

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 5, 2009**

NEUROMETRIX, INC.

(Exact name of registrant as specified in charter)

Delaware
(State or Other
Jurisdiction
of Incorporation)

000-50856
(Commission File Number)

04-3308180
(IRS Employer
Identification No.)

62 Fourth Avenue
Waltham, Massachusetts 02451
(Address of Principal Executive Offices) (Zip Code)

(781) 890-9989
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Definitive Material Agreement.

On February 9, 2009, NeuroMetrix, Inc. (the "Company") announced that it had reached a resolution with the United States Department of Justice ("DOJ") and the Office of Inspector General ("OIG") of the United States Department of Health and Human Services regarding the previously-disclosed investigation into certain of the Company's past sales and marketing practices relating to its NC-stat System. The Company has been cooperating with the investigation since it began in 2006.

As part of the resolution, the Company has entered into a Deferred Prosecution Agreement (the "Deferred Prosecution Agreement"), dated February 5, 2009, with the DOJ related to the Company's operation of marketing referral programs. Pursuant to the Deferred Prosecution Agreement, the Company has agreed to a \$1.2 million payment, and the DOJ has agreed not to prosecute the Company in return for compliance with the terms of the three-year Deferred Prosecution Agreement.

In addition, the Company has entered into a civil Settlement Agreement (the "Settlement Agreement"), dated February 9, 2009, with the DOJ and OIG. The Settlement Agreement involves the referral programs and allegations that, where physicians performed a nerve conduction study using the NC-stat System and did not obtain an F-wave measurement, in limited circumstances, the Company caused physicians to seek reimbursement using the slightly higher valued 95903 CPT code payable for nerve conduction studies where an F-wave measurement is obtained, rather than the 95900 CPT code. While the Company does not admit to the allegations with respect to the F-wave coding issue, the Company has agreed to pay \$2.5 million to settle this dispute and enter into a five-year Corporate Integrity Agreement with OIG. The Company remains fully eligible to participate in all federal health care programs.

The foregoing description of the Deferred Prosecution Agreement and the Settlement Agreement is not complete and is qualified in its entirety by reference to such agreements, which are attached hereto as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Deferred Prosecution Agreement dated February 5, 2009 by and between NeuroMetrix, Inc. and the United States Attorney's Office for the District of Massachusetts
10.2	Settlement Agreement and Release dated February 9, 2009 by and among NeuroMetrix, Inc. and the United States of America acting through the United States Attorney's Office for the District of Massachusetts and the Office of Inspector General of the United States Department of Health and Human Services

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NEUROMETRIX, INC.

Dated: February 10, 2009

By: /s/ Shai N. Gozani, M.D., Ph.D.
Shai N. Gozani, M.D., Ph.D.
President and Chief Executive Officer

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EXHIBIT INDEX

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U.S. Department of Justice

Michael J. Sullivan
 United States Attorney
 District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
 1 Courthouse Way
 Suite 9200
 Boston, Massachusetts 02210

January 26, 2009

Joseph F. Savage, Jr.
 Goodwin Procter, LLP
 Exchange Place
 Boston, MA, 02109

Re: NeuroMetrix, Inc.

Dear Mr. Savage:

This letter sets forth the agreement (the "Agreement") between the United States Attorney's Office for the District of Massachusetts ("USAO") and your client, NeuroMetrix, Inc. ("NeuroMetrix"):

WHEREAS, NeuroMetrix is a Delaware corporation with a principal place of business in Waltham, Massachusetts, that is in the business of design, development, promotion, sale, and distribution of a medical device known as the NC-stat System to physicians nationwide. The NC-stat System is a medical device used in physicians' offices to assist in the diagnosis of neuropathies in peripheral nerves and the spine that can be caused by or associated with carpal tunnel syndrome, leg pain, diabetes, and other clinical disorders.

