DEFERRED PROSECUTION AGREEMENT

Defendant PDQ Imaging Services, LLC (the “Company”), by its undersigned representative, pursuant to authority granted by the Company’s manager, and the United States Attorney’s Office for the Eastern District of Texas (“this office”) enter into this deferred prosecution agreement (the “Agreement”). The terms and conditions of this Agreement are as follows:

Criminal Information and Acceptance of Responsibility

1. The Company accepts and acknowledges that this office will file the attached criminal Information in the United States District Court for the Eastern District of Texas charging the Company with illegal remunerations, in violation of 42 U.S.C. § 1320a-7b(b). In so doing, the Company: (a) knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, 18 U.S.C. § 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Eastern District of Texas.
2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information and as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement. The Company further admits that the allegations described in the Information and the facts described in Attachment A are true and accurate. Should this office pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding. The Company further agrees not to contradict anything in the Statement of Facts at any such proceeding.

**Term of the Agreement**

3. This Agreement is effective for a three-year period beginning on the date on which the Information is filed (the “Effective Date”) and ending three years from that date (the “Term”). The Company agrees, however, that in the event this office determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the Term may be imposed by this office, in its sole discretion, for up to a total additional time period of one year, without prejudice to this office’s right to proceed as provided in Paragraph 16 below. Any extension of the Agreement extends for an equivalent period all terms of this Agreement, including the terms of the reporting requirement in Attachment C. Conversely, in the event this office finds, in its sole discretion, that there exists a change in circumstances
sufficient to eliminate the need for the reporting requirement in Attachment C and that the other provisions of this Agreement have been satisfied, the Term may be terminated early.

**Relevant Considerations**

4. This office enters into this Agreement based on the specific facts and circumstances presented by this case. Among the factors considered were the following: (a) the Company’s remedial actions to date; (b) the Company’s willingness to undertake additional remediation as necessary; (c) the Company’s acceptance of responsibility for certain past conduct giving rise to the Agreement; (d) the Company’s continued cooperation with the government; (e) the Company’s demonstration of its good faith and commitment to full compliance with all federal health care laws; and (f) the Company’s willingness to comply with all of the terms included in this Agreement. This office has also considered the potential impact upon recipients of the Company’s health care services and the possible adverse consequences to innocent Company employees that could result from a conviction of the Company.

**Future Cooperation and Disclosure Requirements**

5. The Company shall cooperate fully with this office in any and all matters relating to the conduct described in this Agreement and Attachment A, subject to applicable law and regulations, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term.
specified in paragraph 3. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities and those of its present and former directors, officers, employees, agents, and consultants about which the Company has any knowledge or about which this office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to this office, upon request, any document, record, or other tangible evidence about which this office may inquire of the Company.

b. Upon request of this office, the Company shall designate knowledgeable employees, agents, or attorneys to provide to this office the information and materials described in Paragraph 5(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by this office, present or former officers, directors, employees, agents, and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials as well as interviews with law enforcement and regulatory authorities. Cooperation under this paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.
d. With respect to any information, testimony, documents, records, or other tangible evidence provided to this office pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities, of such materials as this office, in its sole discretion, shall deem appropriate.

6. In addition to the obligations in Paragraph 5, should the Company learn of credible evidence or allegations of a violation of federal law during the Term of the Agreement, the Company shall promptly report such evidence or allegations to this office.

**Monetary Penalty**

7. The Company received benefits in return for illegal remunerations. The Company therefore agrees to pay $300,000.00 as a monetary penalty. This amount has been calculated for the purposes of this Agreement only. The Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of the monetary penalty.

8. The parties further agree that the Company shall pay $300,000.00 in civil cause number 4:11-CV-00138 in lieu of the monetary penalty. The parties agree that absent this provision the payment of the monetary penalty would substantially jeopardize the continued viability of the Company.

9. The monetary penalty is final and shall not be refunded should this office later determine that the Company has breached this Agreement and commences a Deferred Prosecution Agreement – Page 5
prosecution against the Company. In the event of a breach of this Agreement and subsequent prosecution, this office may pursue additional civil and criminal forfeiture in excess of the monetary penalty, as deemed appropriate. This office agrees that in the event of a breach and subsequent prosecution, it will recommend to the Court that the amounts paid pursuant to this Agreement be offset against whatever forfeiture the Court shall impose as part of any future judgment. The Company understands that such a recommendation will not be binding on the Court.

