuring compliance with regard to the [insert name of department] with all applicable Federal health care program requirements, obligations of the Corporate Integrity Agreement, and [insert name of applicable entity] policies, and I have taken steps to promote such compliance. To the best of my knowledge, the [insert name of department] of [insert name of applicable entity] is in compliance with all applicable Federal health care program requirements and the obligations of the Corporate Integrity Agreement. I understand that this certification is being provided to and relied upon by the United States.”

If any Certifying Employee is unable to provide such a certification, the Certifying Employee shall provide a written explanation of the reasons why he or she is unable to provide the certification outlined above.

Within 90 days after the Effective Date, the U.S. Healthcare Supply DMEPOS Companies shall develop and implement a written process for Certifying Employees to follow for the purpose of completing the certification required by this section (e.g., reports that must be reviewed, assessments that must be completed, sub-certifications that must be obtained, etc. prior to the Certifying Employee making the required certification).

B. Written Standards

Within 90 days after the Effective Date, the U.S. Healthcare Parties shall develop and implement written policies and procedures regarding the operation of their compliance program, including the compliance program requirements outlined in this CIA and compliance with Federal health care program requirements (Policies and Procedures). Throughout the term of this CIA, the U.S. Healthcare Parties shall enforce their Policies and Procedures and shall make compliance with their Policies and Procedures an element of evaluating the performance of all employees. The Policies and Procedures shall be made available to all Covered Persons.

At least annually (and more frequently, if appropriate), the U.S. Healthcare Parties shall assess and update, as necessary, the Policies and Procedures. Any new or revised Policies and Procedures shall be made available to all Covered Persons.

All Policies and Procedures shall be made available to OIG upon request.

C. Training and Education

1. *Covered Persons Training.* Within 90 days after the Effective Date, the U.S. Healthcare Parties shall develop a written plan (Training Plan) that outlines the steps the U.S. Healthcare Parties will take to ensure that all Covered Persons receive at least annual training regarding the U.S. Healthcare Parties' CIA requirements and compliance program and the applicable Federal health care program requirements, including the requirements of the Anti-Kickback Statute and the Stark Law. The Training Plan shall include information regarding the following: training topics, categories of Covered Persons required to attend each training session, length of the training session(s), schedule for training, and format of the training. The U.S. Healthcare

Parties shall furnish training to their Covered Persons pursuant to the Training Plan during each Reporting Period.

2. *Training Records.* The U.S. Healthcare Parties shall make available to OIG, upon request, training materials and records verifying that Covered Persons have timely received the training required under this section.

D. Review Procedures

1. *General Description*

a. *Engagement of Independent Review Organization.* Within 90 days after the Effective Date, the U.S. Healthcare Parties shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform the reviews listed in this Section III.D. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference.

b. *Retention of Records.* The IRO and the U.S. Healthcare Parties shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and the U.S. Healthcare Parties) related to the reviews.

2. *Claims Review.* The IRO shall review claims submitted by the U.S. Healthcare Supply DMEPOS Companies and reimbursed by the Medicare and Medicaid programs to determine: (1) whether the items and services furnished were medically necessary and appropriately documented; (2) whether the claims were correctly coded, submitted, and reimbursed; and (3) whether the claims complied with the Medicare durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) telemarketing rules found at 42 C.F.R. § 424.57(c)(11) (Claims Review), and shall prepare a Claims Review Report, as outlined in Appendix B to this CIA, which is incorporated by reference.

3. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to the U.S. Healthcare Parties a certification that the IRO has (a) evaluated its professional independence and objectivity with respect to the reviews required under this Section III.D and (b) concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to this CIA. The IRO’s

certification shall include a summary of all current and prior engagements between the U.S. Healthcare Parties and the IRO.

E. Risk Assessment and Internal Review Process

Within 90 days after the Effective Date, the U.S. Healthcare Supply DMEPOS Companies shall develop and implement a centralized annual risk assessment and internal review process to identify and address risks associated with the U.S. Healthcare Supply DMEPOS Companies's participation in the Federal health care programs, including but not limited to the risks associated with the submission of claims for items and services furnished to Medicare and Medicaid program beneficiaries. The risk assessment and internal review process shall require compliance, legal, and department leaders, at least annually, to: (1) identify and prioritize risks, (2) develop internal audit work plans related to the identified risk areas, (3) implement the internal audit work plans, (4) develop corrective action plans in response to the results of any internal audits performed, and (5) track the implementation of the corrective action plans in order to assess the effectiveness of such plans. The U.S. Healthcare Supply DMEPOS Companies shall maintain the risk assessment and internal review process for the term of the CIA.

F. Disclosure Program

Within 90 days after the Effective Date, the U.S. Healthcare Supply DMEPOS Companies shall establish a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with the U.S. Healthcare Supply DMEPOS Companies's policies, conduct, practices, or procedures with respect to a Federal health care program believed by the individual to be a potential violation of criminal, civil, or administrative law. The U.S. Healthcare Supply DMEPOS Companies shall appropriately publicize the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

The Disclosure Program shall emphasize a nonretribution, nonretaliation policy and shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. The Disclosure Program also shall include a requirement that all Covered Persons shall be expected to report suspected violations of any Federal health care program requirements to the Compliance Officer or other appropriate individual designated by the U.S. Healthcare Supply DMEPOS Companies. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in

every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, the U.S. Healthcare Supply DMEPOS Companies shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log and shall record each disclosure in the disclosure log within two business days of receipt of the disclosure. The disclosure log shall include a summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews.

#### G. Prohibition On Third-Party Internet-Based Lead Generation Activities

During the term of this CIA, the U.S. Healthcare Parties and the Letko Entities shall refrain from acquiring potential DMEPOS customers through Third-Party Internet-Based Lead Generation Activities. Within 90 days of the Effective Date, the U.S. Healthcare Parties and the Letko Entities shall develop written policies and procedures describing their methods for generating potential customers in accordance with this Section III.G and in compliance with the requirements of 42 C.F.R. § 424.57(c)(11).

For purposes of this Section III.G, “Third-Party Internet-Based Lead Generation Activities” means arranging or contracting with an individual or entity not owned or controlled by the U.S. Healthcare Parties or the Letko Entities for the generation of potential DMEPOS customers through internet-based methods, including, but not limited to, the use of websites, landing pages, online advertising, or social media.