WHEREAS, the USAO conducted a criminal investigation regarding certain marketing referral programs in which NeuroMetrix engaged, to wit, allegations that from in or about August 2004 through in or about October 2006, NeuroMetrix offered and paid illegal remuneration to physicians in the form of free boxes of disposable biosensors to induce them to recommend purchase of the NC-stat System to their colleagues for the purpose of conducting nerve conduction studies that were reimbursed in whole or in part by the Medicare Program (the "Subject Matter"). As a result of its investigation, the USAO informed NeuroMetrix that the USAO has determined that there is sufficient basis to seek an indictment of NeuroMetrix for violations of federal criminal law, specifically for violations of the Medicare Anti-Kickback Act, 42 U.S.C. § 1320a-7b(b)(2).

WHEREAS, NeuroMetrix represents the following:

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- (a) NeuroMetrix does not endorse, ratify, or condone illegal conduct, and has taken steps to prevent such conduct from occurring in the future;
 - (b) NeuroMetrix discontinued all marketing referral programs, which programs involved several hundred boxes of free biosensors which were only a small fraction of the total number of biosensors purchased by physicians during the relevant time period;
 - (c) NeuroMetrix commenced a thorough internal investigation under the supervision of a Special Committee of the Board of Directors immediately upon notice of the allegations of improper conduct;
 - (d) NeuroMetrix cooperated with the USAO in its investigation, which cooperation included making employees available for interviews and testimony without subpoena; responding promptly to requests for documents by producing hundreds of thousands of pages of documents to the USAO, without subpoena and often within a week to ten days of the request; and conducting and providing certain analyses on company computer databases for data requested by the government;
 - (e) NeuroMetrix instituted a voluntary compliance program under the guidance of outside counsel ("compliance counsel");
 - (f) NeuroMetrix reformed relevant business practices based on its internal investigation and review by compliance counsel, including discontinuance of all marketing referral programs.

WHEREAS, NeuroMetrix will enter into a five year corporate compliance agreement with the Inspector General's Office of the Department of Health and Human Services, which requires NeuroMetrix to undertake various compliance obligations designed to ensure compliance with Federal health care program requirements ("CIA"). Among other provisions, the CIA includes "Specific Training" obligations that require all remaining employees of NeuroMetrix to receive annual training concerning proper methods for selling, marketing, and promoting medical devices, including without limitation the antikickback laws and regulations. The HHS-OIG monitors compliance with the CIA obligations and enforces any breaches in accordance with the remedies set forth in the CIA.

WHEREAS, the USAO has determined that an indictment of NeuroMetrix may cause disproportionate harm to innocent individuals including current employees who did not design or implement the marketing referral programs; NeuroMetrix's shareholders and customers who had no involvement in the criminal conduct under investigation; and patients for whom the NC-stat System provides a point-of-care alternative for nerve conduction studies; and the USAO does not allege that the conduct in which NeuroMetrix engaged adversely affected patient health or care.

NOW, THEREFORE, the USAO and NeuroMetrix agree as follows:

1. This agreement shall be in effect for thirty-six (36) months from the date of its execution.
2. NeuroMetrix admits to and acknowledges that it is responsible for the acts of its employees as set forth in the Information attached hereto as Appendix A, and agrees that the marketing referral programs violated 42 U.S.C. § 320a-7b(b)(2)(B). NeuroMetrix agrees that the facts in Appendix A are accurate in their entirety and NeuroMetrix agrees not to contradict the facts stated therein.
3. NeuroMetrix agrees that, if it violates any terms of this Agreement, the USAO may file the attached criminal Information in the United States District Court for the District of Massachusetts charging NeuroMetrix with a violation of 42 U.S.C. § 1320a-7b(b)(2).
4. NeuroMetrix will not, through its present or future directors, officers, employees, agents, attorneys, affiliates, parents or subsidiaries, make any public statements, including statements or positions in litigation in which any United States department or agency is a party, contradicting any statement of fact set forth in the Information attached as Appendix A. Any such contradictory public statement by NeuroMetrix, its present or future directors, officers, employees, agents, attorneys, affiliates, parents or subsidiaries shall constitute a breach of this Agreement, and subject to the provisions in Paragraph 5 below, NeuroMetrix shall be subject to prosecution on the Information attached to this agreement.
5. The decision as to whether any public statement by any such person contradicting a statement contained in Appendix A will be imputed to NeuroMetrix for the purpose of determining whether NeuroMetrix has breached this Agreement shall be at the sole reasonable discretion of the USAO. Upon the USAO reaching a determination that such a contradictory statement has been made by NeuroMetrix, the USAO shall so notify NeuroMetrix in writing and NeuroMetrix may avoid a breach of this Agreement by publicly repudiating such statement within five (5) days after written notification by the USAO. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory or civil matter initiated by the USAO against such individual, unless such individual is speaking on behalf of NeuroMetrix. Consistent with NeuroMetrix's obligation not to make a contradictory public statement, NeuroMetrix may take good faith positions in litigation involving any private party.
6. During the term of this Agreement, NeuroMetrix agrees to continue to cooperate fully with the USAO, and, as directed by the USAO, with any other federal, state or foreign law enforcement or regulatory agency regarding the Subject Matter. The duty to cooperate includes an affirmative duty of full and truthful disclosure. NeuroMetrix shall truthfully disclose to the USAO all information respecting the activities of NeuroMetrix and its present and former directors, officers,

employees, agents, attorneys, parents, affiliates and subsidiaries relating to Subject Matter about which the USAO may inquire, or which NeuroMetrix reasonably believes is material to the investigation by the USAO. NeuroMetrix agrees that its cooperation concerning the Subject Matter shall include, but is not limited to, the following:

- (a) providing reasonable access to NeuroMetrix's documents, facilities and directors, officers, employees, agents, affiliates and subsidiaries for matters relating to the investigation of the Subject Matter;
- (b) assembling, organizing and producing, or taking reasonable steps to effectuate the production of, on request from the USAO, all documents, records, or other tangible evidence related to the investigation in NeuroMetrix's possession, custody or control in such reasonable format that the USAO requests;
- (c) using its reasonable best efforts to make available its present or former directors, officers, employees, agents, affiliates and subsidiaries to provide information and/or testimony related to the investigation of the Subject Matter as requested, including sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities. Cooperation under this sub-paragraph will include identification of witnesses who, to NeuroMetrix's knowledge, may have material information regarding the investigation of the Subject Matter.
- (d) providing testimony and other information deemed necessary by the USAO or the court to establish the original location, authenticity, or other evidentiary foundation to admit into evidence documents in any criminal case or other proceeding as requested by the USAO; and
- (e) maintaining NeuroMetrix as a lawfully organized and adequately capitalized entity for purposes of this Agreement during the time this Agreement is in effect.

Nothing in this paragraph constitutes an agreement that NeuroMetrix will waive the attorney-client privilege or work product protections. The cooperation provisions of this paragraph shall not apply in the event that the USAO pursues a criminal prosecution against NeuroMetrix.

7. In exchange for the agreement of the USAO set forth in Paragraph 8 below, NeuroMetrix agrees:
 - (a) to accept responsibility as set forth in Paragraph 2 through 5 above.
 - (b) to pay one million two hundred thousand dollars (\$1,200,000) to the United States Treasury pursuant to electronic fund transfer instructions

that will be provided by the USAO. This payment is a material term of this Agreement. Failure to make payment within two business days of execution of this Agreement renders the Agreement null and void.