Conditional Release from Criminal Liability

10. Subject to Paragraphs 16 and 17, this office agrees, except as provided herein, that it will not bring any criminal charges for any non-tax violations of federal criminal law against the Company relating to any of the conduct described in the Statement of Facts, attached hereto as Attachment A, or the criminal Information filed pursuant to this Agreement. This office, however, may use any information related to the conduct described in the attached Statement of Facts against the Company in a prosecution or other proceeding concerning: (a) perjury or obstruction of justice; (b) making a false statement; (c) any crime of violence; or (d) a violation of any provision of Title 26 of the United States Code.

a. This Agreement does not provide any protection against prosecution for any future conduct by the Company or any of its officers, directors, employees, shareholders, agents, consultants, contractors, or subcontractors.
b. In addition, this Agreement does not provide any protection against prosecution of any former officers, directors, employees, shareholders, agents, consultants, contractors, or subcontractors of the Company for any violations committed by them.

**Corporate Compliance Program**

11. The Company represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of federal health care laws throughout its operations.

12. In order to address any deficiencies in its internal controls, policies, and procedures, the Company represents that it has undertaken and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies, and procedures regarding compliance with federal health care laws. If necessary and appropriate, the Company will adopt new or modify existing internal controls, policies, and procedures to ensure that the Company maintains compliance with federal health care laws. The internal controls system and compliance code, standards, and procedures will include, but not be limited to, the minimum elements set forth in Attachment B, which is incorporated by reference into this Agreement.

**Corporate Compliance Reporting**

13. The Company agrees that it will report to this office annually during the Term of the Agreement regarding remediation and implementation of the compliance
Deferred Prosecution Agreement

14. In consideration of: (a) the past and future cooperation of the Company described in Paragraph 4; (b) the Company’s payment of $300,000.00; and (c) the Company’s implementation and maintenance of remedial measures as described in Paragraphs 11 and 12, this office agrees that any prosecution of the Company for the conduct set forth in the attached Statement of Facts, and for the conduct that the Company disclosed to this office prior to the signing of the Agreement, be and hereby is deferred for the Term of this Agreement. To the extent there is conduct disclosed by the Company that the parties have specifically discussed and agreed is not covered by this Agreement, such conduct will not be exempt from further prosecution and is not within the scope of or relevant to this Agreement.

15. Within five business days of the Effective Date of this Agreement, this office will recommend to the assigned United States district judge that the prosecution of the Company on the Information be deferred for the duration of this Agreement. This office further agrees that if the Company fully complies with all of its obligations under this Agreement, (a) this office will not continue the criminal prosecution against the Company described in Paragraph 1, and (b) at the conclusion of the Term, this Agreement shall expire. Within six months of this Agreement’s expiration, this office shall seek dismissal with prejudice of the criminal Information filed against the Company.
described in Paragraph 1 and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and Attachment A.

**Breach of the Agreement**

16. If during the Term of this Agreement, the Company (a) commits any felony under federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to cooperate as set forth in Paragraphs 5 and 6 of this Agreement; (d) fails to implement a compliance program as set forth in Paragraphs 11 and 12 of this Agreement and Attachment B; or (e) otherwise fails specifically to perform or to fulfill completely each of the Company’s obligations under this Agreement, regardless of whether this office becomes aware of such a breach after the Term of the Agreement is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which this office has knowledge, including, but not limited to, the charges contained in the Information described in Paragraph 1, which may be pursued by this office in the United States District Court for the Eastern District of Texas or any other appropriate venue. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in this office’s sole discretion. Any such prosecution may be premised on information provided by the Company. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to this office prior to the date on which this Agreement was signed that is not time-barred by the applicable statutes of limitations on the date of the signing of this Agreement may be
commenced against the Company, notwithstanding the expiration of any statutes of limitations between the signing of this Agreement and the expiration of the Term, plus one year. Thus, by signing this Agreement, the Company agrees that the statutes of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the date upon which this office is made aware of the violation.

17. In the event this office determines that the Company has breached this Agreement, this office agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within 30 days of receipt of such notice, the Company shall have the opportunity to respond to this office in writing to explain the nature and circumstances of such breach and to describe the actions the Company has taken to address and remediate the situation. This office shall consider any such explanation in determining whether to pursue prosecution of the Company.