Nothing in this Section III.G prohibits the U.S. Healthcare Parties and/or the Letko Entities from generating potential customers through internet-based methods the U.S. Healthcare Parties and/or the Letko Entities directly control and administer. Documentation that contact with any such potential customers satisfies the requirements of 42 C.F.R. § 424.57(c)(11) must be maintained in the files of the U.S. Healthcare Parties and/or the Letko Entities and made available to the OIG upon request.

#### H. Ineligible Persons

1. *Definitions.* For purposes of this CIA:

- a. an “Ineligible Person” shall include an individual or entity who:
  - i. is currently excluded from participation in any Federal health care program; or
  - ii. has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded.
- b. “Exclusion List” means the HHS/OIG List of Excluded Individuals/Entities (LEIE) (available through the Internet at <http://www.oig.hhs.gov>).

2. *Screening Requirements.* The U.S. Healthcare Parties shall ensure that all prospective and current Covered Persons are not Ineligible Persons, by implementing the following screening requirements.

- a. The U.S. Healthcare Parties shall screen all prospective Covered Persons against the Exclusion List prior to engaging their services and, as part of the hiring or contracting process, shall require such Covered Persons to disclose whether they are Ineligible Persons.
- b. The U.S. Healthcare Parties shall screen all current Covered Persons against the Exclusion List within 90 days after the Effective Date and on a monthly basis thereafter.
- c. The U.S. Healthcare Parties shall implement a policy requiring all Covered Persons to disclose immediately if they become an Ineligible Person.

Nothing in this Section III.H affects the U.S. Healthcare Parties’ responsibility to refrain from (and liability for) billing Federal health care programs for items or services furnished, ordered, or prescribed by an excluded person. The U.S. Healthcare Parties understand that items or services furnished, ordered, or prescribed by excluded persons are not payable by Federal health care programs and that the U.S. Healthcare Parties may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether the U.S. Healthcare Parties meet the requirements of Section III.H.

3. *Removal Requirement.* If any of the U.S. Healthcare Parties has actual notice that a Covered Person has become an Ineligible Person, the respective entity shall remove such Covered Person from responsibility for, or involvement with, the company's business operations related to the Federal health care program(s) from which such Covered Person has been excluded and shall remove such Covered Person from any position for which the Covered Person's compensation or the items or services furnished, ordered, or prescribed by the Covered Person are paid in whole or part, directly or indirectly, by any Federal health care program(s) from which the Covered Person has been excluded at least until such time as the Covered Person is reinstated into participation in such Federal health care program(s).

4. *Pending Charges and Proposed Exclusions.* If any of the U.S. Healthcare Parties has actual notice that a Covered Person is charged with a criminal offense that falls within the scope of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion during the Covered Person's employment or contract term, the respective entity shall take all appropriate actions to ensure that the responsibilities of that Covered Person have not and shall not adversely affect the quality of care rendered to any beneficiary or the accuracy of any claims submitted to any Federal health care program.

I. Notification of Government Investigation or Legal Proceeding

Within 30 days after discovery, the U.S. Healthcare Parties shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to the U.S. Healthcare Parties conducted or brought by a governmental entity or its agents involving an allegation that any of the U.S. Healthcare Parties or Letko Entities has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. The U.S. Healthcare Parties also shall provide written notice to OIG within 30 days after the resolution of the matter and a description of the findings and/or results of the investigation or proceeding, if any.

J. Overpayments

1. *Definition of Overpayment.* For purposes of this CIA, an "Overpayment" shall mean the amount of money any of the U.S. Healthcare Parties has received in excess of the amount due and payable under any Federal health care program requirements.

2. *Overpayment Policies and Procedures.* Within 90 days after the Effective Date, the U.S. Healthcare Parties shall develop and implement written policies

and procedures regarding the identification, quantification, and repayment of Overpayments received from any Federal health care program.

K. Reportable Events

1. *Definition of Reportable Event.* For purposes of this CIA, a “Reportable Event” means anything that involves:

- a. a substantial Overpayment;
- b. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized;
- c. the employment of or contracting with a Covered Person who is an Ineligible Person as defined by Section III.H.1.a; or
- d. the filing of a bankruptcy petition by any of the U.S. Healthcare Parties or Letko Entities.

A Reportable Event may be the result of an isolated event or a series of occurrences. The requirements of this Section III.K shall apply to Reportable Events involving any of the U.S. Healthcare Parties or the Letko Entities.

2. *Reporting of Reportable Events.* If the U.S. Healthcare Parties determine (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, the U.S. Healthcare Parties shall notify OIG, in writing, within 30 days after making the determination that the Reportable Event exists.

3. *Reportable Events under Section III.K.1.a. and III.K.1.b.* For Reportable Events under Section III.K.1.a and b, the report to OIG shall include:

- a. a complete description of all details relevant to the Reportable Event, including, at a minimum, the types of claims, transactions or other conduct giving rise to the Reportable Event; the period during which the conduct occurred; and the names of individuals and entities believed to be implicated, including an explanation of their roles in the Reportable Event;

- b. a statement of the Federal criminal, civil or administrative laws that are probably violated by the Reportable Event, if any;
- c. the Federal health care programs affected by the Reportable Event;
- d. a description of the steps taken by the U.S. Healthcare Parties and/or the Letko Entities to identify and quantify any Overpayments; and
- e. a description of the U.S. Healthcare Parties and/or the Letko Entities's actions taken to correct the Reportable Event and prevent it from recurring.

If the Reportable Event involves an Overpayment, within 60 days of identification of the Overpayment, the U.S. Healthcare Parties shall provide OIG with a copy of the notification and repayment (if quantified) to the appropriate payor.

4. *Reportable Events under Section III.K.1.c.* For Reportable Events under Section III.K.1.c, the report to OIG shall include:

- a. the identity of the Ineligible Person and the job duties performed by that individual;
- b. the dates of the Ineligible Person's employment or contractual relationship;
- c. a description of the Exclusion List screening that the U.S. Healthcare Parties and/or the Letko Entities completed before and/or during the Ineligible Person's employment or contract and any flaw or breakdown in the screening process that led to the hiring or contracting with the Ineligible Person;
- d. a description of how the Ineligible Person was identified; and
- e. a description of any corrective action implemented to prevent future employment or contracting with an Ineligible Person.