- (c) to continue to cooperate with the USAO in its investigation of the matters described herein as more fully set forth in Paragraph 6 above.
8. In light of NeuroMetrix's remedial actions to date and its willingness to (a) acknowledge responsibility for the behavior of its employees; (b) cooperate with the USAO and other governmental agencies; (c) demonstrate its future good conduct through full compliance with the terms of the CIA; and (d) fully comply with all the obligations undertaken this Agreement, the USAO agrees that it will not prosecute NeuroMetrix on the attached Information or any other matters investigated by the USAO as of the date of this Agreement.
9. For the term of this Agreement, should the USAO in its sole reasonable discretion, determine that NeuroMetrix (a) has knowingly and willfully given false, incomplete or misleading information under this Agreement; (b) engaged in conduct subsequent to the execution of this Agreement that constitutes a federal crime; or (c) has otherwise knowingly breached any provision of this Agreement (these three circumstances, (a), (b) and (c), are collectively referred to herein as "Breach"), NeuroMetrix shall, in the USAO's sole reasonable discretion, thereafter be subject to prosecution(s) for any federal criminal violations, including, without limitation, the offense charged in the Information. NeuroMetrix waives any right it may have to proceed by way of Indictment for the offense covered by the attached Information. NeuroMetrix waives venue and any legal or procedural defects in the attached Information. NeuroMetrix agrees that the applicable statute of limitations period (or any other legal equitable or constitutional basis for barring prosecution based on the passage of time) for the offense charged in the Information shall be tolled for a period of time equal to the term of this Agreement at the time a Breach is declared plus an additional six months after the declaration of the Breach. For all other offenses not charged in the Information that are not time-barred as of the date of this Agreement, NeuroMetrix agrees that the applicable statute of limitations period (or any other legal, equitable or constitutional basis upon which a prosecution may be time-barred), shall be tolled for the time period equal to the term of this Agreement at the time a Breach is declared plus an additional six months after the declaration of the Breach. Further, NeuroMetrix waives any rights it may have to a speedy trial pursuant to the Fifth or Sixth Amendments to the United States Constitution, 18 U.S.C. § 3161, Federal Rule of Criminal Procedure 48(b), any applicable local rule of the United States District Court for the District of Massachusetts, or any other applicable legal or equitable principle. NeuroMetrix's agreements herein are knowing and voluntary and in express reliance on the advice of counsel.

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10. The decision as to whether conduct and statements of any individual will be imputed to NeuroMetrix for the purpose of determining whether NeuroMetrix has committed a Breach shall be in the sole reasonable discretion of the USAO.
11. Should the USAO determine that NeuroMetrix has committed a Breach, the USAO shall provide written notice to NeuroMetrix of the alleged breach and provide NeuroMetrix with a two-week period in which to make a presentation to the USAO to demonstrate that: (a) no Breach has occurred, (b) the Breach is not a knowing breach, or (c) the Breach has been cured. The parties hereto expressly understand and agree that should NeuroMetrix fail to make a presentation to the USAO within a two-week period, it shall be conclusively presumed, at the USAO's option, that NeuroMetrix has committed a Breach. In the event of a Breach that results in a prosecution of NeuroMetrix, such a prosecution may be premised upon any information provided by or on behalf of NeuroMetrix to the USAO at any time, unless otherwise agreed when the information was provided.
12. NeuroMetrix agrees that in the event that the USAO, in its sole reasonable discretion, determines that NeuroMetrix has committed a Breach: (a) NeuroMetrix will not contest the filing of the Information nor the admissibility into evidence of the facts set forth in the Information (paragraphs 1-14) as binding admissions of NeuroMetrix; (b) NeuroMetrix will not contradict the contents of the Information; (c) all statements made by or on behalf of NeuroMetrix and any employee (current or former), or any testimony given by NeuroMetrix and any employee (current or former) before a grand jury or elsewhere, and any leads derived from such statements and testimony, shall be admissible in evidence against NeuroMetrix if proffered by the USAO in any criminal proceedings brought by the USAO against NeuroMetrix; (d) NeuroMetrix shall not assert any claim under the U.S. Constitution, the rules of evidence, common law or any other legal or equitable principle, that statements made by or on behalf of NeuroMetrix prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed; and (e) NeuroMetrix shall not assert that the conduct set forth in the Information fails to provide a sufficient factual or legal basis to support the charge set forth in the Information.
13. NeuroMetrix agrees that the consequences for a Breach as set forth in this Agreement, including without limitation, those set forth in paragraph 3 of this Agreement, are remedies to which the USAO is entitled in the event of a Breach and shall survive in the event of a Breach. NeuroMetrix further agrees that the USAO's remedies for a Breach are not limited to those set forth in this Agreement. NeuroMetrix further agrees that in the event of a Breach, NeuroMetrix shall nevertheless be bound by its waivers of any legal, equitable or constitutional rights set forth in this Agreement, including, without limitation, its waivers in paragraphs 9 and 12 of this Agreement, and those provisions shall survive even in the event of a Breach.

