

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the State of New Jersey (the “State” or “New Jersey”), including but not limited to the New Jersey Department of Environmental Protection (“DEP” or the “Department”); Accutest Corporation, also known as Accutest Laboratories (“Accutest”); a corporation headquartered at 2235 U.S. Highway 130, Dayton, New Jersey 08810, and doing business in the State of New Jersey, through its authorized representatives; and Relator Koroush Vaziri (the “Relator”). The foregoing parties are hereinafter collectively referred to as “the Parties.”

PREAMBLE

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

A. WHEREAS Accutest is a member of a network of environmental testing laboratories across the United States, each with a common parent owner. Accutest is engaged in the business of environmental testing services, including but not limited to the testing of semi-volatile organic compounds. The State and its agencies, including but not limited to the DEP, have also contracted with Accutest to perform various environmental tests that were performed in Accutest’s extraction laboratory; and

B. WHEREAS the Department issued a certification to Accutest to conduct environmental laboratory testing under the New Jersey National Environmental Laboratory Accreditation Program (“NJ-NELAP”) pursuant to The NELAC Institute (“TNI”) Standards. (N.J. Certification #12129). *See N.J.A.C. 7:18-1.4*. Accutest is required to conduct testing in accordance with the certification, the TNI Standards and *N.J.A.C. 7:18*; and

C. WHEREAS on December 3, 4, 11 and 12, 2012, the Department conducted a routine on-site audit of Accutest (“the 2012 Audit”) and issued a written report on February

19, 2013. On June 1 through 5, 2015, the Department conducted another routine audit of Accutest (“the 2015 Audit”) and issued a written report on July 31, 2015. On September 4, 2015, Accutest submitted an Audit Response. The Department is currently reviewing the Audit Response; and

D. WHEREAS on October 8, 2015, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (“AO/P”) to Accutest. The AO/P assessed a penalty of \$224,500.00 for alleged violations of the TNI Standards and the Department’s regulations. The AO/P also noted that the Department was continuing its investigation that Accutest allegedly engaged in deviations from EPA and DEP extraction methods as described in H below; and

E. WHEREAS on October 28, 2015, Accutest disputed the allegations in the AO/P and filed a timely request for a hearing on the AO/P in the Office of Administrative Law; and

F. WHEREAS the Department contends that Accutest deviated from EPA and DEP extraction methods during certain periods of time between 2007 and June 2013 in violation of the TNI standards and *N.J.A.C. 7:18-5.1(b)* (the “extraction violations”). The alleged violations involved the following methods: USEPA SW846 3510, USEPA SW846 3545, USEPA SW846 3550, USEPA 625, and NJDEP EPH. The DEP contends that Accutest employees did not always perform the required number of extractions, potentially preventing the full extraction of all of the compounds in the samples; and

G. WHEREAS, although the Department contends that the alleged extraction violations referenced in Paragraph F may have occurred, based upon the Department’s

investigation and assessment, the results of the analyses conducted by Accutest are useable;
and

H. WHEREAS on or about April 4, 2013, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States of America, et al., ex rel. Koroush Vaziri v. Accutest Laboratories*, Civil Action No. 3:13-CV-02223-FLW-TJB pursuant to the United States False Claims Act, 31 U.S.C. § 3729(a) *et seq.* (“USFCA”), the New Jersey False Claims Act, *N.J.S.A. § 2A:32C-1 et seq.* (“NJFCA”), and the false claims acts of several other states, and then subsequently filed an Amended Complaint on or about October 9, 2014 (the “Civil Action”). The Civil Action alleges that Accutest violated the NJFCA, by not following appropriate EPA guidelines in the extraction and testing of certain compounds. Specifically, the Civil Action alleges that some line-level technicians in Accutest’s Extraction laboratory did not fully comply with the Standard Operating Procedures for extractions, and that line-level analysts in Accutest’s Semi-Volatile Organics Laboratory did not properly calibrate the gas chromatography/mass spectrometry (“GC/MS”) instruments or maintain instrument data files, and thereby knowingly presented, and caused to be presented, false claims to, among other entities, the State, and made or used, and caused to be made or used, false records or statements material to false claims made to the State, and conspired to do the same; and