18. In the event that this office determines the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to this office or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal
proceedings brought by this office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer, or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of this office.

19. The Company acknowledges that this office has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company breaches this Agreement and the matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

20. No later than 30 days after expiration of the Term of the Agreement, the Company, by and through the Manager of the Company, will certify to this office that the Company has met its disclosure obligations. Such certification will be deemed a material statement and representation by the Company to the executive branch of the United
States for purposes of 18 U.S.C. § 1001 and will be deemed to have been made in the federal judicial district in which this Agreement is filed.

**Sale, Merger, or Other Change in Corporate Form of Company**

21. Except as may otherwise be agreed by the parties hereto in connection with a particular transaction, the Company agrees that in the event that, during the Term of the Agreement, it undertakes any change in corporate form, including if it sells, merges, or transfers a substantial portion of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The Company shall obtain approval from this office at least 30 days prior to undertaking any such sale, merger, transfer, or other change in corporate form, including dissolution, in order to give this office an opportunity to determine if such change in corporate form would impact the terms or obligations of the Agreement.

**Public Statements by Company**

22. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for the Company, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure
rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraph 16 of this Agreement. The decision as to whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of this office. If this office determines that a public statement by any such person contradicts (in whole or in part) a statement contained in the Statement of Facts, this office shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

23. It is further understood that the Company may disclose the existence of this Agreement to the public; however, the specific terms of the Agreement shall remain confidential until the Company requests and receives prior written consent from this office. The Company agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Deferred Prosecution Agreement – Page 13
Agreement, the Company shall first consult with this office to determine (a) whether the
text of the release or proposed statements at the press conference are true and accurate
with respect to matters addressed by this Agreement; and (b) whether this office has any
objection to the release. Furthermore, this office reserves the right to disclose the
existence of the Agreement and its terms, including the monetary penalty amount, if and
when it deems appropriate, if at all.

24. This office agrees, if requested to do so, to bring to the attention of law
enforcement and regulatory authorities the facts and circumstances relating to the nature
of the conduct underlying this Agreement, including the nature and quality of the
Company’s cooperation and remediation. By agreeing to provide this information to
such authorities, this office is not agreeing to advocate on behalf of the Company, but
rather is agreeing to provide facts to be evaluated independently by such authorities.

Limitations on Binding Effect of Agreement

25. This Agreement is binding on the Company and this office, but specifically
does not bind any other component of the Department of Justice, other federal agencies,
or any state, local, or foreign law enforcement or regulatory agencies, or any other
authorities. However, this office will bring the cooperation of the Company and its
compliance with its other obligations under this Agreement to the attention of such
agencies and authorities if requested to do so by the Company. This Agreement between
the parties in no way limits or waives the Company’s contractual obligations to any
health care benefit program.

Deferred Prosecution Agreement – Page 14
Notice

26. Any notice to this office under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Assistant United States Attorney Nathaniel C. Kummerfeld, United States Attorney’s Office for the Eastern District of Texas, 110 N. College, Ste. 700, Tyler, TX 75702. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to PDQ Imaging Services, LLC, PO Box 492, De Leon, TX 76444. Notice shall be effective upon actual receipt by this office or the Company.

Complete Agreement

27. This Agreement sets forth all the terms of the agreement between the Company and this office. From the Effective Date forward through the end of the Term, this Agreement supersedes all prior understandings, promises, or conditions between this office and the Company, if any. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter, and none will be entered into unless in writing and signed by all parties. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
AGREED:

FOR PDQ IMAGING SERVICES, LLC:

Date: 11-10-17
By: 
DENNIS WHITSELL
Manager, PDQ Imaging Services, LLC

Date: 11-10-17
By: 
GRAHAM LANE
Manager, PDQ Imaging Services, LLC

Date: 11/16/17
By: 
MIKE GIBSON
Counsel for PDQ

FOR THE UNITED STATES ATTORNEY'S OFFICE
FOR THE EASTERN DISTRICT OF TEXAS:

BRIT FEATHERSTON
ACTING U.S. ATTORNEY

Date: 11/14/17
By: 
NATHANIEL C. KUMMERFELD
Assistant United States Attorney
Eastern District of Texas
COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside
counsel for PDQ Imaging Services, LLC (the "Company"). I understand the terms of this
Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before
signing this Agreement, I consulted outside counsel for the Company. Counsel fully
advised me of the rights of the Company, possible defenses, the applicable Sentencing
Guidelines provisions, and the consequences of entering into this Agreement.