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14. NeuroMetrix agrees that if it sells or merges all or substantially all of the business operations as they exist as of the date of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.
15. The parties understand and acknowledge that this Agreement is binding on NeuroMetrix and the USAO, but specifically does not bind any other federal agencies, or any state or local law enforcement or licensing authorities.
16. Nothing in this Agreement restricts in any way the ability of the USAO from proceeding against any individual or entity not a party to this Agreement.

17. This Agreement expires thirty-six (36) months from the Effective Date; provided that if on the Effective Date the USAO or any other federal law enforcement or regulatory agency with which the USAO has directed NeuroMetrix to cooperate is then conducting any investigation, prosecution or proceeding relating to this investigation, then this Agreement shall expire on the date that any such investigation, prosecution or proceeding is finally terminated, as determined by the governmental department or agency conducting the investigation, prosecution or proceeding. Between thirty (30) and sixty (60) calendar days before the expiration of this Agreement, NeuroMetrix shall submit to the USAO a written certification that NeuroMetrix is in compliance with this Agreement.
18. NeuroMetrix and the USAO agree that this Agreement, including Appendix A, shall be made available to the public.
19. NeuroMetrix warrants and represents that its Board of Directors has duly authorized, in a specific resolution, the execution and delivery of this Agreement by NeuroMetrix, and that the person signing the Agreement has authority to bind NeuroMetrix. NeuroMetrix further agrees that it will deliver concurrently with an executed copy of the Agreement a copy of the requisite corporate resolution authorizing it to enter into this Agreement.
20. This Agreement (including Appendix A) constitutes the entire agreement, and supersedes all other prior agreements or understandings, both oral and written, among the parties with respect to the subject matter hereof.
21. This Agreement may not be modified except in writing signed by the parties.
22. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or

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electronic transmission shall be deemed to be their original signatures for all purposes.

23. NeuroMetrix agrees that should a dispute between NeuroMetrix and the USAO arise as to the meaning of any provision of this Agreement, any ambiguities as to the terms of this Agreement shall be construed in favor of the USAO.
24. The Effective Date of this Agreement shall be the date upon which this Agreement is fully executed by the parties.

MICHAEL J. SULLIVAN
United States Attorney

/s/ Diane C. Freniere
Diane C. Freniere
White Collar Section Chief

/s/ Susan G. Winkler
Susan G. Winkler
Health Care Fraud Chief

NeuroMetrix, Inc.

By: /s/ Shai Gozani
Its: President & CEO
NeuroMetrix, Inc.

Dated: 2/5/09

/s/ Joseph F. Savage, Jr.
Joseph F. Savage, Jr.
Goodwin Procter, LLP
Counsel to NeuroMetrix, Inc.

Dated: 2/5/09

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SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the United States of America, acting through the United States Attorney’s Office for the District of Massachusetts, and the Office of Inspector General (“OIG-HHS”) of the United States Department of Health and Human Services (“HHS”); and NeuroMetrix, Inc. (“NeuroMetrix”), a Delaware corporation with a principal place of business in Waltham, Massachusetts, through their authorized representatives. Collectively, all of the above shall be referred to as “the Parties.”