I. WHEREAS, by allegedly engaging in the foregoing conduct with respect to tests paid for by the State, the State contends that Accutest knowingly deviated from EPA and DEP extraction methods identified in Paragraph F above, and therefore, presented, and caused to be presented, false claims to the State, and made or used, and caused to be made or used, false records or statements material to false claims made to the State, and conspired to

do the same. The contentions in Paragraphs F, H I, and K are hereinafter referred to as the “Covered Conduct”; and

J. WHEREAS Relator’s complaint was served on the Office of the Attorney General of the State of New Jersey (“Office of the Attorney General”) on or about October 22, 2014 pursuant to the NJFCA, and the Office of the Attorney General thereafter commenced an investigation in connection with the allegations of the Relator’s complaint; and

K. WHEREAS, on November 23, 2015, Accutest informed the Department that it conducted an internal audit that revealed that it had been performing analyses beyond the scope of their certification in violation of TNI Standard V1M2 5.4.1 and *N.J.A.C. 7:18-2.12(a)*. Such analyses included 97 analytes/parameters in drinking water, non-potable water, and solid/hazardous waste out of roughly 2,300 such analytes/parameters evaluated by the laboratory; and

L. WHEREAS, as a result of its investigations, the State contends that it has certain civil and administrative claims against Accutest under the NJFCA and the Regulations Governing the Certification of Laboratories and Environmental Measurements, *N.J.A.C. 7:18-1 et seq.*; and

M. WHEREAS, to avoid the delay, uncertainty, and expense of protracted litigation of the above claims, the Parties have determined and hereby agree that settlement is in each of their best interests, and the Parties have agreed to accept the terms of the Agreement; and

N. WHEREAS, Accutest has represented to the State that it is engaged in discussions concerning a merger with or sale to another entity, which may occur as soon as December 31, 2015; and

O. WHEREAS, the Parties enter into this Agreement without trial or adjudication in order to amicably resolve the alleged Covered Conduct without any admission of law or fact by any Party provided, however, that in the event of any other environmental laboratory violations by Accutest, the Department may consider the violations cited herein as having been proven for purposes of calculating the appropriate penalty level and specifically for the purpose of determining whether a prior similar violation has occurred, unless the merger with or sale to the other entity occurs as discussed in Paragraph N above, and then no enhancement for alleged prior violations shall apply. See *N.J.A.C. 7:18-10.5(b), -10.5(c), -10.5(e)(1), -10.5(e)(2)*.

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle the Civil Action and the matters described above pursuant to the Terms and Conditions below:

TERMS AND CONDITIONS

1. Accutest shall take whatever actions are necessary to achieve and maintain compliance with the Regulations Governing the Certification of Laboratories and Environmental Measurements, *N.J.A.C. 7:18-1 et seq.* and the TNI Standards.

2. Accutest shall correct the alleged violations found in the 2015 Audit that are set forth in the AO/P and the violations identified in Accutest's internal audit in Paragraph K above. The Department agrees that it will not assess any additional penalties for this past conduct. However, the Department considers the requirements to correct these violations as

part of Accutest's continuing responsibility to comply with the TNI Standards, and reserves its right to take enforcement action for a failure to comply.

3. Accutest shall provide written notification of the alleged extractions violations to all New Jersey clients that received analytical data that was generated during the timeframe and for the methods set forth in Paragraph F above. Within 30 days of the Effective Date, Accutest shall provide to the Department the proposed written notification and list of such clients. Within 15 days of receiving the Department's comments, Accutest shall revise the notifications and client list in accordance with the Department's comments and provide the revisions to the Department. Within 15 days of the Department's approval of the written notification and client list, Accutest shall send the approved notification to all such clients with a concurrent submission to the Department.

