

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice on the Department's behalf and on behalf of the Office of Inspector General ("OIG-HHS" or "OIG") of the Department of Health and Human Services ("HHS") (collectively the "United States"); the Commonwealth of Kentucky, Department of Medicaid Services (the "Kentucky Medicaid Program"); Jewish Hospital HealthCare Services, Inc. ("JHHS"); and Jan Blessman (the "Relator"), through their authorized representatives. Collectively, all of the above will be referred to as the "Parties."

II. PREAMBLE

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

A. JHHS owns Jewish Hospital in Louisville, Kentucky, and is a Kentucky non-stock, nonprofit corporation which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Jewish Hospital is a 442-bed tertiary care, nonprofit hospital.

B. The Relator is an individual resident of Indiana. In 1998, the Relator filed a civil action in the United States District Court for the Western District of Kentucky entitled United States ex rel. Jan Blessman v. Jewish Hospital Healthcare Services, Inc., et al., Civ. Action No. 3:98CV-524-J (W.D. Ky.) (the "Civil Action"). The Relator was formerly employed as an auditor for CIS Technologies, Inc. ("CIS"), which is named as a defendant with JHHS in the Civil Action. Her duties as an auditor for CIS included reviewing certain information pertaining

cc: Sara McLean
John Steenberg

to billing practices and procedures at Jewish Hospital as part the effort of JHHS to bill correctly for services rendered at Jewish Hospital.

C. JHHS regularly submits claims for payment to the Medicare program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg (1999), and the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (1999) for services rendered at Jewish Hospital.

D. The United States has reviewed the complaint filed by the Relator in the Civil Action (the "Complaint") and related information and has engaged in discussions with JHHS regarding the allegations of the Relator in the Complaint. JHHS has provided to the United States information which the United States has sought in connection with the allegations in the Complaint. The United States has intervened in the Civil Action with respect to Count I of the Complaint with respect to JHHS but not with respect to CIS and has declined to intervene with respect to Count II of the Complaint.

E. The United States contends that it has certain civil claims against JHHS under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or certain common law doctrines, for engaging in the following conduct: JHHS submitted or caused the submission of claims to the Medicare program and the Kentucky Medicaid Program for different services, medical devices, and supplies than were actually used or provided in connection with outpatient services performed at Jewish Hospital's heart catheterization laboratories (the "Cath Labs") during the period from May 1, 1996, through February 28, 1997 (the "Covered Conduct").

F. The United States also contends that it has certain administrative claims against JHHS under the provisions for permissive exclusion from the Medicare, Medicaid and other Federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

G. JHHS denies that the Covered Conduct is the basis for any claim or allegation by the Relator, the United States, or anyone else, that any aspect of the Covered Conduct constitutes a violation by JHHS of the False Claims Act, 31 U.S.C. §§ 3729-3733, and denies the contentions of the United States set forth in Paragraphs E and F, above.

H. In order to avoid the delay, uncertainty, inconvenience, and expense of litigating the allegations and claims made in the Complaint, the Parties have reached a full and final settlement of all matters relating to the Civil Action on the terms set forth in this Agreement.

III. TERMS AND CONDITIONS

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

1. In consideration of the releases, waivers, and obligations of the United States and the Relator as set forth below, JHHS agrees to pay the total sum of \$226,164.00 (the "Settlement Amount") to the United States, the Kentucky Medicaid Program, and the Relator. The United States and the Relator agree that, pursuant to 31 U.S.C. § 3730(d)(1), the Relator's share of the Settlement Amount is sixteen percent (16%) of the total Settlement Amount, or \$36,186.24. JHHS will pay the Settlement Amount in two separate payments.

1.1 The first payment of \$189,977.76 will be made to the United States by electronic funds transfer pursuant to written instructions previously provided by William F. Campbell (or his successor), Assistant United States Attorney, Western District of Kentucky, Louisville, Kentucky. JHHS will make this payment by no later than five days after the effective date of this Agreement as stated in Paragraph 23 below.

1.2 JHHS will send the remainder of the Settlement Amount, that is \$36,186.24, directly to the undersigned attorney for the Relator pursuant to written instructions previously provided by such counsel for the Relator. JHHS will notify the Internal Revenue Service of the payment made to the Relator under this Agreement by filing a Form 1099 covering the payment. JHHS will make this payment by no later than five days after the effective date of this Agreement as stated in Paragraph 23 below.

2. In addition to paying the Settlement Amount as set forth in Paragraph 1 above, JHHS also agrees that it will make a good faith attempt to identify, quantify, and adjust the patient accounts of the Medicare beneficiaries whose co-payments may have been inflated due to the Covered Conduct including payments to the beneficiaries and their private insurers.

3. Subject to the exceptions in Paragraphs 4 and 8 below, in consideration of the waivers, releases, and obligations of JHHS set forth in this Agreement, and conditioned upon JHHS's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments), the Kentucky Medicaid Program (on behalf of itself, its officers, agents, agencies and departments), and the Relator (collectively, the "Releasers") hereby release JHHS, together with its current and former direct and indirect subsidiaries, brother

or sister corporations, divisions, current or former owners, officers, directors, affiliates, agents, and employees, and the successors and assigns of any of them, from any civil or administrative monetary claim arising from or related to the Covered Conduct which the Releasers have or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

4. In consideration of the obligations of JHHS set forth in this Agreement and conditioned upon JHHS's payment in full of the Settlement Amount, the United States and the Relator agree that within five (5) days of JHHS' payment in full of the Settlement Amount, the United States and the Relator will notify the Court that the United States and the Relator stipulate and request that JHHS be dismissed with prejudice from the Civil Action subject to the terms of this Agreement. The Parties recognize, however, that the Court retains jurisdiction of the Civil Action to enforce the terms of this Agreement. Notwithstanding the provisions of Paragraph 3 and this Paragraph, if the OIG has given Jewish Hospital a "Notice of Material Breach and Intent to Exclude" in accordance with section 7.10.C below and Jewish Hospital has not cured such alleged breach within the 30 day period described in that section, the United States may also rescind the releases set forth in Paragraph 3 and reinstate the Civil Action based upon the Covered Conduct.