II. PREAMBLE

A. WHEREAS, at all relevant times, NeuroMetrix developed, designed, distributed, marketed, and sold a medical device known as the NC-stat System (the “medical device”) to physicians nationwide for the purpose of conducting nerve conduction studies on-site to assist in the diagnosis of neuropathies in the peripheral nerves and spine frequently caused by or associated with carpal tunnel syndrome, leg pain, diabetes, and other clinical disorders;

B. WHEREAS, NeuroMetrix has agreed to enter into a deferred prosecution agreement with the United States Attorney for the District of Massachusetts (the “Deferred Prosecution Agreement”), under which NeuroMetrix will acknowledge that it is guilty of a violation of 42 U.S.C. §1320a-7b(b)(2) by offering and paying illegal remuneration to physicians to induce them to refer and recommend the use of the NC-stat System to other physicians, as set forth in an Information attached to the Deferred Prosecution Agreement;

C. WHEREAS, the United States alleges that NeuroMetrix caused to be submitted claims for payment for the technical and professional component of use of the medical device to the Medicare Program, established pursuant to Title XVIII of the Social Security Act, § 1395-1395hhh, which is administered by HHS;

D. WHEREAS, the United States contends that it has certain civil claims against NeuroMetrix as specified in Paragraph 2 below for engaging in the following conduct:

(i) The United States contends that, from August 2004 through October 2006, NeuroMetrix knowingly and willfully offered and paid illegal remuneration to induce physicians to refer and recommend purchase of the NC-stat System, in violation of 42 U.S.C. §1320a-7b(b)(2) through marketing programs known as the “Referral Rewards Program” and “Customer Referral Program.” As a result, NeuroMetrix knowingly caused the submission of false or fraudulent claims to the Medicare Programs for nerve conduction studies performed with the NC-stat System for which no payments should have been made.

(ii) The United States contends that, from January 2003 through April 2006, NeuroMetrix knowingly caused the submission of false or fraudulent claims for payment to Medicare by providing coding reports to physicians that falsely indicated the nerve conduction studies performed with the NC-stat System should be billed under CPT Codes 95903 when no F-wave had been obtained, and which services should have been billed under CPT Code 95900 instead, a specific code for nerve conduction studies where no F-wave was obtained. As a result, NeuroMetrix knowingly caused the submission of false or fraudulent claims to Medicare that resulted in excess payments from Medicare to which the physicians were not entitled.

E. NeuroMetrix’s conduct as described in the Information attached to the Deferred Prosecution Agreement and Preamble Paragraph D is hereafter referred to as the “Covered Conduct.”

F. WHEREAS, HHS-OIG contends that it has certain administrative claims against NeuroMetrix, as specified in Paragraph 4 below, for engaging in the Covered Conduct.

G. WHEREAS, this Agreement is neither an admission of facts or liability by NeuroMetrix nor a concession by the United States that its claims are not well-founded, and NeuroMetrix denies that it engaged in any conduct giving rise to criminal or civil liability with the sole exception of such admissions as NeuroMetrix makes in connection with the Deferred Prosecution Agreement referenced in Paragraph B above.

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

1. NeuroMetrix agrees to pay to the United States the sum of two million four hundred ninety eight thousand three hundred thirty seven dollars (\$2,498,337), plus interest in an amount of 2.75% per annum on the Settlement Amount as further set forth below (\$188.23 per day) from January 1, 2009 and continuing until and including the day before complete payment is made (the “Settlement Amount”). This sum shall constitute a debt immediately due and owing to the United States on the Effective Date of this Agreement. The Settlement Amount shall be electronically transferred pursuant to instructions provided by the United States Attorney’s Office for the District of Massachusetts no later than the second business day following the date on which this Agreement is fully executed by the parties.