4. Accutest shall provide written notification to all clients who received analytical data for the analytes/parameters referenced in Paragraph K above within 30 days of the Effective Date of this Agreement. Accutest shall send the notification concurrently to the Department.

5. To the extent not already done, Accutest shall conduct an investigation into the Covered Conduct as may be required by the applicable TNI standards. To the extent that such investigation identifies managers, executives, and officers who may have caused the Covered Conduct, Accutest shall take any Corrective Action that is required by TNI standards, to the extent that has not yet been done. Such investigation, to the extent that it has not already been done, shall be completed within 90 days of the Effective Date of this Agreement.

6. Accutest will pay the State the sum of Two Million and 00/100 Dollars (\$2,000,000) (the “Settlement Amount”) to resolve the Civil Action and penalties under the Department’s Regulations Governing the Certification of Laboratories and Environmental Measurements, *N.J.A.C. 7:18-10*, of which Five Hundred Thousand Dollars (\$500,000) will be paid within ninety (90) days of this Agreement, Five Hundred Thousand Dollars (\$500,000) will be paid by June 1, 2016, Five Hundred Thousand Dollars (\$500,000) will be paid by September 1, 2016, and Five Hundred Thousand Dollars (\$500,000) will be paid by December 1, 2016 plus interest at the N.J. Superior Court rate on payment installments beyond 90 days after the effective date of this Agreement. Following any change in control of Accutest after the Effective Date of this Agreement, the remaining Settlement Amount will be due in full and owing within thirty (30) days plus interest at the N.J. Superior Court rate on payment installments beyond 90 days from the Effective Date of this Agreement. Such payments will be made by wire transfer pursuant to instructions provided by the Office of the Attorney General. This amount represents the damages and penalties being recovered by the State, as well as costs and attorneys’ fees borne by the State. Of the sum due to the State, \$920,000 shall be allocated as a penalty to settle the AO/P and the alleged extraction violations under *N.J.A.C. 7:18-10* and the internal audit issues discussed in Paragraph K.

7. Contingent upon the State receiving the Settlement Amount installments from Accutest, the State agrees to pay Relator Seventy Four Thousand Two Hundred Forty Six and 05/100 Dollars (\$74,246.05) of each installment as soon as feasible after receipt of payment from Accutest as Relator’s share under the NJFCA by electronic funds transfer or check pursuant to written instructions provided by Relator’s counsel, which shall total Two Hundred Ninety Six Thousand Nine Hundred Eighty Four and 20/100 Dollars (\$296,984.20)

(“Relator’s Share”). If the State is paid the full Settlement Amount following a change of control of Accutest as described in Paragraph 6, the State will pay the remaining amount of Relator’s Share as soon as feasible upon receipt of payment from Accutest.

8. By execution of this Agreement, Accutest hereby withdraws its request for an administrative hearing before the Office of Administrative Law on the AO/P with prejudice. This Settlement Agreement fully resolves the AO/P and any obligations contained therein are superseded by this Agreement.

9. Nothing herein shall be construed as a defense to Accutest’s potential liability in other proceedings.

10. Accutest specifically does not admit the Covered Conduct or any alleged wrongdoing. Accutest also does not admit any alleged technical or other violation contained in the AO/P. Nothing in this Agreement is an admission of any liability by Accutest.

11. Accutest agrees to continue to cooperate with any State inquiry into the Covered Conduct necessary to identify the source of projects, samples and funds submitted to Accutest.

12. Subject to the exceptions in Paragraph 13, in consideration of the obligations of Accutest set forth in this Agreement, conditioned upon the full payment by Accutest of the Settlement Amount and subject to Paragraph 23 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State under the Agreement, whichever is later), the State releases Accutest from any civil monetary claim based upon the Covered Conduct, the 2012 Audit, the 2015 Audit, and the violations discussed above in Paragraph K that the State has or should have known of under the NJFCA and for penalties and costs under *N.J.A.C. 7:18-1 et seq.* and

N.J.S.A. 58:10A-1 et seq. and any common law theories including but not limited to breach of contract, payment by mistake, unjust enrichment, and fraud.

