

## STATE SETTLEMENT AGREEMENT

### I PARTIES

This Settlement Agreement ("Agreement") is entered into by the State of Michigan ("State") and Medtronic, Inc ("Medtronic") and Medtronic Sofamor Danek USA, Inc (MSD), through their authorized representatives [hereafter collectively referred to as "the Parties"]

### II PREAMBLE

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

A Medtronic and MSD have been named as defendants in two *qui tam* actions, United States ex rel. v. Medtronic, Inc., et al., Civil Action No. 02-2709 (W. D. Tenn ), and United States ex rel. Poteet v. Medtronic, Inc., et al., Civil Action No 03-2979 (W. D. Tenn ) (the "Qui Tam Lawsuits"), both of which allege that Medtronic and MSD violated the False Claims Act, 31 U S C 3729, *et seq* , by paying illegal kickbacks to certain physicians which resulted in the submission of false or fraudulent claims to federal health care programs

B Medtronic and MSD have entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States

C The State contends that Medtronic's and MSD's conduct resulted in the expenditure of Medicaid monies pursuant to 42 U S C §§ 1396 – 1396(v) (the State's Medicaid Program)

DEPT OF  
ATTORNEY GENERAL

REC 2 3 2009

HEALTH CARE FRAUD  
DIVISION

D The State contends that it has certain civil and administrative causes of actions, as specified immediately below, against Medtronic and MSD for knowingly causing false and/or fraudulent claims to be submitted to the State's Medicaid Program:

The State contends that between January 1, 1998 and April 30, 2003, MSD made payments and provided other remuneration to a number of physicians and entities in connection with its spinal products in the form of (1) payments and other remuneration for physicians' attendance and expenses at medical education events, think tanks, VIP/MVP events, and meetings at resort locations; (2) services and payments for services to physicians through MSD's Healthcare Economic Services and eBusiness Departments (formerly called the Physician Provider Services or "PPS" Department); and (3) payments made pursuant to consulting, royalty, fellowship and research agreements with the physicians and physician practices listed as defendants in the Qui Tam Lawsuits (See IIA) ("the Covered Conduct")

E Based on its investigation, the State contends that certain of the payments, services, and remuneration discussed above were improper, resulted in the submission of false or fraudulent claims to the State's Medicaid program, and give rise to certain legal claims described above. Medtronic and MSD deny that they engaged in any wrongdoing, and specifically deny that any of the payments, services, or remuneration were illegal or improper or resulted in any false or fraudulent claims. Inclusion of or reference to a particular physician or entity in the Covered Conduct does not necessarily constitute a finding by the State that any payments, services, or remuneration provided to that particular doctor or entity was illegal or improper in any way.

F To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below

### III TERMS AND CONDITIONS

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

1 Pursuant to the Federal Settlement Agreement, Medtronic and MSD agreed to pay to the United States and the Participating States, collectively, the total of \$40 million plus interest ("the Settlement Amount") Included in the Federal Settlement Amount were monies representing the federal share of any settlement with the states and/or the District of Columbia for Covered Conduct

2 With regard to those states and/or the District of Columbia that execute a state settlement agreement with Medtronic and MSD, Medtronic and MSD agree to pay to the States, collectively, the sum of Two Million Nine Hundred Thousand Dollars (\$2,900,000 00), plus accrued interest (the "State Settlement Amount") at the rate of 5 25% per annum compounded annually from August 1, 2006 through May 31, 2009 The States' share of the Medicaid State Settlement Amount plus accrued interest (\$3,352,962 00) shall be paid to the New York State Attorney General's National Global Settlement Account (the "NY State Account") on June 1, 2009, pursuant to instructions provided by the NAMFCU Team Medtronic shall execute a Medicaid State Settlement

Agreement with any State that executes such an agreement. Except as otherwise provided in this paragraph, no State may become a Medicaid Participating State if it has not executed a Medicaid State Settlement Agreement within 90 days following the date the NAMFCU Team transmits the State Settlement Agreements to the States. This time period may be extended by agreement of the Parties. The amount attributable to a State that chooses not to participate will be returned to Medtronic.

3 The total settlement amount paid by Medtronic for the Covered Conduct for the State is \$223,092.84. This total settlement amount consists of two portions. The first portion, \$137,245.52, including a proportionate amount of the interest referenced in paragraph 2 above, is being paid to the State under this Agreement (the "State share"). The second portion, \$101,527.89, was previously paid to the federal government as part of the Federal Settlement Agreement.

4 Subject to the exceptions in Paragraph 6 below, and in consideration of the obligations of Medtronic and MSD set forth in this Agreement, conditioned upon timely payment in full of the Settlement Amount, the State (on behalf of itself, its officers, agents, agencies and departments) agrees to release Medtronic, MSD and all current employees thereof from any civil or administrative monetary claim or cause of action the State has or may have for the Covered Conduct.