5. *Reportable Events under Section III.K.1.d.* For Reportable Events under Section III.K.1.d, the report to OIG shall include documentation of the bankruptcy filing and a description of any Federal health care program requirements implicated.

6. *Reportable Events Involving the Stark Law.* Notwithstanding the reporting requirements outlined above, any Reportable Event that involves solely a probable violation of section 1877 of the Social Security Act, 42 U.S.C. § 1395nn (the Stark Law) should be submitted by the U.S. Healthcare Parties and/or the Letko Entities to the Centers for Medicare & Medicaid Services (CMS) through the self-referral disclosure protocol (SRDP), with a copy to the OIG. If the U.S. Healthcare Parties and/or the Letko Entities identify a probable violation of the Stark Law and repay the applicable Overpayment directly to the CMS contractor, then the U.S. Healthcare Parties and/or the Letko Entities are not required by this Section III.K to submit the Reportable Event to CMS through the SRDP.

#### **IV. SUCCESSOR LIABILITY**

In the event that, after the Effective Date, the U.S. Healthcare Parties propose to: (a) sell any or all of their businesses, business units, or locations (whether through a sale of assets, sale of stock, or other type of transaction) relating to the furnishing of items or services that may be reimbursed by a Federal health care program; or (b) purchase or establish a new business, business unit, or location relating to the furnishing of items or services that may be reimbursed by a Federal health care program, the CIA shall be binding on the purchaser of any business, business unit, or location and any new business, business unit, or location (and all Covered Persons at each new business, business unit, or location) shall be subject to the applicable requirements of this CIA, unless otherwise determined and agreed to in writing by OIG.

If, in advance of a proposed sale or a proposed purchase, the U.S. Healthcare Parties wish to obtain a determination by OIG that the proposed purchaser or the proposed acquisition will not be subject to the requirements of the CIA, the U.S. Healthcare Parties must notify OIG in writing of the proposed sale or purchase at least 30 days in advance. This notification shall include a description of the business, business unit, or location to be sold or purchased; a brief description of the terms of the transaction; and, in the case of a proposed sale, the name and contact information of the prospective purchaser.

#### **V. IMPLEMENTATION AND ANNUAL REPORTS**

##### **A. Implementation Report**

Within 120 days after the Effective Date, the U.S. Healthcare Parties shall submit a written report to OIG summarizing the status of their implementation of the requirements of this CIA (Implementation Report). The Implementation Report shall, at a minimum, include:

1. the name, address, phone number, and position description of the Compliance Officer required by Section III.A.1, and a summary of other noncompliance job responsibilities the Compliance Officer may have;
2. the names and positions of the members of the Compliance Committee required by Section III.A.2;
3. the names and positions of the Certifying Employees required by Section III.A.3, along with a copy of the written process for Certifying Employees to follow for purposes of completing the requisite certifications;
5. a list of the Policies and Procedures required by Section III.B;
6. the Training Plan required by Section III.C.1 (including a summary of the topics covered, the length of the training, and when the training was provided);
7. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the IRO has the qualifications outlined in Appendix A to this CIA; and (d) a certification from the IRO regarding its professional independence and objectivity with respect to the U.S. Healthcare Parties;
8. a description of the risk assessment and internal review process required by Section III.E;
9. a description of the Disclosure Program required by Section III.F;
10. copies of the policies and procedures describing the U.S. Healthcare Parties' and the Letko Entities' methods for generating potential customers in accordance with Section III.G and the requirements of 42 C.F.R. § 424.57(c)(11);
11. a description of the U.S. Healthcare Parties' Ineligible Persons screening and removal process required by Section III.H;

12. a copy of the U.S. Healthcare Parties' policies and procedures regarding the identification, quantification, and repayment of Overpayments required by Section III.J;

13. a list of all of the U.S. Healthcare Parties' and the Letko Entities' locations (including locations and mailing addresses), the corresponding name under which each location is doing business, and the location's Medicare and state Medicaid program provider number and/or supplier number(s);

14. a description of the U.S. Healthcare Parties' and the Letko Entities' corporate structure, including identification of any individual owners, parent and sister companies, subsidiaries, and their respective lines of business, as well as a description of the types of items and services furnished by each of the Letko Entities; and

15. the certifications required by Section V.C.

#### B. Annual Reports

The U.S. Healthcare Parties shall submit to OIG a report on their compliance with the CIA requirements for each of the five Reporting Periods (Annual Report). Each Annual Report shall include, at a minimum, the following information:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer, a current list of the Compliance Committee members, and a current list of the Certifying Employees;

2. a list of any new or revised Policies and Procedures developed during the Reporting Period;

3. a description of any changes to the U.S. Healthcare Parties' Training Plan developed pursuant to Section III.C;

4. a complete copy of all reports prepared pursuant to Section III.D and the U.S. Healthcare Parties' response to the reports, along with corrective action plan(s) related to any issues raised by the reports;

5. a certification from the IRO regarding its professional independence and objectivity with respect to the U.S. Healthcare Parties;

6. a description of any changes to the risk assessment and internal review process required by Section III.E, including the reasons for such changes;

7. a summary of the following components of the risk assessment and internal review process during the Reporting Period: work plans developed, internal audits performed, corrective action plans developed in response to internal audits, and steps taken to track the implementation of the corrective action plans. Copies of any work plans, internal audit reports, and corrective action plans shall be made available to OIG upon request;

8. a summary of the disclosures in the disclosure log required by Section III.F that relate to Federal health care programs, including at least the following information: a description of the disclosure, the date the disclosure was received, the resolution of the disclosure, and the date the disclosure was resolved (if applicable). The complete disclosure log shall be made available to OIG upon request;

9. a description of any changes to the policies and procedures describing the U.S. Healthcare Parties' and the Letko Entities' methods for generating potential customers in accordance with Section III.G and the requirements of 42 C.F.R. § 424.57(c)(11), including the reasons for such changes;

10. a description of any changes to the U.S. Healthcare Parties' Ineligible Persons screening and removal process required by Section III.H, including the reasons for such changes;

11. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.I. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;

12. a description of any changes to the Overpayment policies and procedures required by Section III.J, including the reasons for such changes;

13. a summary of Reportable Events (as defined in Section III.K) identified during the Reporting Period;

14. a summary of any audits conducted of any of the U.S. Healthcare Parties or the Letko Entities during the applicable Reporting Period by any Medicare or state Medicaid program contractor or any government entity or contractor, involving a review of Federal health care program claims, and the U.S. Healthcare Parties and/or the Letko Entities's response/corrective action plan (including information regarding any Federal health care program refunds) relating to the audit findings;

15. a description of all changes to the most recently provided list of the U.S. Healthcare Parties' and Letko Entities' locations as required by Section V.A.13;

16. a description of all changes to the U.S. Healthcare Parties' or the Letko Entities' corporate structure, or the types of items and services furnished by the Letko Entities, as required by Section V.A.14; and

17. the certifications required by Section V.C.