2. Subject to the exceptions in Paragraphs 3 and 4 below, and in consideration of the obligations of NeuroMetrix set forth in this Agreement, conditioned upon NeuroMetrix’s payment in full of the Settlement Amount, subject to Paragraph 12 below (concerning bankruptcy proceedings commenced

within 91 days of the Effective Date of this Agreement or any payment under this Agreement), and subject to the simultaneous execution of the Deferred Prosecution Agreement described in Preamble Paragraph B, the United States, on behalf of itself, and its officers, agents, agencies, and departments, agrees to release NeuroMetrix, its predecessors, and its current and former parents, affiliates, divisions, subsidiaries, successors and assigns, and their current and former directors, officers, and employees, from any civil or administrative monetary claim that the United States has or may have under the False Claims

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Act, 31 U.S.C. §§ 3729-33; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; any statutory provision applicable to the federal funded program in this Agreement for which the Civil Division, United States Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(d); and common law claims for fraud, unjust enrichment, payment by mistake, or disgorgement for the Covered Conduct.

3. Notwithstanding any term of this Agreement, the United States specifically does not release any person or entity from any of the following claims or liabilities: (a) any criminal, civil, or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code); (b) any criminal liability except as set forth in the Deferred Prosecution Agreement; (c) any liability to the United States (or any agencies thereof) for any conduct other than the Covered Conduct; (d) any claims based upon obligations created by this Agreement; (e) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs; (f) any express or implied warranty claims or other claims for defective or deficient products and services provided by NeuroMetrix; (g) any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct; (h) any claim based on a failure to deliver items or services due; or (i) any civil or administrative claims against individuals, including current and former directors, officers, and employees of NeuroMetrix, its predecessors, subsidiaries, and affiliates, who receive written notification that they are the target of a criminal investigation, are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement.

4. In consideration of the obligations of NeuroMetrix set forth in this Agreement, and the Corporate Integrity Agreement (“CIA”) entered into between OIG-HHS and NeuroMetrix, conditioned on NeuroMetrix’s payment in full of the Settlement Amount, and subject to Paragraph 12 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement or any payment under this Agreement), OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking

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exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against NeuroMetrix, its predecessors, and its current or former parents, affiliates, divisions, subsidiaries, successors, and assigns, under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks or other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 3 above, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude NeuroMetrix from the Medicare, Medicaid, or other Federal health care program under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 3 above.

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

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

7. In consideration of the obligations of the United States set forth in this Agreement, NeuroMetrix, on behalf of itself and its predecessors, its current and former parents, affiliates, divisions, subsidiaries, successors and assigns fully and finally releases, waives and discharges the United States, its agencies, employees, servants, and agents from any claims (including attorneys’ fees, costs, and expenses of every kind and however denominated) which NeuroMetrix has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to or arising from the United States’ investigation and prosecution of the Covered Conduct.

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8. The Settlement Amount that NeuroMetrix must pay pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by any State or Federal payer, related to the Covered Conduct; and, if applicable, NeuroMetrix agrees not to resubmit to any State and Federal payer any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

9. NeuroMetrix agrees to the following:

a. **Unallowable Costs Defined:** that all costs (as defined in the Federal Acquisition Regulation (“FAR”), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of NeuroMetrix, its predecessors, parents, divisions, subsidiaries, or affiliates, and its present or former officers, directors, employees, and agents in connection with: (1) the matters covered by this Agreement and the related Deferred Prosecution Agreement; (2) the United States’ civil and criminal investigation relating to matters covered by this Agreement; (3) NeuroMetrix’s investigation, defense, and any corrective actions undertaken in response to the United States’ civil and criminal investigations in connection with the matters covered by this Agreement (including attorneys’ fees); (4) the negotiation and performance of this Agreement and the Deferred Prosecution Agreement; (5) the payments made to the United States pursuant to this Agreement and the Deferred Prosecution Agreement; and (6) the negotiation of and obligations undertaken pursuant to the CIA to: (a) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (b) prepare and submit reports to the

OIG-HHS, are unallowable costs on Government contracts under the Medicare Program, Medicaid Program, TRICARE Program, Department of Veterans Affairs (DVA), and the Federal Employees Health Benefits Program (FEHBP). However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to NeuroMetrix. (All costs described or set forth in this Paragraph are hereafter, "Unallowable Costs").