5. The Relator agrees that the settlement contained in this Agreement is fair, adequate, and reasonable, and the Relator will not challenge any of the terms of this Agreement

pursuant to 31 U.S.C. § 3730(c)(2). The Relator hereby releases the United States, its agencies, employees, servants, and agents from any claims which the Relator has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, relating to the filing of the Civil Action, or, pursuant to 31 U.S.C. § 3730(d)(1), for a share of the proceeds of the settlement under this Agreement, other than the share stated in Paragraph 1 above.

6. In consideration of the obligations of JHHS set forth in this Agreement, and conditioned upon JHHS's payment in full of the Settlement Amount and compliance with the Integrity Provisions included in this Agreement, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against JHHS under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 8, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8, below. No individuals are released by this Paragraph.

7.1 INTEGRITY PROVISIONS

JHHS hereby agrees to these Integrity Provisions set forth within sections 7.1 through 7.10.D.3 of this Agreement to promote compliance by its employees, contractors, agents and physicians with the requirements of Medicare, Medicaid and all other Federal health care

programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs"). The integrity obligations set forth in section 7.3 below shall apply only to the facility known as "Jewish Hospital" located in the Downtown Medical Center of Louisville, Kentucky, including its component known as the "Rudd Heart and Lung Center," ("Jewish Hospital") and, consistent with Paragraph 24 below, its successors, assigns and transferees.

Jewish Hospital represents to the OIG that it has adopted a voluntary compliance program ("Compliance Program") prior to agreeing to these Integrity Provisions. Jewish Hospital agrees that it shall modify its Compliance Program as necessary to meet the requirements of these Integrity Provisions. Jewish Hospital's compliance with the terms and conditions in these Integrity Provisions shall constitute an element of Jewish Hospital's present responsibility with regard to participation in the Federal health care programs on the terms stated in these Integrity Provisions.

7.2 TERM OF THESE INTEGRITY PROVISIONS

The period of compliance obligations assumed by Jewish Hospital under these Integrity Provisions shall be three (3) years from the effective date of this Agreement (unless otherwise specified in these Integrity Provisions).

7.3 COMPLIANCE OBLIGATIONS

Jewish Hospital shall ensure that its Compliance Program includes the following elements during the term of these Integrity Provisions.

A. Compliance Officer and Committee.

1. *Compliance Officer.* Jewish Hospital shall have an individual serving as its Compliance Officer, who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in these Integrity Provisions and with the requirements of the Federal health care programs. The Compliance Officer shall be a member of the senior management of Jewish Hospital, shall make regular reports, at least quarterly, regarding compliance matters directly to the CEO and/or the Board of Trustees of Jewish Hospital, and shall be authorized to report to the Board of Trustees at any time. The Compliance Officer shall be responsible for monitoring the day-to-day activities engaged in by Jewish Hospital to further its compliance objectives as well as for any reporting obligations created under these Integrity Provisions. In the event a new Compliance Officer is appointed during the term of these Integrity Provisions, Jewish Hospital shall notify the OIG, in writing, within fifteen (15) days of such a change.

2. *Management Compliance Committee.* Within ninety (90) days of the effective date of this Agreement, Jewish Hospital shall have in place, in addition to its existing compliance committee including members of the JHHS Board of Trustees, an additional committee (the "Management Compliance Committee") which shall include, at a minimum, the Compliance Officer and the persons named from time to time as Directors of the following Departments of Jewish Hospital: Health Information Management (medical records and coding), Patient Accounting (billing), Human Resources, and Internal Audit. The Compliance Officer shall chair the Management Compliance Committee which shall support the Compliance Officer in

fulfilling his or her responsibilities.

3. *Definition of "Covered Persons."* The term "Covered Persons" shall mean, for all purposes of these Integrity Provisions all employees of JHHS who are either working at Jewish Hospital, or supervising patient care provided by Jewish Hospital, or who are providing or supervising billing or coding services with respect to Jewish Hospital, and all contractors or agents (including their employees) providing or supervising patient care or billing or coding services on behalf of Jewish Hospital. Individuals working less than one hundred and sixty (160) hours annually at Jewish Hospital, including any employee or independent contractor of a "Nursing Agency" as defined in section 7.3.C.5 shall not be considered Covered Persons. Jewish Hospital's obligations with respect to Covered Persons who are "Pre-existing Contractors" shall be set forth in section 7.3.C.4 below.

B. Written Standards.

1. *Code of Conduct.* Jewish Hospital shall continue to maintain a Code of Conduct. Within ninety (90) days after the effective date of this Agreement, the Code of Conduct shall be distributed to all Covered Persons who have not already received it. Jewish Hospital shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. Within ninety (90) days of the effective date of these Integrity Provisions, Jewish Hospital shall review and revise, if appropriate, its established Code of Conduct. At its own discretion, Jewish Hospital may fulfill its obligation under this section by revising and reissuing its Code of Conduct adopted January, 1999. In order to meet the requirement of maintaining and distributing a Code

of Conduct in compliance with these Integrity Provisions, Jewish Hospital may make available at training meetings or otherwise distribute to all Covered Persons, from time to time, the entire Code of Conduct, as revised, or a supplement containing any revisions to the Code of Conduct that Jewish Hospital may adopt, however, within ninety (90) days after the effective date of this Agreement, all Covered Persons shall have received the Code of Conduct. The Code of Conduct shall, at a minimum, set forth:

- a. Jewish Hospital's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by appropriate regulatory agencies, e.g., the Health Care Financing Administration ("HCFA"), and/or their agents;
- b. Jewish Hospital's requirement that all of its Covered Persons shall be expected to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Jewish Hospital's own Policies and Procedures (including the applicable provisions of these Integrity Provisions);
- c. the requirement that all of Jewish Hospital's Covered Persons shall be expected to report suspected violations of any statute, regulation, or guideline applicable to Federal health care programs

- or of Jewish Hospital's own Policies and Procedures;
- d. the possible consequences to both Jewish Hospital and Covered Persons of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with Jewish Hospital's own Policies and Procedures or of failure to report such non-compliance; and
 - e. the right of all Covered Persons to use the Jewish Hospital Confidential Disclosure Program, as described in section 7.3.E below, and Jewish Hospital's commitment to confidentiality and non-retaliation with respect to disclosures.