13. Notwithstanding any term of this Agreement, the following potential claims of the State against Accutest are specifically reserved and are not released:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability, including but not limited to the criminal liability of individuals (including current or former directors, officers, employees, agents or shareholders);
- c. Any civil liability that Accutest has or may have under any state or local statute, regulation, or rule not covered by this Agreement for conduct other than the Covered Conduct;
- d. Any liability that Accutest has or may have to the State (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability to any local government (or agency thereof) for any conduct other than the Covered Conduct;
- f. Any liability based upon such obligations as are created by this Agreement;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;

- i. Any liability for personal injury, property damage, or for other consequential damages resulting from the Covered Conduct, including but not limited to, remediation necessitated by improper testing performed by Accutest;
- j. Any liability of individuals;
- k. Any liability or responsibility relating to Accutest's continuing compliance with TNI standards after the Effective Date; and
- l. Any enforcement action against Accutest for violations of N.J.A.C. 7:18 that are not explicitly identified in the AO/P, identified in Paragraph F as the extraction violations, or identified in Paragraph K, and that are not known to the State as of the Effective Date.

14. In consideration of the obligations of Accutest in this Agreement, conditioned upon the full payment by Accutest of the Relator's Share, Relator, for himself, and for his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, releases Accutest from any claim that he may have against Accutest for the Covered Conduct under the NJFCA or any other New Jersey law or statute, and any claims that Relator asserted or may properly have asserted in the Amended Complaint he filed in the Action. Relator further acknowledges that he does not intend to seek recovery of his expenses or attorney's fees and costs, pursuant to *N.J.S.A. 2A:32C-8(b)*.

15. Accutest fully and finally releases the State, its agencies, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Accutest has asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants,

attorneys, and/or agents, related to the Covered Conduct and the State's investigation and prosecution thereof.

16. Upon the Court's dismissal or the discontinuance of the Action, Accutest fully and finally releases, waives, and discharges Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Accutest has asserted, could have asserted, or may assert in the future against the Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, related to the Covered Conduct and Relator's and the State's investigations and prosecution concerning the Action.

17. Relator, and each of his respective heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, will not object to this Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to *N.J.S.A. 2A:32C-6(c)*. Conditioned upon receipt of the full payment as provided in Paragraph 7 pertaining to the Relator's Share, the Relator, for himself individually, and for his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the State and any officers, agents, and employees of the State from any and all rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature, that Relator has asserted, could have asserted, or might assert in the future against the State, arising out of the Action or from any other claim for a share of the Settlement Amount. Relator accepts the full payment as provided in

Paragraph 7 pertaining to the Relator's Share in full settlement of any claims Relator may have against the State under this Agreement or as a result of the Action.

18. Upon the Court's dismissal or discontinuance of the Action, the State fully and finally releases, waives, and forever discharges Relator, his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims related to the Action. This Agreement does not resolve or in any manner affect any claims the State has or may have against Relator arising under state tax laws arising under this Agreement.

19. This Agreement shall be fully enforceable as a final administrative order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to *N.J.S.A. 58:10A-1 et seq.* and *R. 4:67-6* and may also be enforced in the same manner as an Administrative Order issued by the Department pursuant to these same authorities.

20. This Agreement shall not relieve Accutest from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the NJFCA and all other statutes and regulations cited herein.

21. The State has agreed to the terms of this Settlement Agreement based on, among other things, the representations made to the Office of the Attorney General and to the Department by Accutest and its counsel concerning technical data relating to the extractions and information concerning Accutest's financial condition. Accutest has provided certification that states the financial information is accurate. To the extent that any material representations are later found to be materially inaccurate or misleading or if Accutest or its counsel intentionally withheld material information, this Agreement is

voidable by the Office of the Attorney General in its sole discretion and would permit the State to declare or take the actions set forth in Paragraph 24 below. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Accutest in agreeing to this Agreement. Accutest represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion.