No promises or inducements have been made other than those contained in this
Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any
person authorizing this Agreement on behalf of the Company, in any way to enter into
this Agreement. I am also satisfied with outside counsel's representation in this matter. I
certify that I am the Manager of the Company and that I have been duly authorized by the
Company to execute this Agreement on behalf of the Company.

Date: 11/10/17

PDQ IMAGING SERVICES, LLC

By: DENNIS WHITSELL
Manager

By: GRAHAM PLAN
Manager
CERTIFICATE OF COUNSEL

I am counsel for PDQ Imaging Services, LLC (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Manager of the Company. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is therefore a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the Manager of the Company. I have fully advised him of the rights of the Company, possible defenses, the applicable Sentencing Guidelines provisions, and the consequences of entering into this Agreement.

To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the Manager, is an informed and voluntary one.

Date: 11/10/17

By: [Signature]
MIKE GIBSON
Counsel for PDQ Imaging Services, LLC
ATTACHMENT A

STATEMENT OF FACTS

1. The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (“this Agreement”) between the United States Attorney’s Office for the Eastern District of Texas (“this office”) and PDQ Imaging Services, LLC (the “Company”). The Company hereby agrees and stipulates that the following information is true and accurate. The following facts establish beyond a reasonable doubt the charges set forth in the criminal Information attached to this Agreement. The Company admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. If it is determined that the Company has committed any felony after signing this Agreement; has given false, incomplete, or misleading testimony or information; or has otherwise violated any provision of this Agreement, the Company agrees that it will neither contest the admissibility of nor contradict this Statement of Facts in any related proceedings.

2. The Medicare Program (Medicare) is a federal health care program providing benefits to persons who are sixty-five and over and some persons under the age of sixty-five who are blind or disabled. Medicare is administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency under the United States Department of Health and Human Services (HHS). Individuals who receive benefits under Medicare are referred to as Medicare “beneficiaries.”

3. Medicare is a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), in that it is a public plan affecting commerce under which
medical benefits, items, and services are provided to individuals and under which individuals and entities who provide medical benefits, items, or services may obtain payments.

4. Medicare is a “federal health care program,” as defined by Title 42, United States Code, Section 1320a-7b(f), in that it is a plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government.

5. The Medicare program includes an insurance benefit known as Part A, which is funded from payroll taxes paid by employees and employers and from other federal income taxes, premiums, government credits, and interest on federal securities. Payments for Part B services are made from the United States Treasury.

6. The Medicare program also includes an insurance benefit known as Part B, which is funded from payroll taxes paid by employees and employers and from other federal income taxes, premiums, government credits, and interest on federal securities. Payments for Part B services are made from the United States Treasury.

7. Individuals covered by Medicare Part B are entitled, subject to certain conditions and requirements, to have payments made on their behalf for covered medical and health services.

8. Skilled nursing facilities (SNFs) are Medicare-certified facilities that provide extended skilled nursing or rehabilitative care under Medicare Part A. They are typically reimbursed under Medicare Part A for the cost of most items and services, including room,
board, and ancillary items and services. In some circumstances, SNFs may receive payment under Medicare Part B.

9. Medicare pays SNFs under a prospective payment system (PPS) for beneficiaries covered by the Part A extended care benefit. Covered beneficiaries are those who require skilled nursing or rehabilitation services and receive the services from a Medicare-certified SNF after a qualifying hospital stay of at least three days. The PPS rate is a fixed, per diem rate. The maximum benefit is 100 days per “spell of illness.”

10. The PPS payments cover virtually all of the SNF’s costs for furnishing services to Medicare Part A beneficiaries. Under the “consolidated billing” rules, SNFs bill Medicare for most of the services provided to Medicare beneficiaries in SNF stays covered under Part A, including items and services that outside practitioners and suppliers provide under arrangement with the SNF. The SNF is responsible for paying the outside practitioners and suppliers for these services. Services covered by this consolidated billing requirement include, among others, diagnostic tests, including portable x-ray services. These items and services must be billed to Medicare by the SNF.