Within ninety (90) days of the effective date of this Agreement, each Covered Person who has not already done so shall certify, in writing, that he or she has received, understands, and will abide by Jewish Hospital's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within two weeks after becoming a Covered Person or within ninety (90) days of the effective date of this Agreement, whichever is later.

Jewish Hospital shall annually review the Code of Conduct and shall make any necessary revisions. These revisions shall be distributed within thirty (30) days of initiating such a change. Covered Persons shall certify on an annual basis that they have received, understand, and will abide by the Code of Conduct. Jewish Hospital's obligations with respect to Covered Persons who are "Pre-Existing Contractors" shall be set forth in section 7.3.C.4 below.

2. *Policies and Procedures.* Jewish Hospital shall continue its process of adopting, promulgating, and amending as appropriate written Policies and Procedures regarding the operation of Jewish Hospital's Compliance Program and its compliance with federal and state health care statutes, regulations, and guidelines, including the requirements of the Federal health care programs (the "Policies and Procedures"). The Policies and Procedures shall address specifically the accurate billing of hospital procedures, services, supplies and drugs, including but not limited to, the maintenance of an accurate and up-to-date Charge Description Master ("CDM") file, in the manner of Jewish Hospital's current Policy titled "Charge Description Master File Maintenance Policy and Procedure," effective October 1, 1999. In addition, the Policies and Procedures shall include disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues to Jewish Hospital management through the Confidential Disclosure Program described in section 7.3.E. Jewish Hospital shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. Jewish Hospital shall make the Policies and Procedures available to the OIG upon request.

Within ninety (90) days of the effective date of this Agreement, the relevant portions of the Policies and Procedures shall be made available to all appropriate Covered Persons who have not already received them. Compliance staff or supervisors shall be available to explain any and all Policies and Procedures as reasonably requested.

C. Training and Education.

1. *General Training.* In accordance with Jewish Hospital's 1999/2000 Compliance Training and Education Plan, or such other plan as Jewish Hospital shall develop and implement to comply with the requirements of these Integrity Provisions, within ninety (90) days of the effective date of this Agreement, Jewish Hospital shall provide at least two (2) hours of training to each Covered Person. This general training shall explain Jewish Hospital's:

- a. Requirements under these Integrity Provisions
- b. Compliance Program (including the Policies and Procedures as they pertain to general compliance issues); and
- c. Code of Conduct.

General compliance training (as described above) provided by Jewish Hospital to Covered Persons prior to the execution of this Agreement during 1999 and/or 2000 may be credited toward the training time requirements set forth in this section 7.3.C.1. The training materials used for the general training shall be made available to the OIG, upon request.

New Covered Persons shall receive the general training described above within thirty (30) days of becoming a Covered Person or within ninety (90) days after the effective date of this Agreement, whichever is later. Each Covered Person shall receive such general training on an annual basis.

In each year of employment after a Covered Person's first year of employment, he or she shall receive one hour of general training.

2. *Specific Training.* Within ninety (90) days of the effective date of this

Agreement, each Covered Person who is involved directly or in a supervisory role in the preparation or submission of claims for reimbursement for items or services (including, but not limited to, coding and billing) for any Federal health care program shall receive on an annual basis at least six (6) hours of specific training in addition to the general training required above. The specific training may be provided in periodic training sessions over the course of each calendar year during which these Integrity Provisions are in effect, and specific training (as described below) provided by Jewish Hospital to Covered Persons within the four months immediately preceding the effective date of this Agreement may be credited towards the training requirements set forth within this section 7.3.C.2. The specific training shall include a discussion of:

- a. the submission of accurate bills for services rendered to Federal health care program patients;
- b. policies, procedures and other requirements applicable to the documentation of medical records;
- c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;
- d. applicable reimbursement statutes, regulations, and program requirements and directives, including, where appropriate, the proper billing of hospital procedures, services, supplies and drugs, including but not limited to, the maintenance of an accurate and up-to-date CDM file;

- e. the legal sanctions for improper billings; and
- f. examples of proper and improper billing practices.

The training materials used for the specific training shall be made available to the OIG upon request. Persons providing the training must be knowledgeable about the subject area.

Affected new Covered Persons shall receive this training within thirty (30) days of the beginning of their employment or within ninety (90) days of the effective date of this Agreement, whichever is later. If a new Covered Person has any responsibility for the preparation or submission of claims, and/or the assignment of procedure codes prior to completing this specific training, a Jewish Hospital employee who has completed the substantive training shall review the untrained person's work regarding the preparation or submission of claims and the assignment of billing codes, including but not limited to, the proper billing of hospital procedures, services, supplies and drugs, for example, through the maintenance of an accurate and up-to-date CDM file.

3. *Certification.* Each individual who is required to attend training shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. Jewish Hospital shall retain the certifications, along with specific course materials, which shall be made available to the OIG upon request.