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b. Future Treatment of Unallowable Costs: If applicable, these Unallowable Costs shall be separately estimated and accounted for by NeuroMetrix and NeuroMetrix shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by NeuroMetrix, its predecessors, divisions, subsidiaries, or affiliates to Medicare, Medicaid, TRICARE, FEHBP or DVA.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, NeuroMetrix further agrees that within 60 days of the Effective Date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, DVA, and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by NeuroMetrix, its predecessors, parents, divisions, subsidiaries, or affiliates and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. NeuroMetrix agrees that the United States, at a minimum, shall be entitled to recoup from NeuroMetrix any overpayment, plus applicable interest and penalties, as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by NeuroMetrix or its parents, divisions, subsidiaries or affiliates on the effect of inclusion of Unallowable Costs on NeuroMetrix or its divisions, subsidiaries or affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the

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rights of the United States to examine or re-examine the Unallowable Costs described in this Paragraph.

10. NeuroMetrix agrees that it shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors. NeuroMetrix waives any causes of action against these beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims for payment covered by this Agreement.

11. NeuroMetrix 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)(1)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. 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 NeuroMetrix 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. In the event NeuroMetrix commences, or another party commences, within 91 days of the Effective Date of this Agreement or any payment made hereunder, 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 NeuroMetrix's debts, or seeking to adjudicate NeuroMetrix as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for NeuroMetrix or for all or any substantial part of NeuroMetrix's assets, NeuroMetrix agrees as follows:

a. NeuroMetrix's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and NeuroMetrix shall not argue or otherwise take the position in any such case, proceeding or action that: (i) NeuroMetrix's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) NeuroMetrix was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the

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United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to NeuroMetrix.

b. If NeuroMetrix'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 United States, at its sole option, may rescind the releases provided in this Agreement, and bring any civil and/or administrative claim, action or proceeding against NeuroMetrix for the claims that would otherwise be covered by the releases provided in this Agreement. If the United States chooses to do so, NeuroMetrix agrees that for purposes only of any claims, actions or proceeding referenced in this first clause of this Paragraph (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude NeuroMetrix from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that NeuroMetrix shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) NeuroMetrix 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 which are brought by the United States within 90 calendar days of written notification to NeuroMetrix that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available before the Effective Date of this Agreement; and (iii) the United States has a valid claim against NeuroMetrix in the amount of three million seven hundred twenty five thousand dollars (\$3,725,000) plus applicable multipliers and penalties and they may pursue their claims, inter alia, in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action or proceeding; and

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

13. 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 claims against any other person or entity.

14. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of the Internal Revenue laws, Title 26 of the United States Code.

15. 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.

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the District of Massachusetts, except that disputes arising under the CIA shall be resolved exclusively through the dispute resolution provisions set forth in the CIA.

17. The undersigned NeuroMetrix signatory represents and warrants that he is authorized by the Board of Directors to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement on behalf of the United States.

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

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

20. This Agreement shall not be amended except by written consent of the Parties, except that only NeuroMetrix and OIG-HHS must agree in writing to modification of the CIA, without the consent of any other party to this Agreement or the Deferred Prosecution Agreement.

21. NeuroMetrix hereby consents to the disclosure of this Agreement and the Deferred Prosecution Agreement, and information about these agreements, by the United States to the public.

22. 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.

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UNITED STATES OF AMERICA

By: /s/ Jennifer A. Serafyn
JENNIFER A. SERAFYN
Assistant U.S. Attorney
United States Attorney's Office
District of Massachusetts

Dated: 2/9/09

By: /s/Gregory E. Demske
GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
U.S. Department of Health and Human Services

Dated: 2/6/09

By: /s/ Shai Gozani

Dated: 2/5/09

Name: Shai Gozani
Title: President & CEO
NeuroMetrix, Inc.

By: /s/ Joseph F. Savage, Jr.

Dated: 2/5/09

JOSEPH F. SAVAGE, JR.
Goodwin Procter LLP
Counsel to NeuroMetrix, Inc.