11. Some Medicare beneficiaries reside in a Medicare-certified SNF, but are not eligible for Part A extended care benefits (e.g., a beneficiary who has exhausted his or her Part A benefit). These beneficiaries—sometimes described as being in “non-covered Part A stays”—may still be eligible for Part B coverage of certain individual services. Consolidated billing would not apply to such individual services, with the exception of therapy services.
12. In certain instances, SNFs may obtain discounts from suppliers and providers on items and services that the SNFs purchase for their own account. In negotiating arrangements with suppliers and providers, SNFs must ensure that there is no link or connection, explicit or implicit, between discounts offered or solicited for business that the SNF pays for and the SNF’s referral of business billable by the supplier or provider directly to Medicare or another federal health care program. SNFs should not engage in “swapping” arrangements by accepting a low price from a supplier or provider on an item or service covered by the SNF’s Part A per diem payment in exchange for the SNF referring to the supplier or provider other Federal health care program business, such as Part B business excluded from consolidated billing, that the supplier or provider can bill directly to a federal health care program. Such “swapping” arrangements implicate the anti-kickback statute and are not protected by the discount exception or the discount safe harbor.

13. Medicare has specific guidelines for the billing and coverage of portable x-ray services. These guidelines are made available to Medicare providers. They are also publically-available and accessible on the Internet.

14. Medicare providers sign an agreement with Medicare in which they state that they agree to abide by all applicable Medicare laws, regulations, and program instructions and understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions. Medicare requires providers to retain records for a period of six years and three months.

15. All payments made by Medicare are made to a provider in the form of a pre-arranged electronic deposit into the provider’s bank account.
16. PDQ Imaging Services, LLC (PDQ), was a Texas business entity doing business at 391 County Road 473, De Leon, Texas 77644. Among other things, PDQ provided portable x-ray services to Medicare beneficiaries residing in the Sherman Division of the Eastern District of Texas and elsewhere. PDQ also filed claims seeking payment for portable x-ray services provided to these Medicare beneficiaries.

17. From in or around January 2008, and continuing through in or around March 2012, in the Eastern District of Texas, and elsewhere, the defendant, PDQ, acting through its officers and employees, knowingly and willfully offered and paid remunerations, namely free and significantly discounted portable x-ray services, to administrators of SNFs in exchange for the referral of the SNF’s Medicare beneficiaries to PDQ for the purpose of furnishing portable x-ray services, for which payment may be made in whole and in part under Medicare, a federal health care program.

18. The arrangements entered into between PDQ and the SNFs amounted to “swapping” arrangements wherein PDQ offered and provided free and significantly discounted portable x-ray services to the SNFs. The portable x-ray services were services covered by the SNF’s Part A per diem payment. These free and significantly discounted services were provided to the SNFs in exchange for the SNF referring to PDQ other federal health care program business, namely Part B business excluded from consolidated billing, that PDQ could bill directly to Medicare. These “swapping” arrangements implicated the anti-kickback statute and were not protected by the discount exception or the discount safe harbor.
19. PDQ acknowledges that these acts constitute a violation of 42 U.S.C. § 1320a-7b(b) (Illegal Remunerations).
ATTACHMENT B

CORPORATE COMPLIANCE PROGRAM

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with federal health care laws, PDQ Imaging Services, LLC (the “Company”), agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, the Company agrees to adopt new or to modify existing internal controls, compliance code, policies, and procedures to ensure that it maintains: (a) a system of internal controls designed to ensure that the Company makes and keeps fair and accurate books, records, and accounts; and (b) a rigorous compliance program that includes policies and procedures designed to detect and deter violations of federal health care laws. At a minimum, such internal controls should include, but not be limited to, the following elements to the extent they are not already part of the Company’s existing internal controls, compliance code, policies, and procedures:

High-Level Commitment

1. The Company will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of federal health care laws and its compliance code.
Policies and Procedures

2. The Company will develop and promulgate a clearly articulated and visible corporate policy against violations of federal health care laws, which policy shall be memorialized in a written compliance code.

3. The Company will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of federal health care laws and the Company’s compliance code, and the Company will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violations of federal health care laws by personnel at all levels of the Company.

Periodic Risk-Based Review

4. The Company will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of the Company, in particular the compliance risks facing the Company.