4. *Exception for Pre-Existing Contractors.* The term "Pre-Existing Contractors" shall refer to Covered Persons who are independent contractors with whom Jewish Hospital has an existing contract on the effective date of this Agreement that has not been renewed or modified after the effective date of this Agreement. Once Jewish Hospital renegotiates,

modifies, or renews a contract with a Pre-Existing Contractor, such Contractor ceases to be a Pre-Existing Contractor as that term is used for purposes of these Integrity Provisions, and Jewish Hospital shall have full responsibility for the certification and training compliance obligations as pertain to such Contractor as contemplated by sections 7.3.B and 7.3.C. Notwithstanding any other provision of these Integrity Provisions, the following are Jewish Hospital's only obligations hereunder with respect to training and certifications for Pre-Existing Contractors: (i) Jewish Hospital shall attempt to renegotiate contracts with Pre-Existing Contractors to require such contractors to meet all of the training and certification requirements of these Integrity Provisions; and (ii) Jewish Hospital shall make the Code of Conduct available to all Pre-Existing Contractors and shall make the general training, and specific training, where appropriate, available to all Pre-Existing Contractors, and shall use its best efforts to encourage their attendance and participation. The Compliance Officer shall keep a record of all Pre-Existing Contractors who attend such training.

5. *Exception for Nursing Agencies.* Notwithstanding any other provision of these Integrity Provisions, the following shall be Jewish Hospital's only obligations hereunder with respect to training and certifications for individuals working at Jewish Hospital as the employee or independent contractor of any entity providing part-time or temporary nursing services to Jewish Hospital (a "Nursing Agency"). Within ninety (90) days of the effective date of this Agreement, each Nursing Agency providing such services shall certify in writing to Jewish Hospital that all individuals working at Jewish Hospital on behalf of the Nursing Agency shall have: (i) received the Code of Conduct described in section 7.3.B.1; (ii) received a flyer or other notice describing Jewish Hospital's Confidential Disclosure Program as described in section 7.3.E. Any individual working one hundred and sixty (160) hours or more annually at Jewish Hospital as the employee or independent contractor of a Nursing Agency shall meet the definition of Covered Person as set forth in section 7.3.A.3, and Jewish Hospital shall have full responsibility for the certification and training compliance obligations as pertain to such Covered Person as set forth in sections 7.3.B and 7.3.C.

D. Review Procedures. Jewish Hospital shall retain an entity, such as an accounting, auditing or consulting firm (an "Independent Review Organization"), to perform review procedures to assist Jewish Hospital in assessing the adequacy of its billing and compliance practices pursuant to these Integrity Provisions in accordance with these Integrity Provisions. The billing reviews shall be performed annually and shall cover each of the one-year periods beginning on the effective date of this Agreement or the one-year periods beginning on the first two anniversaries of that date. The compliance review shall be performed once and shall cover

the one year period beginning with the effective date of this Agreement. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs from which Jewish Hospital seeks reimbursement. The Independent Review Organization must be retained to conduct the review of the first year within ninety (90) days of the effective date of this Agreement.

The Independent Review Organization shall conduct two separate engagements. One shall be an analysis of Jewish Hospital's billing to the Federal health care programs to assist Jewish Hospital and the OIG in determining Jewish Hospital's compliance with all applicable statutes, regulations, and directives or guidance (the "billing engagement"). The second engagement shall verify whether Jewish Hospital is in compliance with these Integrity Provisions (the "compliance engagement").

1. *Billing Engagement.* The billing engagement shall consist of a review of a statistically valid sample of claims that can be projected to the population of claims for outpatient care provided to patients treated at the Rudd Heart and Lung Center (or claims for equivalent outpatient care provided by Jewish Hospital in any other portion of Jewish Hospital) submitted to the Federal health care programs during the relevant year covered by the engagement, in accordance with the following provisions. For this purpose, "equivalent outpatient care" shall mean the particular procedures described on Attachment 1 to this Agreement, and JHHS hereby represents to the OIG that the procedures listed on Attachment 1 include all of the outpatient procedures currently performed at the Rudd Heart and Lung Center. In the event that additional outpatient procedures are performed at the Rudd Heart and Lung Center during the term of these

Integrity Provisions, all claims for those additional services shall be included in the population of claims reviewed by the billing engagement. The sample size shall be determined through the use of a probe sample. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. The full sample must contain a sufficient number of units so that when the sample results are projected to the population of claims, the projection provides a minimum 90% confidence level and a maximum precision of plus or minus 25% of the point estimate (i.e., the upper and lower bounds of the 90% confidence interval shall not exceed 125% and shall not fall below 75% of the midpoint of the confidence interval, respectively). Both the probe sample and the full sample must be selected through random number sampling. To generate the random sample, Jewish Hospital shall use the OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "www.hhs.gov/oas/ratstat.html."

Each annual billing engagement review shall include the following components in its methodology:

- a. Billing Engagement Objective: a clear statement of the objective intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective.
- b. Billing Engagement Population: the identity of the population, which is the group about which information is needed and an explanation of the methodology used to develop the population and

provide the basis for this determination.

- c. Sources of Data: a full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.
- d. Sampling Unit: a definition of the sampling unit, which is any of the designated elements that comprise the population of interest.
- e. Sampling Frame: the identity of the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The billing engagement shall provide:

- a. findings regarding Jewish Hospital's billing and coding operation (including, but not limited to, the operation of the billing system, strengths and weaknesses of the system, internal controls, and effectiveness of the system);
- b. findings regarding whether Jewish Hospital is submitting accurate claims and corresponding cost report entries for services billed to the Federal health care programs;
- c. findings regarding Jewish Hospital's procedures to correct inaccurate billings or codings to the Federal health care programs;
- d. findings regarding the systems and controls in place to ensure the

- accuracy of Jewish Hospital's billing of hospital procedures, services, supplies and drugs, including but not limited to, the maintenance of an accurate and up-to-date Charge Description Master ("CDM") file;
- e. findings regarding whether Jewish Hospital has complied with its obligation under the Settlement Agreement: (a) not to resubmit to any Federal health care program payers any previously denied claims related to the conduct addressed in the Settlement Agreement, and its obligation not to appeal any such denials of claims, and (b) not to charge to or otherwise seek payment from federal or state payers for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify and adjust any past charges of such unallowable costs; and
 - f. findings regarding the steps Jewish Hospital is taking to bring its operations into compliance or to correct problems identified by the review;

A complete copy of the Independent Review Organization's most recent billing engagement report shall be included in each of Jewish Hospital's Annual Reports to the OIG.