The first Annual Report shall be received by OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

### C. Certifications

1. *Certifying Employees.* In each Annual Report, the U.S. Healthcare Parties shall include the certifications of Certifying Employees required by Section III.A.3.

2. *Compliance Officer and Chief Executive Officer.* The Implementation Report and each Annual Report shall include a certification by the Compliance Officer and Chief Executive Officer of U.S. Healthcare Supply, LLC, Spectrum Diabetic Services, LLC, Heritage Diabetic Supply, Inc, and Dependable Diabetic Supply, LLC that:

- a. to the best of his or her knowledge, except as otherwise described in the report, U.S. Healthcare Supply, LLC, Spectrum Diabetic Services, LLC, Heritage Diabetic Supply, Inc, and/or Dependable Diabetic Supply, LLC has implemented and is in compliance with all of the requirements of this CIA; and
- b. he or she has reviewed the report and has made reasonable inquiry regarding its content and believes that the information in the report is accurate and truthful.

3. *Letko Certifications.* The Implementation Report and each Annual Report shall include a certification by Edward J. Letko and Jon P. Letko that:

- a. all of the entities in which they have an ownership or control interest, as defined in 42 U.S.C. § 1320a-3, and that submit

claims to the Federal health care programs or provide items or services that are payable, directly or indirectly, by Federal health care programs, are in compliance with all of the applicable requirements of this CIA; and

- b. they have reviewed the report and have made reasonable inquiry regarding its content and believe that the information in the report is accurate and truthful.

4. *Chief Financial Officer.* The first Annual Report shall include a certification by the Chief Financial Officer of U.S. Healthcare Supply, LLC, Spectrum Diabetic Services, LLC, Heritage Diabetic Supply, Inc, and Dependable Diabetic Supply, LLC that, to the best of his or her knowledge, U.S. Healthcare Supply, LLC, Spectrum Diabetic Services, LLC, Heritage Diabetic Supply, Inc, and/or Dependable Diabetic Supply, LLC have complied with their obligations under the Settlement Agreement: (a) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; (b) not to charge to or otherwise seek payment from federal or state payors for unallowable costs (as defined in the Settlement Agreement); and (c) to identify and adjust any past charges or claims for unallowable costs.

#### D. Designation of Information

The U.S. Healthcare Parties shall clearly identify any portions of their submissions that they believe are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The U.S. Healthcare Parties shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

## **VI. NOTIFICATIONS AND SUBMISSION OF REPORTS**

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG:

Administrative and Civil Remedies Branch  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services

U.S. Healthcare Supply, LLC; Spectrum Diabetic Services, LLC; Heritage Diabetic Supply, Inc; Dependable Diabetic Supply, LLC; U.S. Diagnostics, Inc.; U.S. Diagnostics NJ; Edward J. Letko; and Jon P. Letko  
Corporate Integrity Agreement

Cohen Building, Room 5527  
330 Independence Avenue, S.W.  
Washington, DC 20201  
Telephone: 202.619.2078  
Facsimile: 202.205.0604

U.S. Healthcare Parties:

Jon P. Letko  
P.O. Box 372  
Milford, NJ 08848  
Telephone: 908-505-4917

Unless otherwise specified, all notifications and reports required by this CIA shall be made by electronic mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. Upon request by OIG, the U.S. Healthcare Parties may be required to provide OIG with an electronic copy of each notification or report required by this CIA in addition to a paper copy.

**VII. OIG INSPECTION, AUDIT, AND REVIEW RIGHTS**

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may conduct interviews, examine and/or request copies of or copy the U.S. Healthcare Parties' or the Letko Entities' books, records, and other documents and supporting materials, and conduct on-site reviews of any of the U.S. Healthcare Parties' or the Letko Entities' locations, for the purpose of verifying and evaluating: (a) the U.S. Healthcare Parties' or the Letko Entities' compliance with the terms of this CIA and (b) the U.S. Healthcare Parties' or the Letko Entities' compliance with the requirements of the Federal health care programs. The documentation described above shall be made available by the U.S. Healthcare Parties or the Letko Entities to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, and/or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of the U.S. Healthcare Parties' or the Letko Entities' owners, employees, contractors, and directors who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. The U.S. Healthcare Parties and the Letko Entities shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. The U.S. Healthcare Parties' or the Letko Entities' owners, employees, contractors, and directors may elect to be interviewed with or without a representative of the U.S. Healthcare Parties or the Letko Entities present.

U.S. Healthcare Supply, LLC; Spectrum Diabetic Services, LLC; Heritage Diabetic Supply, Inc; Dependable Diabetic Supply, LLC; U.S. Diagnostics, Inc.; U.S. Diagnostics NJ; Edward J. Letko; and Jon P. Letko Corporate Integrity Agreement

## **VIII. DOCUMENT AND RECORD RETENTION**

The U.S. Healthcare Parties and the Letko Entities shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs and to compliance with this CIA for six years (or longer if otherwise required by law) from the Effective Date.

## **IX. DISCLOSURES**

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify the U.S. Healthcare Parties and/or the Letko Entities prior to any release by OIG of information submitted by the U.S. Healthcare Parties and/or the Letko Entities pursuant to their obligations under this CIA and identified upon submission by the U.S. Healthcare Parties and/or the Letko Entities as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, the U.S. Healthcare Parties and/or the Letko Entities shall have the rights set forth at 45 C.F.R. § 5.65(d).

