SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Environmental Research Center, Inc. ("ERC") and Bio-Tech Pharmacal Inc. ("Bio-Tech Pharmacal") is effective on the date on which it is fully executed ("Effective Date"). ERC and Bio-Tech Pharmacal are referred to individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. This matter arises out of the Notice of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") that ERC served on Bio-Tech Pharmacal on August 29, 2019 (the "Notice") with regard to the following product identified below (referred to as the "Covered Product"):

Bio Tech Pharmacal Inc. EVAC Psyllium Fiber

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notice and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. This Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

In consideration of the following covenants and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

3.1 Beginning on the Effective Date, Bio-Tech Pharmacal shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

3.1.1 As used in this Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Bio-Tech Pharmacal knows or has reason to know will sell the Covered Product in California.

3.1.2 For purposes of this Agreement, the "Daily Lead Exposure Level, " shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label),

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which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

If Bio-Tech Pharmacal is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

> **WARNING:** Consuming this product can expose you to chemicals including [lead] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

Bio-Tech Pharmacal shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Bio-Tech Pharmacal has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product offered for sale in California, and if the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which product on the checkout page is subject to the Warning. In no event shall any internet or website Warning be contained in or made through a link.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of Bio-Tech Pharmacal's product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

Bio-Tech Pharmacal must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, container, or on its website, as applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

3.3 Conforming Covered Products

A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4.

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3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, Bio-Tech Pharmacal shall arrange for lead testing of the Covered Product at least once a year for a minimum of five (5) consecutive years by arranging for testing of five (5) randomly selected samples of the Covered Product, in the form intended for sale to the end-user, which Bio-Tech Pharmacal intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for the Covered Product during each of the five (5) consecutive years, then the testing requirements of this Section will no longer be required as to the Covered Product. However, if during or after the five-year testing period, Bio-Tech Pharmacal changes ingredient suppliers for the Covered Product and/or reformulates the Covered Product, Bio-Tech Pharmacal shall test the Covered Product annually for at least four (4) consecutive years after such change is made.

3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest lead detection result of the five (5) randomly selected samples of the Covered Product will be controlling.

3.4.3 All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg.

3.4.4 All testing pursuant to this Agreement shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration.

3.4.5 Nothing in this Agreement shall limit Bio-Tech Pharmacal's ability to conduct, or require that others conduct, additional testing of the Covered Product, including the raw materials used in its manufacture.

3.4.6 Within thirty (30) days of ERC's written request, Bio-Tech Pharmacal shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Bio-Tech Pharmacal shall retain all such lab reports and related documentation for a period of five years from the date of each test. Any request by ERC for lab reports and related documentation shall be made prior to the expiration of the five-year time period identified in this section 3.4.6.

3.4.7 The testing requirements of this Section 3.4 do not apply to the Covered Product if Bio-Tech Pharmacal has provided the Warning specified in Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event Bio-Tech Pharmacal ceases to

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provide the Warning specified in Section 3.2, Bio-Tech Pharmacal shall be required to comply with the testing requirements of this section beginning immediately after the date the Warning ceases to be provided or one year after the Effective Date, whichever date is later.

4. Bio-Tech Pharmacal shall make a total payment of $25,000.00 ("Total Settlement Amount") by wire transfer to ERC's account within 5 days of the Effective Date ("Due Date"), for which ERC will give Bio-Tech Pharmacal the necessary account information. The Total Settlement Amount shall be allocated as follows:

a. $18,602.86 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% ($13,952.14) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% ($4,650.72) of the civil penalty.

b. $955.48 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Bio-Tech Pharmacal's attention and negotiating a settlement.

c. $5,441.66 shall be considered reimbursement for ERC's in-house legal fees.

d. In the event that Bio-Tech Pharmacal fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Bio-Tech Pharmacal shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Bio-Tech Pharmacal via electronic mail. If Bio-Tech Pharmacal fails to deliver the Total Settlement Amount within five days from the written notice, the Total Settlement Amount shall become immediately due and payable and shall accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure section 685.010. Additionally, Bio-Tech Pharmacal agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the payment due under this Agreement.

5. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to the Notice.

6. Binding Effect; Claims Covered and Released

6.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, and Bio-Tech Pharmacal and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Bio-Tech Pharmacal), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Product, as to any alleged

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violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Product regarding lead up to and including the Effective Date.

6.2 ERC on its own behalf only, and Bio-Tech Pharmacal on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice up through and including the Effective Date, provided, however, that nothing in Section 6 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

6.3 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice, and relating to the Covered Product, will develop or be discovered. ERC, on behalf of itself only, and Bio-Tech Pharmacal, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. ERC and Bio-Tech Pharmacal acknowledge that the claims released in Sections 6.1 and 6.2 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

> (i) A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

ERC, on behalf of itself only, and Bio-Tech Pharmacal, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

6.4 Compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in the Covered Product as set forth in the Notice.

6.5 Nothing in this Agreement is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Bio-Tech Pharmacal's products other than the Covered Product.

7. Nothing herein shall be construed as diminishing Bio-Tech Pharmacal's continuing obligations to comply with Proposition 65.

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8. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail, or via electronic mail where required. Courtesy copies of notices sent via first-class mail may also be sent via email.

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:
Charles W. Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

FOR BIO-TECH PHARMACAL INC.:

Bio-Tech Pharmacal, Inc.
ATTN: Dale Benedict
P.O. Box 1927
Fayetteville, AR 72702

With a copy to:
W. Asa Hutchinson III
The Asa Hutchinson Law Group, PLC
912 W. Central Avenue
Bentonville, AR 72712
Ph: (479) 878-1600
Email: ahutchinson@ahlawgroup.com

9. After executing this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding the Notice, the settlement, and this Agreement.

10. This Agreement contains the entire agreement between the Parties with regard to settlement of the Notice, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the Notice as set forth in this Agreement. This Agreement may be amended or modified as to injunctive terms only in whole or in part at any time only by an agreement in writing executed by the Parties.

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11. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

12. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

13. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

14. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

15. The Parties acknowledge by signing this Agreement that they have a right to consult an attorney and that they have either consulted their attorney(s) with respect to the Notice and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notice and the terms and conditions of this Agreement. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

16. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. ERC shall be entitled to recover its reasonable attorneys' fees and costs that are necessary and required to enforce the Agreement pursuant to California Code of Civil Procedure section 1021.5.

17. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

18. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

Signatures on following page

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DATED: 1/17/2020

BIO-TECH PHARMACAL INC.

By: _____
Dale Benedict
Title: President

DATED: 1/15/2020

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

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