2. *Compliance Engagement.* The compliance engagement shall provide findings regarding whether Jewish Hospital's program, policies, procedures, and operations comply with the terms of these Integrity Provisions, including section by section findings regarding the

requirements of these Integrity Provisions.

A complete copy of the Independent Review Organization's compliance engagement shall be included in the first of Jewish Hospital's Annual Reports to the OIG.

3. *Verification/Validation.* In the event the OIG has reason to believe that the billing engagement performed for Jewish Hospital by the Independent Review Organization fails to conform to the requirements of section 7.3.D.1 or indicates improper billings not otherwise adequately addressed in the billing engagement report, and thus determines that it is necessary to conduct an additional independent review to determine whether, or the extent to which, Jewish Hospital is complying with its obligations under these Integrity Provisions, Jewish Hospital agrees to pay for the reasonable costs of any such additional review or engagement by the OIG or any of its designated agents.

E. Confidential Disclosure Program. Jewish Hospital shall continue to maintain a Confidential Disclosure Program, which includes measures (e.g., a toll-free compliance telephone hotline) to enable employees, contractors, agents or other individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Jewish Hospital's policies, practices or procedures with respect to a Federal health care program, believed by the individual to be inappropriate. Jewish Hospital shall publicize the existence of the hotline (e.g., e-mail to employees or post hotline number in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication.

Upon receipt of a disclosure, the Compliance Officer or his or her designee shall gather the information in such a way as to elicit all relevant information from the disclosing individual. The Compliance Officer or his or her designee shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice, and (2) provides an opportunity for taking corrective action, Jewish Hospital shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigation(s), and any corrective action taken in response to the investigation(s).

F. Ineligible Persons.

1. *Definition.* For purposes of these Integrity Provisions, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, suspended, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

2. *Screening Requirements.* Jewish Hospital shall not hire, engage as a contractor, or grant staff privileges to any Ineligible Person. To prevent hiring or contracting

with any Ineligible Person, Jewish Hospital shall screen all prospective employees and prospective contractors prior to engaging their services and screen physicians prior to granting staff privileges by (i) requiring each applicant to disclose whether he, she, or it is an Ineligible Person, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.arnet.gov/eplis>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.dhhs.gov/OIG>) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within ninety (90) days of the effective date of this Agreement, Jewish Hospital shall review its list of current employees, contractors, and physicians with staff privileges against the Exclusion Lists. Thereafter, Jewish Hospital shall review its list semi-annually. If Jewish Hospital has notice that an employee, agent, or physician has become an Ineligible Person, Jewish Hospital shall remove such person from responsibility for, or involvement with, Jewish Hospital's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Jewish Hospital has notice that an employee is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, Jewish Hospital shall take all

appropriate actions to ensure that the responsibilities of that employee or contractor do not adversely affect the quality of care rendered to any patient or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Proceedings. Within thirty (30) days of discovery, Jewish Hospital shall notify the OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents, of which Jewish Hospital has knowledge, involving an allegation that Jewish Hospital has committed a crime or has engaged in fraudulent activity. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Jewish Hospital shall also provide notify the OIG within thirty (30) days of the resolution of the matter, and shall provide the OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting.

1. *Overpayments*

a. *Definition of Overpayments.* For purposes of these Integrity Provisions, an "Overpayment" shall mean the amount of money Jewish Hospital has received in excess of the amount due and payable under any Federal health care program requirements. Jewish Hospital may not subtract any underpayments for purposes of determining the amount of relevant "overpayments."

b. *Reporting of Overpayments.* If, at any time, Jewish Hospital identifies

or learns of any Overpayments, Jewish Hospital shall notify the payer (e.g., Medicare fiscal intermediary or carrier) and repay any identified Overpayments within 30 days of discovery and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the payer) to correct the problem, including preventing the underlying problem and the Overpayments from recurring. Notification and repayment to the payer, including any "adjustment billing," should be done in accordance with the payer's policies.

2. Material Deficiencies.

a. Definition of Material Deficiency. For purposes of these Integrity Provisions, a "Material Deficiency" means anything that involves:

- (i) a substantial Overpayment;
- (ii) a matter that a reasonable person would consider a potential violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized; or

A Material Deficiency may be the result of an isolated event or a series of occurrences.

b. Reporting of Material Deficiencies. If Jewish Hospital determines that there is a Material Deficiency, Jewish Hospital shall notify OIG, in writing, within 30 days of making the determination that the Material Deficiency exists. The report to the OIG shall include the following

information:

(i) If the Material Deficiency results in an Overpayment, the report to the OIG shall be made at the same time as the notification to the payer required in section 7.3.H.1, and shall include all of the information on the Overpayment Refund Form, provided as Exhibit A to this Agreement, as well as:

(A) the payer's name, address, and contact person to whom the Overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid/refunded;

(ii) a complete description of the Material Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

(iii) a description of Jewish Hospital's actions taken to correct the Material Deficiency; and

(iv) any further steps Jewish Hospital plans to take to address the Material Deficiency and prevent it from recurring.

7.4 NEW BUSINESS UNITS OR LOCATIONS

In the event that Jewish Hospital purchases or establishes new business units after the effective date of this Agreement, Jewish Hospital shall notify the OIG of the new business unit

not later than thirty (30) days after the date the new business unit begins providing services. This notification shall include the location of the new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding payer(s) (contractor specific) that has issued each provider number. All Covered Persons at such locations shall be subject to the requirements in these Integrity Provisions that apply to new Covered Persons (e.g., completing certifications and undergoing training).