5 Subject to the exceptions in Paragraph 6 below, and in consideration of the obligations of Medtronic and MSD set forth in this Agreement, conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State agrees to release Medtronic, MSD, their predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, and assigns, and their current and former

directors, officers, employees, and agents individually and collectively (collectively, the "Medtronic Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program for the Covered Conduct

6 Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities: (a) any criminal, civil, or administrative liability arising under state revenue codes; (b) any criminal liability; (c) any civil liability not covered by this Agreement that Medtronic has or may have under any state statute, regulation, or rule; (d) any liability to the State for any conduct other than the Covered Conduct; (e) any liability which may be asserted by private payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis; (f) any liability based upon obligations created by this Agreement; (g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from the State's Medicaid program; (h) any express or implied warranty claims or other liability for defective or deficient products and services provided by Medtronic; (i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or (j) any liability based on a failure to deliver items or services due.

7 In consideration of the obligations of Medtronic set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Medtronic has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount, except as

reserved in Paragraph 6 above, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against Medtronic for the Covered Conduct. Nothing in this Agreement precludes the State from taking action against Medtronic in the event that Medtronic is excluded by the federal government, or for conduct and practices other than the Covered Conduct.

8 In the event of any criminal prosecution or administrative action for the Covered Conduct, Medtronic waives and shall not assert any defenses based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment to the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9 In consideration of the obligations of the State set forth in this Agreement, Medtronic waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of actions (including attorneys' fees, costs, and expenses of every kind and however denominated) which Medtronic has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct.

10 Medtronic shall not seek payment for any of the claims for reimbursement to Medicaid covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

11 Medtronic expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Federal Settlement Amount and compliance with sub-paragraphs III 1 b(i), (ii), and (iv) of the Federal Settlement Agreement. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Medtronic within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

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

13 Medtronic agrees to cooperate fully and truthfully with the State's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Medtronic shall encourage, and agrees not to impair, the cooperation of its directors, officers, employees and agents in any such investigation, and shall use its reasonable efforts to make available and encourage the cooperation of former directors, officers, employees and agents for interviews and testimony in any such investigation, consistent with the rights and privileges of such individuals. Medtronic agrees to produce to the State in a timely manner complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody or control that are requested by the State in connection with any such investigation.

14 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

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

16 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

17 In addition to all other payments and responsibilities under this Agreement, Medtronic agrees to pay all reasonable travel costs and expenses of the NAMFCU Team up to \$5,000 00 Medtronic 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 If the NAMFCU team anticipates that reasonable travel costs and expenses will exceed \$5,000 because of unforeseen and extraordinary events, the NAMFCU team will notify Medtronic and will provide a detailed explanation of the proposed additional costs and expenses If the Parties agree that the additional costs and expenses are reasonable and necessary, Medtronic will pay those reasonable costs and expenses

18 This Agreement is governed by the laws of the State.

19 The undersigned Medtronic 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

20. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

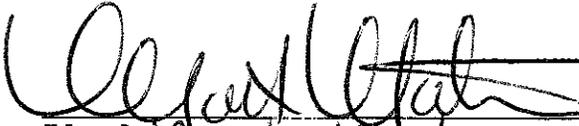
21. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

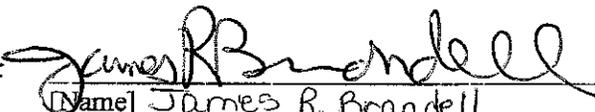
22. This Settlement Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

23. 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.

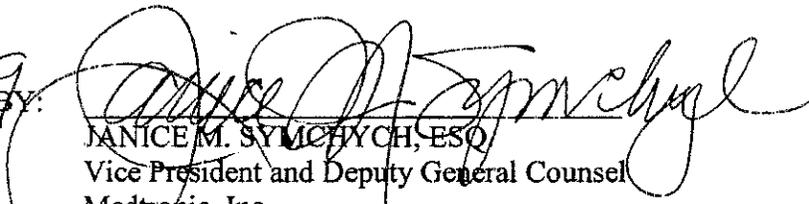
IN WITNESS WHEREOF, the parties hereto affix their signatures:

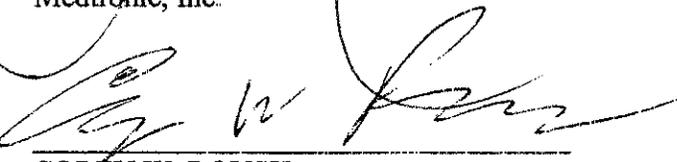
STATE OF Michigan

By:  \_\_\_\_\_ Dated: 10/14/2009  
[Name] Mark Indrus  
[Title] Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL

By:  \_\_\_\_\_ Dated: 10/13/2009  
[Name] James R. Brandell  
[Title]  
Medicaid Program: Director,  
Bureau of Medicaid Financial Management  
& Administrative Services

IN WITNESS WHEREOF, the parties hereto affix their signatures:

DATED: Dec 15, 2009 BY:   
JANICE M. SYMCHYCH, ESQ.  
Vice President and Deputy General Counsel  
Medtronic, Inc.

DATED: 12/15/09 BY:   
COREY W. ROUSH  
Hogan & Hartson  
Counsel for Medtronic, Inc. and  
Medtronic Sofamor-Danek USA, Inc.