5. The Company shall review its health care compliance policies and procedures at least annually and update them as appropriate to ensure their continued effectiveness, taking into account relevant developments in the field and evolving regulatory and industry standards.
Proper Oversight and Independence

6. The Company will assign responsibility to one or more senior employees of the Company for the implementation and oversight of the Company’s health care compliance code, policies, and procedures.

Training and Guidance

7. The Company will implement mechanisms designed to ensure that its health care compliance code, policies, and procedures are effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, legal, compliance, finance), positions that otherwise pose a risk to the Company, and where necessary and appropriate, agents and business partners; and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

8. The Company will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners about complying with the Company’s health care compliance code, policies, and procedures, including when they need advice on an urgent basis.
Internal Reporting and Investigation

9. The Company will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of federal health care laws or the Company’s health care compliance code, policies, and procedures.

10. The Company will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of federal health care laws or the Company’s health care compliance code, policies, and procedures.

Enforcement and Discipline

11. The Company will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

12. The Company will institute appropriate disciplinary procedures to address, among other things, violations of federal health care laws and the Company’s health care compliance code, policies, and procedures by the Company’s directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by or perceived importance of the director, officer, or employee. The Company shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to
ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall health care compliance program is effective.

Third-Party Relationships

13. The Company will institute appropriate risk-based due diligence and compliance requirements for the retention and oversight of all agents and business partners, including:
   
   a. properly documented due diligence regarding the hiring and appropriate and regular oversight of agents and business partners;
   
   b. informing agents and business partners of the Company’s commitment to abiding by federal health care laws and of the Company’s health care compliance code, policies, and procedures; and
   
   c. seeking a reciprocal commitment from agents and business partners.

14. Where necessary and appropriate, the Company will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of federal health care laws, which may, depending upon the circumstances, include: (a) representations and undertakings relating to compliance with federal health care laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of
any breach of federal health care laws, the Company’s compliance code, policies, or procedures, or the representations and undertakings related to such matters.

**Monitoring and Testing**

15. The Company will conduct periodic reviews and testing of its health care compliance code, policies, and procedures designed to evaluate and improve the effectiveness of such codes, policies, and procedures in preventing and detecting violations of federal health care laws as well as violations of the Company’s health care compliance code, policies, and procedures, taking into account relevant developments in the field and evolving regulatory and industry standards.
ATTACHMENT C

REPORTING REQUIREMENTS

PDQ Imaging Services, LLC (the “Company”) agrees that it will report to this office periodically, at no less than 12-month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment B. The Company agrees that it will report the following types of misconduct directly to this office: (1) any misconduct that poses a significant risk to public health or safety; (2) any misconduct that involves management of the Company; (3) any misconduct that involves obstruction of justice; (4) any misconduct that involves a violation of any federal or state criminal statute, or otherwise involves criminal activity; or (5) any misconduct that otherwise poses a significant risk of harm to any person or to any federal or state entity or program. Should the Company discover credible evidence, not already reported to this office, that such misconduct has occurred, the Company shall promptly report such conduct to this office.

During this three-year period, the Company shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two follow-up reviews and reports, as described below:

a. By no later than one year from the Effective Date, the Company shall submit to this office a written report setting forth (i) a complete description of its remediation efforts to date; (ii) its proposals reasonably designed to improve the Company’s internal controls, policies, and procedures for ensuring compliance with federal health care laws; and (iii) the proposed scope of the subsequent reviews. The

Attachment C – Page 1
The report shall be transmitted to Assistant United States Attorney Nathaniel C. Kummerfeld, United States Attorney’s Office for the Eastern District of Texas, 110 N. College, Ste. 700, Tyler, Texas 75702. The Company may extend the time period for issuance of the report with prior written approval of this office.

b. The Company shall undertake at least two follow-up reviews, incorporating this office’s views on the Company’s prior reviews and reports, to further monitor and assess whether the Company’s policies and procedures are reasonably designed to detect and prevent violations of federal health care laws.

c. The first follow-up review and report shall be completed by no later than one year after the initial review. The second follow-up review and report shall be completed by no later than one year after the completion of the preceding follow-up review. The final follow-up review and report shall be completed and delivered to this office no later than 30 days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation and impede pending or potential government investigations, thus undermining the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that this office determines in its sole discretion that disclosure would be in furtherance of this office’s discharge of its duties and responsibilities or is otherwise required by law.
e. The Company may extend the time period for submission of any of the follow-up reports with prior written approval of this office.