7.5 REPORTS

A. Initial Availability and Certification. Within one hundred and twenty (120) days after the effective date of this Agreement, Jewish Hospital's Compliance Officer shall be available to the OIG to summarize the status of Jewish Hospital's implementation of the requirements of these Integrity Provisions. The Compliance Officer shall also certify in writing by that date that:

- a. the Policies and Procedures required by section 7.3.B.2 have been developed, are being implemented, and have been made available to all pertinent Covered Persons;
- b. all Covered Persons have completed the Code of Conduct certification required by section 7.3.B.1; and
- c. all Covered Persons have completed the training and executed the certification required by section 7.3.C.

B. Annual Reports. Jewish Hospital shall submit to the OIG Annual Reports with respect to the status and findings of Jewish Hospital's compliance activities.

Each Annual Report shall include:

1. any change in the identity or position description of the Compliance Officer and/or members of the Management Compliance Committee described in section 7.3.A;
2. a certification by the Compliance Officer that:
 - a. all Covered Persons have completed the annual Code of Conduct certification required by section 7.3.B.1;
 - b. all Covered Persons have completed the training and executed the certification required by section 7.3.C; and
 - c. Jewish Hospital has complied with its obligations under the Settlement Agreement: (i) not to resubmit to any Federal health care program payers any previously denied claims related to the conduct addressed in the Settlement Agreement, and its obligation not to appeal any such denials of claims, and (ii) not to charge to or otherwise seek payment from federal or state payers for unallowable costs (as defined in the Settlement Agreement) and has complied with its obligation to identify and adjust any past charges of such unallowable costs; and
3. notification of any changes or amendments to the Policies and Procedures required by section 7.3.B.2 and the reasons for such changes (e.g., change in contractor policy);
4. a complete copy of the report prepared pursuant to the Independent

- Review Organization's billing and compliance engagements, including a copy of the methodology used;
5. Jewish Hospital's response/corrective action plan to any issues raised by the Independent Review Organization;
 6. a summary of Material Deficiencies identified and reported throughout the course of the previous twelve (12) months pursuant to section 7.3.H;
 7. a report of the aggregate Overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing these Integrity Provisions. Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (with each applicable state reported separately) and other Federal health care programs;
 8. a copy of the confidential disclosure log required by section 7.3.E, with names redacted as necessary to maintain the confidentiality of the identity of the individual or organization making the disclosure, provided that the underlying information shall be made available to the OIG upon request;
 9. a description of any personnel action (other than hiring) taken by Jewish Hospital as a result of the obligations in section 7.3.F, and the name, title and responsibilities of any person that falls within the ambit of section 7.3.F.4, and the actions taken in response to the obligations set forth in that section;

10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Jewish Hospital has committed a crime or has engaged in fraudulent activities, which have been reported pursuant to section 7.3.G.4. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information;
11. a corrective action plan to address all material deficiencies (as defined in section 7.3.H) identified over the previous twelve (12) months; and
12. a description of all changes to the most recently provided list (as updated) of Jewish Hospital's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the payer (specific contractor) that issued each provider identification number.

The first Annual Report shall be received by the OIG no later than one year and ninety (90) days after the effective date of this Agreement. Subsequent Annual Reports shall be received by the OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certification of Annual Reports. Each Annual Report shall include a certification by the Compliance Officer that: (1) except as otherwise described in the report, Jewish Hospital is in compliance with all of the requirements of these Integrity Provisions, to the best of his or her

knowledge; and (2) the Compliance Officer has reviewed the report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information contained in it is accurate and truthful.

7.6 NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise agreed in writing by both parties subsequent to the effective date of this Agreement, all notifications and reports required under these Integrity Provisions shall be submitted in writing by certified mail to the respective parties addressed as follows (telephone and facsimile numbers are given below for ease of reference and for use in communications not rising to the level of notifications and reports required by these Integrity Provisions):

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Telephone: (202) 619-2078
Facsimile: (202) 205-0604

Jewish Hospital:

Jewish Hospital
Attn: Aaron R. Hazzard, Chief Compliance Officer
217 East Chestnut Street
Louisville, KY 40202-1886
Telephone: (502) 587-4418
Facsimile: (502) 587-4537

7.7 OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights the OIG may have by statute, regulation, or contract, the OIG or its duly authorized representative(s), may examine Jewish Hospital's books, records, and other documents and supporting materials and/or conduct an on-site review of any of Jewish Hospital's locations for the purpose of verifying and evaluating: (a) Jewish Hospital's compliance with the terms of these Integrity Provisions; and (b) Jewish Hospital's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Jewish Hospital to the OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, the OIG or its duly authorized representative(s) may interview any of Jewish Hospital's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and the OIG. Jewish Hospital agrees to assist the OIG in contacting and arranging interviews with such individuals upon the OIG's request. Jewish Hospital's employees may elect to be interviewed with or without a representative of Jewish Hospital present.

7.8 DOCUMENT AND RECORD RETENTION

Jewish Hospital shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs or to compliance with these Integrity Provisions, for four (4) years, or longer if otherwise required by law.