## **X. BREACH AND DEFAULT PROVISIONS**

The U.S. Healthcare Parties are expected to fully and timely comply with all of their CIA obligations.

### **A. Stipulated Penalties for Failure to Comply with Certain Obligations**

As a contractual remedy, the U.S. Healthcare Parties and OIG hereby agree that failure to comply with certain obligations as set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day the U.S. Healthcare Parties or the Letko Entities, as applicable, fail to establish, implement, or comply with any of the following obligations as described in Section III:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. the management certification obligations;

- d. written Policies and Procedures;
- e. training and education of Covered Persons;
- f. a risk assessment and internal review process;
- g. a Disclosure Program;
- h. the prohibition on Third-Party Internet-Based Lead Generation Activities;
- i. Ineligible Persons screening and removal requirements;
- j. notification of Government investigations or legal proceedings;
- k. policies and procedures regarding the repayment of Overpayments; and
- l. reporting of Reportable Events.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day the U.S. Healthcare Parties fail to engage and use an IRO, as required by Section III.D, Appendix A, or Appendix B.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day the U.S. Healthcare Parties fail to submit a complete Implementation Report, Annual Report, or any certification to OIG in accordance with the requirements of Section V by the deadlines for submission.

4. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day the U.S. Healthcare Parties fail to submit any Claims Review Report in accordance with the requirements of Section III.D and Appendix B or fail to repay any Overpayment identified by the IRO, as required by Appendix B.

5. A Stipulated Penalty of \$1,500 for each day the U.S. Healthcare Parties or the Letko Entities fail to grant access as required in Section VII. (This Stipulated Penalty shall begin to accrue on the date the U.S. Healthcare Parties and/or the Letko Entities fail to grant access.)

6. A Stipulated Penalty of \$50,000 for each false certification submitted by or on behalf of the U.S. Healthcare Parties as part of their Implementation Report, any Annual Report, additional documentation to a report (as requested by the OIG), or otherwise required by this CIA.

7. A Stipulated Penalty of \$1,000 for each day the U.S. Healthcare Parties fail to comply fully and adequately with any obligation of this CIA. OIG shall provide notice to the U.S. Healthcare Parties stating the specific grounds for its determination that the U.S. Healthcare Parties have failed to comply fully and adequately with the CIA obligation(s) at issue and steps the U.S. Healthcare Parties shall take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after the date the U.S. Healthcare Parties receive this notice from OIG of the failure to comply.) A Stipulated Penalty as described in this Subsection shall not be demanded for any violation for which OIG has sought a Stipulated Penalty under Subsections 1-6 of this Section.

B. Timely Written Requests for Extensions

The U.S. Healthcare Parties and/or the Letko Entities may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after the U.S. Healthcare Parties and/or the Letko Entities fail to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three days after the U.S. Healthcare Parties and/or the Letko Entities receive OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties

1. *Demand Letter.* Upon a finding that the U.S. Healthcare Parties or the Letko Entities have failed to comply with any of the obligations described in Section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify the U.S. Healthcare Parties and/or the Letko Entities of: (a) the U.S. Healthcare Parties and/or the Letko Entities's failure to comply; and (b) OIG's exercise of its contractual

right to demand payment of the Stipulated Penalties. (This notification shall be referred to as the “Demand Letter.”)

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, the U.S. Healthcare Parties and/or the Letko Entities shall either: (a) cure the breach to OIG’s satisfaction and pay the applicable Stipulated Penalties or (b) request a hearing before an HHS administrative law judge (ALJ) to dispute OIG’s determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E. In the event the U.S. Healthcare Parties and/or the Letko Entities elect to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until the U.S. Healthcare Parties and/or the Letko Entities cure, to OIG’s satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under Section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by electronic funds transfer to an account specified by OIG in the Demand Letter.

4. *Independence from Material Breach Determination.* Except as set forth in Section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG’s decision that the U.S. Healthcare Parties have materially breached this CIA, which decision shall be made at OIG’s discretion and shall be governed by the provisions in Section X.D, below.

D. Exclusion for Material Breach of this CIA

1. *Definition of Material Breach.* A material breach of this CIA means:

- a. repeated violations or a flagrant violation of any of the obligations under this CIA, including, but not limited to, the obligations addressed in Section X.A;
- b. a failure by the U.S. Healthcare Parties to report a Reportable Event, take corrective action, or make the appropriate refunds, as required in Section III.J;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C; or

- d. a failure to engage and use an IRO in accordance with Section III.D, Appendix A, or Appendix B.

2. *Notice of Material Breach and Intent to Exclude.* The U.S. Healthcare Parties accept responsibility for the Covered Conduct described in Paragraph C of the Settlement Agreement and admit and agree that the Covered Conduct provides a basis for the OIG to exclude the U.S. Healthcare Parties pursuant to 42 U.S.C. § 1320a-7(b)(7). Should the OIG determine in its sole discretion that the U.S. Healthcare Parties have committed a material breach of this CIA, as defined in Section X.D.2, the U.S. Healthcare Parties agree that the OIG shall have the right to exclude the U.S. Healthcare Parties from participation in the Federal health care programs based on the Covered Conduct. In any such proceeding, the U.S. Healthcare Parties waive and agree not to assert that the OIG's claim is time-barred by any statute of limitations, laches, or other time-related defenses, except to the extent such defenses were available on or before the Effective Date.

The length of the exclusion shall be in the OIG's discretion, but not more than five years per material breach. Upon a determination by OIG that the U.S. Healthcare Parties have materially breached this CIA and that exclusion is the appropriate remedy, OIG shall notify the U.S. Healthcare Parties of: (a) the U.S. Healthcare Parties' material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion. (This notification shall be referred to as the "Notice of Material Breach and Intent to Exclude.")