22. Accutest represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized. Accutest shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without any factual basis; provided, however, that Accutest may refer to the Preamble and Paragraph 10 in any description or discussion of the Agreement. Nothing in this Paragraph affects Accutest's testimonial obligations or its right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

23. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Accutest or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate Accutest as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Accutest or for all or any substantial part of its or their assets, Accutest agrees as follows:

- a. Accutest's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Accutest shall not argue or otherwise take the position

in any such case, proceeding, or action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) it was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Accutest.

- b. If Accutest's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may terminate the releases in this Agreement insofar as it affects the State and bring any civil and/or administrative claim, action, or proceeding against Accutest for the claims that would otherwise be covered by the releases provided above, and Accutest agrees that (i) any such claims, actions, or proceedings brought by the State are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Accutest shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) Accutest shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State within 60 calendar days of written notification to Accutest that the releases have been terminated pursuant to this Paragraph, except to the extent such defenses were available on the

Effective Date of the Agreement; and (iii) the State has a valid claim against Accutest in the amount of treble damages plus penalties under the NJFCA, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Accutest acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

24. In the event of the failure by Accutest to pay the Settlement Amount when due, the State will provide written notice of the non-payment to Accutest. Such notice shall be given to the person and address designated in Paragraph 36 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Accutest shall have an opportunity to pay the unpaid balance within five (5) calendar days from the date of notice. If Accutest fails to pay the overdue unpaid balance of their payment obligations under this Agreement within five (5) calendar days from the date of notice of non-payment (“Default”), the State, in its sole discretion, may declare or do any or all of the following:

- a. The State may declare the entire Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the rate of interest set forth in New Jersey Court Rules beginning as of the date of Default until payment of the remaining Settlement Amount is made in full;

- b. Terminate this Agreement and pursue all available remedies and enforcement actions it deems necessary, including reinstating the Civil Action and/or the AO/P against Accutest; and/or
- c. Assess an administrative penalty against Accutest under *N.J.A.C. 7:18-10* for the extraction deviations in the Covered Conduct described in the Preamble above and the violations described above in Paragraph K.

25. In the event of a Default as described in Paragraph 24, Accutest agrees not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to this Paragraph, and Accutest agrees to pay the State all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses. In the event the State reinstates the Civil Action or AO/P or the Department assesses an administrative penalty or takes additional enforcement action as described in Paragraph 24, Accutest: (1) expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State after the written notification to Accutest that this Agreement has been terminated, and (ii) relate to the Covered Conduct, and (2) further waives and will not assert any defenses it may have to the Civil Action or the AO/P.

26. In the event of the failure by Accutest to pay the Settlement Amount when due, Relator will provide written notice of the non-payment to Accutest. Such notice shall be given to the person and address designated in Paragraph 36 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Accutest shall have an opportunity to pay the

unpaid balance within five (5) calendar days from the date of notice. If Accutest fails to pay the overdue unpaid balance of their payment obligations for the Relator's Share under this Agreement within five (5) calendar days from the date of notice of non-payment ("Relator's Share Default"), the Relator, in his sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the rate of interest set forth in New Jersey Court Rules beginning as of the date of Default until payment of the remaining Relator's Share is made in full; and/or
- b. Institute an action or actions against Accutest to collect the unpaid amounts of the Relator's Share plus applicable interest. Accutest agrees not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and Accutest agrees to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

27. For purposes of construction, this Agreement shall be deemed to have been drafted by all the Parties to this Agreement and therefore shall not be construed against any Party for that reason in any subsequent dispute.

28. Except as expressly provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter.

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

30. This Agreement constitutes the complete agreement between the Parties, and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.

31. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns. Accutest shall immediately give written notice of this Agreement to any successor in interest and shall simultaneously notify the Office of the Attorney General and the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership of Accutest's facility. In addition, the parties agree that any successor agreement that Accutest enters into shall include a provision which states that (i) the purchaser is considered the successor; (ii) the purchaser had prior notice of this Agreement, including the Covered Conduct giving rise to this Agreement; and (iii) the purchaser has agreed to assume the unfulfilled obligations imposed by this Agreement. Prior to any merger or sale, Accutest shall provide the relevant successor-in-interest language to the State. The State shall have no fewer than 5 business days to review and provide its comments to Accutest regarding such language. If, the State has notified Accutest that it is not reasonably satisfied that the successor-in-interest is sufficiently bound by this Agreement and Accutest proceeds with the transaction without satisfying the State's interest, the State shall have 15 days from the date of the transaction closing to terminate the Agreement.

32. If requested by Accutest, the State agrees to hereafter respond promptly and in good faith to any reasonable written request by Accutest seeking confirmation of any unfulfilled obligations under this Agreement.

33. The State reserves all statutory and common law rights to require Accutest to take additional action(s) if the State determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this Agreement shall constitute a waiver of any statutory or common law right of the State to require such additional measures should the State determine that such measures are necessary, although no additional penalty shall be assessed for the Covered Conduct or any other conduct known to the Department as of the Effective Date.

34. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

35. Any failure by the State to insist upon the strict performance by Accutest and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by any or all of the Parties.

36. All communications from any party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State of New Jersey:

Nicholas Kant
Janine Matton
Deputy Attorneys General

Office of the Attorney General
PO Box 45029
124 Halsey Street, 5th Floor
Newark, New Jersey 07101

If to the Department of Environmental
Protection:

Andrew Reese
Gary W. Wolf II
Deputy Attorneys General
Office of the Attorney General
PO Box 093
25 Market Street
Trenton, New Jersey 08625-0093

If to Relator:

Neil Mullen
Smith Mullin P.C.
240 Claremont Ave.
Montclair, New Jersey 07042
(973) 783-7607

If to Accutest:

Matthew E. Beck
Jeffrey S. Chiesa
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, New Jersey 07052

Lisa M. Krigsten
Dentons US LLP
4520 Main Street #1100
Kansas City, Missouri 64111

37. If a court of competent jurisdiction determines that Accutest has breached this Agreement, Accutest shall pay to the State the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

38. This Agreement shall be governed by the laws of the State of New Jersey without regard to any conflict-of-laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this

Agreement will be either the Superior Court of New Jersey or the New Jersey Office of Administrative Law.

39. This Agreement is effective on the date of signature of the last signatory of the Agreement (the “Effective Date”). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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

IN WITNESS WHEREOF, the Agreement is executed by the parties hereto.

THE STATE OF NEW JERSEY

Dated: Dec. 10, 2015

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

Nicholas Kant
Janine Matton
Deputy Attorneys General
Government and Healthcare Fraud Section
New Jersey Division of Law
Department of Law & Public Safety
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Attorney for the State of New Jersey

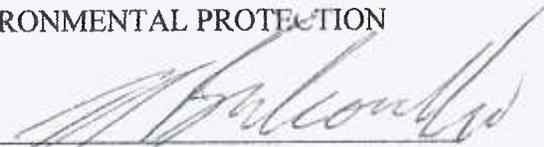
NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL
PROTECTION

Dated:

12/7/15

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By:



Ray Bukowski, Assistant Commissioner
Compliance and Enforcement

Dated:

12/10/15

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:

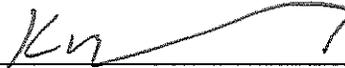


Andrew Reese
Gary W. Wolf II
Deputy Attorneys General
Office of the Attorney General
25 Market Street
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*Attorney for the New Jersey Department of Environmental
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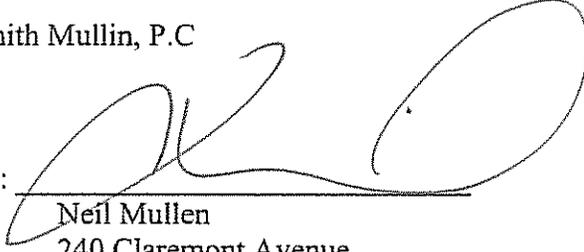
Dated: 12-9-15



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