7.9 DISCLOSURES

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify Jewish Hospital prior to any release by the OIG of information submitted by Jewish Hospital pursuant to its obligations under these Integrity Provisions and identified upon submission by Jewish Hospital as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. With respect to such releases, Jewish Hospital shall have the rights set forth in 45 C.F.R. 5.65(d). Jewish Hospital shall refrain from identifying any information as trade secrets, commercial or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

7.10 BREACH AND DEFAULT PROVISIONS

Jewish Hospital is expected to fully and timely comply with all of the obligations herein throughout the term of these Integrity Provisions, subject to any exceptions specifically stated in these Integrity Provisions and any further exceptions to which Jewish Hospital and OIG may agree in writing.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Jewish Hospital and the OIG hereby agree that failure to comply with certain obligations set forth in these Integrity Provisions may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after

the date the obligation became due) for each day, beginning ninety (90) days after the effective date of this Agreement and concluding at the end of the term of these Integrity Provisions;

Jewish Hospital fails to have in place any of the following:

- a. a Compliance Officer;
- b. a Management Compliance Committee;
- c. a written Code of Conduct;
- d. written Policies and Procedures;
- e. a training program; and
- f. a Confidential Disclosure Program;

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Jewish Hospital fails meet any of the deadlines to submit the Annual Reports to the OIG.

3. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Jewish Hospital:

- a. hires or enters into a contract with or grants staff privileges to an Ineligible Person after that person has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (this Stipulated Penalty shall not be demanded for any time period during which Jewish Hospital can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section 7.3.F) as to the status of the person);

b. employs or contracts with or grants staff privileges to an Ineligible Person and that person: (i) has responsibility for, or involvement with, Jewish Hospital's business operations related to the Federal health care programs or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (this Stipulated Penalty shall not be demanded for any time period during which Jewish Hospital can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section 7.3.F) as to the status of the person).

4. A Stipulated Penalty of \$1,500 (which shall begin to accrue on the date the Jewish Hospital fails to grant access) for each day Jewish Hospital fails to grant access to the information or documentation as required in section 7.7 of these Integrity Provisions.

5. A Stipulated Penalty of \$1,000 (which shall begin to accrue ten (10) days after the date on which the OIG provides notice to Jewish Hospital of the failure to comply) for each day Jewish Hospital fails to comply fully and adequately with any obligation of these Integrity Provisions. In its notice to Jewish Hospital, the OIG shall state the specific grounds for its determination that Jewish Hospital has failed to comply fully and adequately with the obligation(s) of the Integrity Provisions at issue.

B. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Jewish Hospital has failed to comply with any of the obligations described in section 7.10.A and determining that Stipulated Penalties are appropriate, the OIG shall give notice to Jewish Hospital of (a) Jewish Hospital's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, Jewish Hospital shall either (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section 7.10.D. In the event Jewish Hospital elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Jewish Hospital cures, to the OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of these Integrity Provisions and shall be grounds for exclusion under section 7.10.C.

2. *Timely Written Requests for Extensions.* Jewish Hospital may submit a timely written request for an extension of time to perform any act or file any notification or report required by these Integrity Provisions. Notwithstanding any other provision in this section, if the OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one (1) day after Jewish Hospital fails to meet the revised deadline set by the OIG.

Notwithstanding any other provision in this section, if the OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after Jewish Hospital receives the OIG's written denial of such request. A "timely written request" is defined as a request in writing received by the OIG in accordance with the notification provisions of section 7.5 at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to the OIG at the address set forth in section 7.5.

4. *Independence from Material Breach Determination.* Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's determination that Jewish Hospital has materially breached these Integrity Provisions, which decision shall be made at the OIG's discretion and governed by the provisions in section 7.10.C, below.

C. Exclusion for Material Breach of these Integrity Provisions

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of these Integrity Provisions by Jewish Hospital constitutes an independent basis for Jewish Hospital's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by the OIG that Jewish Hospital has materially breached these Integrity Provisions and that exclusion should be imposed, the OIG

shall give notice to Jewish Hospital of: (a) the specific grounds on which the OIG has determined that Jewish Hospital has committed a Material Breach of these Integrity Provisions; and (b) the OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

2. *Opportunity to cure.* Jewish Hospital shall have thirty (30) days from the receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to the OIG's satisfaction that:

- a. Jewish Hospital is in full compliance with these Integrity Provisions;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30 day period, but that: (i) Jewish Hospital has begun to take action to cure the material breach; (ii) Jewish Hospital is pursuing such action with due diligence, and (iii) Jewish Hospital has provided to the OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the thirty (30) day period, Jewish Hospital fails to satisfy the requirements of section 7.10.C.2 the OIG may exclude Jewish Hospital from participation in the Federal health care programs by giving notice to Jewish Hospital of its determination to exclude Jewish Hospital (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section 7.10.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion

Letter. The exclusion shall have national effect and shall also apply to all other federal procurement and non-procurement programs. If Jewish Hospital is excluded under the provisions of these Integrity Provisions, Jewish Hospital may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. *Material Breach.* A material breach of these Integrity Provisions means:

- a. a failure by Jewish Hospital to report a Material Deficiency, take corrective action and pay the appropriate refunds, as provided in section 7.3.H;
- b. repeated or flagrant violations of the obligations under these Integrity Provisions, including, but not limited to, the obligations addressed in section 7.10.A of these Integrity Provisions;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section 7.10.B above; or
- d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section 7.3.D.

D. Dispute Resolution

1. *Review Rights.* Upon the OIG's delivery to Jewish Hospital of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of these Integrity Provisions, Jewish Hospital shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought

pursuant to these Integrity Provisions. Specifically, the OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under these Integrity Provisions shall be (a) whether Jewish Hospital was in full and timely compliance with the obligations of these Integrity Provisions for which the OIG demands payment; and (b) the period of noncompliance. Jewish Hospital shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a Material Breach of these Integrity Provisions and orders Jewish Hospital to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a decision notwithstanding that Jewish Hospital may request review of the ALJ decision by the DAB.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a Material Breach of these Integrity Provisions shall be (a) whether Jewish

Hospital was in material breach of these Integrity Provisions; (b) whether such Material Breach was continuing on the date of the Exclusion Letter; and (c) whether the alleged Material Breach could not have been cured within the 30 day period, but that (i) Jewish Hospital had begun to take action to cure the Material Breach within that period, (ii) Jewish Hospital has pursued and is pursuing such action with due diligence, and (iii) Jewish Hospital provided to OIG within that period a reasonable timetable for curing the Material Breach. For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. Jewish Hospital's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Jewish Hospital upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that Jewish Hospital may request review of the ALJ decision by the DAB.