3. *Opportunity to Cure.* The U.S. Healthcare Parties shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate that:

- a. the alleged material breach has been cured; or
- b. the alleged material breach cannot be cured within the 30 day period, but that: (i) the U.S. Healthcare Parties have begun to take action to cure the material breach; (ii) the U.S. Healthcare Parties are pursuing such action with due diligence; and (iii) the U.S. Healthcare Parties have provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30 day period, the U.S. Healthcare Parties fail to satisfy the requirements of Section X.D.3, OIG may exclude the U.S. Healthcare Parties from participation in the Federal health care programs. OIG shall notify the U.S. Healthcare Parties in writing of its determination to exclude the U.S. Healthcare Parties. (This letter shall be referred to as the "Exclusion Letter.") Subject to

the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of the U.S. Healthcare Parties' receipt of the Exclusion Letter. The exclusion shall have national effect. Reinstatement to program participation is not automatic. At the end of the period of exclusion, the U.S. Healthcare Parties may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to the U.S. Healthcare Parties of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, the U.S. Healthcare Parties and/or the Letko Entities shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board (DAB), in a manner consistent with the provisions in 42 C.F.R. § 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter. The procedures relating to the filing of a request for a hearing can be found at <http://www.hhs.gov/dab/divisions/civil/procedures/divisionprocedures.html>.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether the U.S. Healthcare Parties and/or the Letko Entities were in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. The U.S. Healthcare Parties and/or the Letko Entities shall have the burden of proving their full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders the U.S. Healthcare Parties and/or the Letko Entities to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless the U.S. Healthcare Parties and/or the Letko Entities request review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issue in a proceeding for exclusion based on a material breach of this CIA shall be whether the U.S. Healthcare Parties were in material breach of this CIA.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for the U.S. Healthcare Parties, only after a DAB decision in favor of OIG. The U.S. Healthcare Parties' election of their contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude the U.S. Healthcare Parties upon the issuance of an ALJ's decision in favor of OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that the U.S. Healthcare Parties may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. The U.S. Healthcare Parties shall waive their right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of the U.S. Healthcare Parties, the U.S. Healthcare Parties shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA.

## **XI. EFFECTIVE AND BINDING AGREEMENT**

The U.S. Healthcare Parties and OIG agree as follows:

A. This CIA shall become final and binding on the date the final signature is obtained on the CIA.

B. This CIA constitutes the complete agreement between the parties and may not be amended except by written consent of the parties to this CIA.

C. OIG may agree to a suspension of the U.S. Healthcare Parties' obligations under this CIA based on a certification by the U.S. Healthcare Parties that they are no longer providing health care items or services that will be billed to any Federal health care program and they do not have any ownership or control interest, as defined in 42 U.S.C. § 1320a-3, in any entity that bills any Federal health care program. If the U.S. Healthcare Parties are relieved of their CIA obligations, the U.S. Healthcare Parties shall

be required to notify OIG in writing at least 30 days in advance if the U.S. Healthcare Parties plan to resume providing health care items or services that are billed to any Federal health care program or to obtain an ownership or control interest in any entity that bills any Federal health care program. At such time, OIG shall evaluate whether the CIA will be reactivated or modified.

D. All requirements and remedies set forth in this CIA are in addition to and do not affect (1) the U.S. Healthcare Parties' responsibility to follow all applicable Federal health care program requirements or (2) the government's right to impose appropriate remedies for failure to follow applicable Federal health care program requirements.

E. The undersigned signatories for the U.S. Healthcare Parties and the Letko Entities represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatories represent that they are signing this CIA in their official capacities and that they are authorized to execute this CIA.

F. This CIA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same CIA. Electronically-transmitted copies of signatures shall constitute acceptable, binding signatures for purposes of this CIA.

**ON BEHALF OF U.S. HEALTHCARE SUPPLY, LLC; SPECTRUM DIABETIC SERVICES, LLC; HERITAGE DIABETIC SUPPLY, INC; DEPENDABLE DIABETIC SUPPLY, LLC; U.S. DIAGNOSTICS, INC.; U.S. DIAGNOSTICS NJ; EDWARD J. LETKO; AND JON P. LETKO**

/Jon P. Letko/ 8/25/2016  
JON P. LETKO DATE  
On behalf of U.S. Healthcare Supply, LLC,  
Spectrum Diabetic Services, LLC, Heritage  
Diabetic Supply, Inc, and Dependable Diabetic  
Supply, LLC

/Jon P. Letko/ 8/25/2016  
JON P. LETKO DATE  
On behalf of U.S. Diagnostics, NJ

/Jon P. Letko/ 8/25/2016  
JON P. LETKO DATE  
Individually

/Edward J. Letko/ 8/25/2016  
EDWARD J. LETKO DATE  
On behalf of U.S. Diagnostics, Inc.

/Edward J. Letko/ 8/25/2016  
EDWARD J. LETKO DATE  
Individually

/Joseph F. Savage Jr./ 8/29/2016  
JOSEPH F. SAVAGE JR. DATE  
Goodwin Procter LLP  
Counsel for U.S. Healthcare Supply, LLC,  
Spectrum Diabetic Services, LLC, Heritage  
Diabetic Supply, Inc; Dependable Diabetic  
Supply, LLC; U.S. Diagnostics, Inc., U.S.  
Diagnostics NJ; Edward J. Letko; and Jon P. Letko

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

/Robert K. DeConti/  
ROBERT K. DECONTI  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U.S. Department of Health and Human Services

8/30/2016  
DATE

/David W. Fuchs/  
DAVID FUCHS  
Associate Counsel  
Office of Counsel to the Inspector General  
U.S. Department of Health and Human Services

8/30/2016  
DATE

## APPENDIX A

### INDEPENDENT REVIEW ORGANIZATION

This Appendix contains the requirements relating to the Independent Review Organization (IRO) required by Section III.D of the CIA.

#### A. IRO Engagement

1. The U.S. Healthcare Parties shall engage an IRO that possesses the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO shall conduct the review in a professionally independent and objective fashion, as set forth in Paragraph D. Within 30 days after OIG receives the information identified in Section V.A.7 of the CIA or any additional information submitted by the U.S. Healthcare Parties in response to a request by OIG, whichever is later, OIG will notify the U.S. Healthcare Parties if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, the U.S. Healthcare Parties may continue to engage the IRO.

2. If the U.S. Healthcare Parties engage a new IRO during the term of the CIA, that IRO must also meet the requirements of this Appendix. If a new IRO is engaged, the U.S. Healthcare Parties shall submit the information identified in Section V.A.7 of the CIA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives this information or any additional information submitted by the U.S. Healthcare Parties at the request of OIG, whichever is later, OIG will notify the U.S. Healthcare Parties if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, the U.S. Healthcare Parties may continue to engage the IRO.