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including JHHS) are any and all of the following:

8.1 Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

8.2 Any criminal liability;

8.3 Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

8.4 Any liability to the United States (or its agencies) for any conduct other than the

Covered Conduct;

8.5 Any claims based upon such obligations as are created by this Agreement; and

8.6 Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Jewish Hospital's Cath Labs.

9. JHHS waives and will not assert any defenses JHHS may have to any criminal prosecution relating to the Covered Conduct which are based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, the settlement in this Agreement bars a remedy sought in such criminal prosecution. Nothing in this paragraph or any other provision of this Agreement constitutes an admission by JHHS with respect to any aspect of the Covered Conduct. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

10. JHHS fully and finally releases the United States and the Kentucky Medicaid Program, and their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which JHHS has asserted, could have asserted, or may assert in the future against the United States or the Kentucky Medicaid Program, or their agencies, employees, servants, or agents, related to the investigation by the United States and the Kentucky Medicaid Program of the Covered Conduct and the actions of the United States and the Kentucky Medicaid Program with respect thereto in

connection with the Civil Action and this Agreement.

11. The Relator shall have no right to raise at any time any issue with respect to JHHS' performance of the Integrity Provisions, it being agreed and understood that the payments to the Relator and the other terms and conditions of this Agreement have provided the Relator with adequate and complete consideration for all of the covenants and obligations of the Relator under this Agreement.

12. The portions of the Settlement Amount that JHHS is agreeing to pay pursuant to this Agreement by electronic wire transfer 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 Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and JHHS agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

13. JHHS agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. 1395-1395ggg (1997) and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of JHHS in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) JHHS's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees); (4) the negotiation of this

Agreement; (5) the payments JHHS is making under Paragraph 1 of this Agreement; and (6) the obligations of JHHS under the Integrity Provisions to: (i) perform Review Procedures as described in section 7.3.D (except to the extent that such Review Procedures are performed by JHHS); and (ii) prepare and submit reports to OIG-HHS, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program ("VA") and Federal Employee Health Benefits Program ("FEHBP") (hereafter, "unallowable costs")

Within 60 days of the effective date of this Agreement, JHHS will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph 13) 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 JHHS or any of its subsidiaries, and will 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. JHHS agrees that the United States will be entitled to recoup from JHHS any overpayment 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 JHHS or any of its subsidiaries on the effect of

inclusion of unallowable costs (as defined in this paragraph) on JHHS or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this paragraph.

14. 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, including but not limited to CIS.

15. JHHS agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. JHHS waives any causes of action against these beneficiaries or their parents or sponsors for any such payments by JHHS.

16. JHHS expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to JHHS, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

17. Each of the Parties will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as any parties may have otherwise agreed in writing.

18. JHHS and the Relator each hereby represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. 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 will be the United States District Court for the Western District of Kentucky, except that disputes arising under the Integrity Provisions shall be resolved by the dispute resolution provisions within section 7.10.D of the Agreement.

20. This Agreement constitutes the complete agreement between the Parties relating to the subject matter of this Agreement. This Agreement may not be amended except by the written consent of the Party against whom the enforcement of the amendment is sought, except that only JHHS and OIG-HHS must agree in writing to modification of the Integrity Provisions.

21. The undersigned individuals signing this Agreement on behalf of JHHS and the Relator, represent and warrant that they are authorized by JHHS and the Relator respectively to execute this Agreement. The undersigned United States and Commonwealth of Kentucky signatories represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

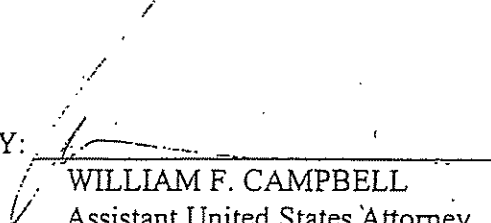
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

23. This Agreement is effective as of the date all of the Parties have signed this Agreement and the Court has entered an order dismissing JHHS with prejudice from the Civil Action.

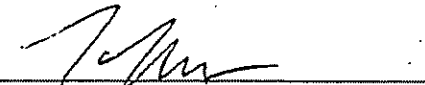
24. This Agreement is binding on all successors, heirs, assigns and transferees.

THE UNITED STATES OF AMERICA

DATED: 10/13/00

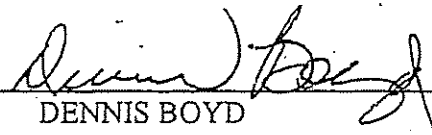
BY: 
WILLIAM F. CAMPBELL
Assistant United States Attorney
Western District of Kentucky

DATED: 10/5/00

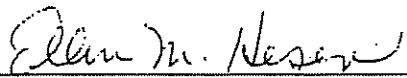
BY: 
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF MEDICAID SERVICES

DATED: 10/11/00

BY: 
DENNIS BOYD
Commissioner
Department for Medicaid Services

DATED: 10/10/00

BY: 
ELLEN M. HESSEN
General Counsel
Cabinet for Health Services

JEWISH HOSPITAL HEALTHCARE SERVICES, INC.

DATED: 10-12-00

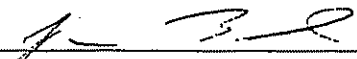
BY: Henry C. Wagner
HENRY C. WAGNER
President and Chief Executive Officer

DATED: 10/12/00


BY: Joseph L. Ardery
JOSEPH L. ARDERY
Counsel for Jewish Hospital
HealthCare Services, Inc.

JAN BLESSMAN - Relator

DATED: 10/25/00

BY: 
JAN BLESSMAN

DATED: 10/25/00

BY: 
EDWARD C. AIRHART
Counsel for Relator Blessman