#### B. IRO Qualifications

The IRO shall:

1. assign individuals to conduct the Claims Review who have expertise in the Medicare and state Medicaid program requirements applicable to the claims being reviewed;
2. assign individuals to design and select the Claims Review sample who are knowledgeable about the appropriate statistical sampling techniques;

3. assign individuals to conduct the coding review portions of the Claims Review who have a nationally recognized coding certification and who have maintained this certification (e.g., completed applicable continuing education requirements); and

4. have sufficient staff and resources to conduct the reviews required by the CIA on a timely basis.

C. IRO Responsibilities

The IRO shall:

1. perform each Claims Review in accordance with the specific requirements of the CIA;

2. follow all applicable Medicare and state Medicaid program rules and reimbursement guidelines in making assessments in the Claims Review;

3. request clarification from the appropriate authority (e.g., Medicare contractor), if in doubt of the application of a particular Medicare or state Medicaid program policy or regulation;

4. respond to all OIG inquires in a prompt, objective, and factual manner; and

5. prepare timely, clear, well-written reports that include all the information required by Appendix B to the CIA.

D. IRO Independence and Objectivity

The IRO must perform the Claims Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the U.S. Government Accountability Office.

E. IRO Removal/Termination

1. *U.S. Healthcare Parties and IRO.* If the U.S. Healthcare Parties terminate the IRO or if the IRO withdraws from the engagement during the term of the CIA, the U.S. Healthcare Parties must submit a notice explaining (a) the reasons for termination of the IRO or (b) the IRO's reasons for its withdrawal to OIG, no later than 30 days after termination or withdrawal. The U.S. Healthcare Parties must engage a new IRO in accordance with Paragraph A of this Appendix and within 60 days of termination or withdrawal of the IRO.

2. *OIG Removal of IRO.* In the event OIG has reason to believe the IRO does not possess the qualifications described in Paragraph B, is not independent and objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG shall notify the U.S. Healthcare Parties in writing regarding OIG's basis for determining that the IRO has not met the requirements of this Appendix. The U.S. Healthcare Parties shall have 30 days from the date of OIG's written notice to provide information regarding the IRO's qualifications, independence, or performance of its responsibilities in order to resolve the concerns identified by OIG. If, following OIG's review of any information provided by the U.S. Healthcare Parties regarding the IRO, OIG determines that the IRO has not met the requirements of this Appendix, OIG shall notify the U.S. Healthcare Parties in writing that the U.S. Healthcare Parties shall be required to engage a new IRO in accordance with Paragraph A of this Appendix. The U.S. Healthcare Parties must engage a new IRO within 60 days of their receipt of OIG's written notice. The final determination as to whether or not to require the U.S. Healthcare Parties to engage a new IRO shall be made at the sole discretion of OIG.

**APPENDIX B**  
**CLAIMS REVIEW**

A. Claims Review. The IRO shall perform the Claims Review annually to cover each of the five Reporting Periods. The IRO shall perform all components of each Claims Review.

1. *Definitions*. For the purposes of the Claims Review, the following definitions shall be used:

- a. Overpayment: The amount of money the U.S. Healthcare Supply DMEPOS Companies have received in excess of the amount due and payable under Medicare or any state Medicaid program requirements, as determined by the IRO in accordance with Section A.2 of this Appendix B.
- b. Paid Claim: A claim submitted by the U.S. Healthcare Supply DMEPOS Companies and for which the U.S. Healthcare Supply DMEPOS Companies have received reimbursement from the Medicare program or a state Medicaid program.
- c. Population: The Population shall be defined as all Paid Claims during the 12-month period covered by the Claims Review.

2. *Claims Review Sample*. The IRO shall randomly select and review a sample of 100 Paid Claims (Claims Review Sample) from across the U.S. Healthcare Supply DMEPOS Companies. The Paid Claims shall be reviewed based on the supporting documentation available at the U.S. Healthcare Supply DMEPOS Companies's office or under the U.S. Healthcare Supply DMEPOS Companies's control and applicable Medicare and state Medicaid program requirements to determine: (1) whether the items and services furnished were medically necessary and appropriately documented; (2) whether the claim was correctly coded, submitted, and reimbursed; and (3) whether the claim complied with the Medicare DMEPOS telemarketing rules found at 42 C.F.R. § 424.57(c)(11).

To determine whether a claim complied with the DMEPOS telemarketing rules, the IRO shall review, at a minimum, the following: (1) the U.S. Healthcare Supply DMEPOS Companies's general policies, procedures, systems, and processes regarding compliance with the requirements of 42 C.F.R. § 424.57(c)(11); and (2) specific documentation showing how the U.S. Healthcare Supply DMEPOS Companies identified, acquired, and/or made initial contact with that particular beneficiary,

including, but not limited to, any written permission that the beneficiary provided for the U.S. Healthcare Supply DMEPOS Companies to contact him or her by telephone.

For each claim in the Claims Review Sample that resulted in an Overpayment, the IRO shall review the system(s) and process(es) that generated the claim and identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide its observations and recommendations on suggested improvements to the system(s) and the process(es) that generated the claim. OIG, in its sole discretion, may refer the findings of the Claims Review Sample (and any related work papers) received from the U.S. Healthcare Supply DMEPOS Companies to the appropriate Federal health care program payor (e.g., Medicare contractor) for appropriate follow-up by that payor.

3. *Other Requirements.*

- a. Supplemental Materials. The IRO shall request all documentation and materials required for its review of the Paid Claims selected as part of the Claims Review Sample and the U.S. Healthcare Supply DMEPOS Companies shall furnish such documentation and materials to the IRO prior to the IRO initiating its review of the Claims Review Sample. If the IRO accepts any supplemental documentation or materials from the U.S. Healthcare Supply DMEPOS Companies after the IRO has completed its initial review of the Claims Review Sample (Supplemental Materials), the IRO shall identify in the Claims Review Report the Supplemental Materials, the date the Supplemental Materials were accepted, and the relative weight the IRO gave to the Supplemental Materials in its review. In addition, the IRO shall include a narrative in the Claims Review Report describing the process by which the Supplemental Materials were accepted and the IRO's reasons for accepting the Supplemental Materials.
- b. Paid Claims without Supporting Documentation. Any Paid Claim for which the U.S. Healthcare Supply DMEPOS Companies cannot produce documentation sufficient to support the Paid Claim shall be considered an error and the total reimbursement received by the U.S. Healthcare Supply DMEPOS Companies for such Paid Claim shall be deemed an Overpayment. Replacement sampling for Paid Claims with missing documentation is not permitted.
- c. Use of First Samples Drawn. For the purposes of the Claims Review Sample discussed in this Appendix, the first set of Paid Claims selected shall be used (i.e., it is not permissible to generate more

than one list of random samples and then select one for use with the Claims Review Sample).

4. *Repayment of Identified Overpayments.* The U.S. Healthcare Supply DMEPOS Companies shall repay within 60 days the Overpayment(s) identified in the Claims Review Sample, as determined by the IRO in accordance with Section A.2 above, in accordance with the requirements of 42 U.S.C. § 1320a-7k(d) and 42 C.F.R. § 401.301-305 (and any applicable CMS guidance) (the “CMS overpayment rule”). If the U.S. Healthcare Supply DMEPOS Companies determine that 42 C.F.R. § 401.301-305 requires that an extrapolated Overpayment be repaid, the U.S. Healthcare Supply DMEPOS Companies shall repay that amount at the mean point estimate as calculated by the IRO. The U.S. Healthcare Supply DMEPOS Companies shall make available to OIG all documentation that reflects the refund of the Overpayment(s) to the payor. OIG, in its sole discretion, may refer the findings of the Claims Review Sample (and any related work papers) received from the U.S. Healthcare Supply DMEPOS Companies to the appropriate Medicare or state Medicaid program contractor for appropriate follow up by the payor.

B. Claims Review Report. The IRO shall prepare a Claims Review Report as described in this Appendix for each Claims Review performed. The following information shall be included in the Claims Review Report for each Claims Review Sample.

1. *Claims Review Methodology.*

- a. Claims Review Population. A description of the Population subject to the Claims Review.
- b. Claims Review Objective. A clear statement of the objective intended to be achieved by the Claims Review.
- c. Source of Data. A description of (1) the process used to identify claims in the Population, and (2) the specific documentation relied upon by the IRO when performing the Claims Review (e.g., medical records, physician orders, certificates of medical necessity, requisition forms, local medical review policies (including title and policy number), CMS program memoranda (including title and issuance number), Medicare carrier or intermediary manual or bulletins (including issue and date), other policies, regulations, or directives).

- d. Review Protocol. A narrative description of how the Claims Review was conducted and what was evaluated.
  - e. Supplemental Materials. A description of any Supplemental Materials as required by Section A.3.a, above.
2. *Statistical Sampling Documentation.*
- a. A copy of the printout of the random numbers generated by the “Random Numbers” function of the statistical sampling software used by the IRO.
  - b. A description or identification of the statistical sampling software package used by the IRO.
3. *Claims Review Findings.*
- a. Narrative Results.
    - i. A description of the U.S. Healthcare Supply DMEPOS Companies’s billing and coding system(s), including the identification, by position description, of the personnel involved in coding and billing.
    - ii. A description of controls in place at the U.S. Healthcare Supply DMEPOS Companies to ensure that all items and services billed to Medicare or a state Medicaid program are medically necessary and appropriately documented.
    - iii. A description of controls in place at the U.S. Healthcare Supply DMEPOS Companies to ensure that all DMEPOS claims comply with the DME telemarketing rules found at 42 C.F.R. § 424.57(c)(11).
    - iv. A narrative explanation of the IRO’s findings and supporting rationale (including reasons for errors, patterns noted, etc.) regarding the Claims Review, including the results of the Claims Review Sample.
  - b. Quantitative Results.
    - i. Total number and percentage of instances in which the IRO determined that the coding of the Paid Claims submitted by

the U.S. Healthcare Supply DMEPOS Companies differed from what should have been the correct coding and in which such difference resulted in an Overpayment to the U.S. Healthcare Supply DMEPOS Companies.

- ii. Total number and percentage of instances in which the IRO determined that a Paid Claim was not appropriately documented and in which such documentation errors resulted in an Overpayment to the U.S. Healthcare Supply DMEPOS Companies.
- iii. Total number and percentage of instances in which the IRO determined that a Paid Claim was for items or services that were not medically necessary and resulted in an Overpayment to the U.S. Healthcare Supply DMEPOS Companies.
- iv. Total number and percentage of instances in which the IRO determined that a Paid Claim did not comply with the DMEPOS telemarketing rules found at 42 C.F.R. § 424.57(c)(11), regardless of whether it resulted in an Overpayment to the U.S. Healthcare Supply DMEPOS Companies.
- v. Total dollar amount of all Overpayments in the Claims Review Sample.
- vi. Total dollar amount of Paid Claims included in the Claims Review Sample.
- vii. Error Rate in the Claims Review Sample. The Error Rate shall be calculated by dividing the Overpayment in the Claims Review Sample by the total dollar amount associated with the Paid Claims in the Claims Review Sample.
- viii. An estimate of the actual Overpayment in the Population at the mean point estimate.
- ix. A spreadsheet of the Claims Review results that includes the following information for each Paid Claim: Federal health care program billed, beneficiary health insurance claim number, date of service, code submitted (e.g., DRG, CPT code, etc.), code reimbursed, allowed amount reimbursed by

payor, correct code (as determined by the IRO), correct allowed amount (as determined by the IRO), dollar difference between allowed amount reimbursed by payor and the correct allowed amount.

- c. Recommendations. The IRO's report shall include any recommendations for improvements to the U.S. Healthcare Supply DMEPOS Companies's billing and coding system, or to the U.S. Healthcare Supply DMEPOS Companies's controls for ensuring that all items and services billed to Medicare or a state Medicaid program are medically necessary, appropriately documented, and comply with the DMEPOS telemarketing rules found at 42 C.F.R. § 424.57(c)(11), based on the findings of the Claims Review.

4. *Credentials.* The names and credentials of the individuals who: (1) designed the statistical sampling procedures and the review methodology utilized for the Claims Review and (2) performed the Claims Review.