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 and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), (collectively the "United States"); Relator, Health Outcome Technologies ("Relator"), and Iberia General Hospital and Medical Center ("Iberia General") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. The United States contends that Iberia General, a health care provider, submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg(1999) for inpatient treatment of Medicare beneficiaries.

B. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.

C. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.

D. The United States conducted an investigation into inpatient payment claims submitted to Medicare by Iberia General with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria").

E. The United States contends that it has certain civil claims against Iberia General under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in Paragraph 5 below, for engaging in the following alleged conduct during the period from March 23, 1993 to October 26, 1995: Iberia General submitted or caused to be submitted claims to Medicare with a principal diagnosis code of 482.89 that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, Iberia General received payments to which it was not entitled.

F. The United States also contends that it has certain administrative claims against Iberia General 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. Iberia General has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to Medicare with the principal diagnosis code of 482.89, and Iberia General represents that such response has been truthful, accurate, and complete.

H. Iberia General denies the contentions of the United States as set forth in Paragraphs E and F above.

I. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

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. Iberia General agrees to pay to the United States $303,887.52 plus interest calculated at 6.375% (the "Settlement Amount"), as follows: Iberia General agrees to make an initial payment of $63,173.92 by electronic funds transfer pursuant to written instructions to be provided by Vickie Eaves, Paralegal, Financial Litigation Unit, United States Attorney's Office, Western District of Louisiana (318) 676-3635 no later than the effective date of this Agreement. Iberia General agrees to make twelve (12) payments of $21,302.56, which includes interest, per month. The first payment is due by September 5, 2000, at 5:00 P.M. CST. Thereafter, each payment will be due on the fifth day of the month by 5:00 P.M. CST. Should payment by Iberia General be late, Iberia General will be considered in default. Upon default, the full remaining unpaid balance (including all unpaid interest and principal) will become immediately due and payable. Interest upon default will accrue at the rate of 18% (eighteen percent) per annum compounded daily from the date of default on the remaining unpaid principal balance. Upon default, the United States may exercise, at its sole option, one or more of the following rights, as applicable: (a) declare this Agreement breached, and proceed against Iberia General for any claims under the Civil Action, including those to be released by this Agreement; (b) file an action for specific performance of the Agreement (excluding the Corporate Integrity Agreement which will be separately enforced by OIG-HHS pursuant to its own terms); (c) immediately offset the remaining unpaid balance, inclusive of interest, from any amounts due and owing to Iberia General by any department, agency, or agent

of the United States; (d) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. Iberia General agrees not to contest any offset imposed pursuant to this provision, either administratively or in any State or Federal court. In addition, Iberia General will pay the United States all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses. The United States reserves the option of referring such matters for private collection. Upon default, OIG-HHS may, at its option, exclude Iberia General from participation in the Medicare, Medicaid and Federal health care programs pursuant to 42 U.S.C. § 1320a-7(b)(7). Any exclusion imposed by OIG-HHS will have national effect and will also apply to all other Federal procurement and non-procurement programs. Iberia General agrees not to contest such exclusion either administratively or in any State or Federal court, except that Iberia reserves the right to contest the existence of a default. Upon curing the default, Iberia General may apply for reinstatement after the date specified in the notice of exclusion, in accordance with 42 C.F.R. § 1001.3001. This provision does not affect the rights, obligations, or causes of action the OIG-HHS or HHS may have under any authority other than that specifically referred to in this paragraph.

2. Iberia General agrees to cooperate fully and in good faith with the United States in the administrative, civil or criminal investigation or prosecution of any person concerning the Covered Conduct, and concerning similar matters involving other hospitals and others, by providing accurate, truthful, and complete information whenever, wherever, to whomever and in whatever form the United States reasonably may request. Nothing in this Paragraph, however, affects any privilege that might be available to Iberia General or any statutory or regulatory obligation of Iberia General or Iberia General's ability to object to the request on the grounds of such privilege or obligation; the

United States reserves its right to contest the assertion of any such privilege or obligation by Iberia General. Iberia General agrees to the following specific representations and undertakings:

a. Iberia General will use its best efforts to provide such information, and related documents, within ten (10) working days of receipt of a request. If necessary, Iberia General will notify the United States of any difficulty in timely complying with any such request, and will advise the United States of the additional amount of time estimated to be needed to respond to such request.

b. Iberia General understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. Iberia General agrees that it shall take no action which could cause any person to fail to provide such testimony (other than the assertion of a privilege or statutory or regulatory obligation), or could cause any person to believe that the provision of truthful and accurate testimony could adversely affect such person's employment or any contractual relationship.

c. Should it be judged by the United States that Iberia General has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, Iberia General thereafter shall be subject to prosecution for an criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

3. Iberia General has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Iberia General will implement its obligations under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

4. Iberia General releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors and their employees, and Relator from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct, including the investigation of the Covered Conduct, and this Agreement.

5. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of Iberia General set forth in this Agreement, conditioned upon Iberia General's payment in full of the Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the date of any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments referenced above in Paragraph 4) and Relator agree to release (i) Iberia General, its parents, affiliates, divisions, subsidiaries, (ii) their predecessors, successors, assigns, transferees, and (iii) any of their current of former directors, officers, and employees, from any civil or administrative monetary claim the United States has 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. No individuals are released by this Agreement.

6. By this Agreement, Relator and Relator's Counsel will release and will be deemed to release Iberia General, from any claim that the Relator, and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) or any other statute or at common law, to pay Relator or Relator's Counsel any reasonable attorneys' fees, expenses and costs.

7. In consideration of the obligations of Iberia General set forth in this Agreement, and the Corporate Integrity Agreement incorporated by reference, conditioned upon Iberia General's

payment in full of the Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the date of any payment under 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: (i) Iberia General, its parents, affiliates, divisions, subsidiaries, and (ii) their predecessors, successors, assigns, transferees 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 this Paragraph. OIG-HHS expressly reserves its rights to comply with the statutory obligation to exclude Iberia General or others from Medicare and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). No individuals are released by this Paragraph 7. 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.

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 Iberia General) are any and all of the following:

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

(2) Any criminal liability;

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

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement;

(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 Iberia General;

(7) Any claims based on a failure to deliver items or services due;

(8) Any claims against entities or individuals other than those specifically released in Paragraphs 5, 6, and 7, above.

9. Iberia General has provided sworn financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Iberia General warrants that the Financial Statements are thorough, accurate, and complete. Iberia General further warrants that it does not own or have an interest in any assets which have not been disclosed in the Financial Statements, and that Iberia General has made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of asset(s) in which Iberia General had an interest at the time of this Agreement which were not disclosed in the Financial Statements, or in the event the United States learns of a misrepresentation by Iberia General on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation changes the estimated net worth of Iberia General set forth on the Financial Statements by ten thousand dollars ($10,000) or more, the United States may at its option: (1) rescind this Agreement and reinstate its suit upon the underlying claims described in Paragraph E or (2) let the Agreement stand and collect

the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Iberia General previously undisclosed. Iberia General agrees not to contest any collection action undertaken by the United States pursuant to this provision.

10. In the event that the United States, pursuant to Paragraph 9 above, opts to rescind this Agreement, Iberia General expressly agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (1) are filed by the United States within ninety (90) calendar days of written notification to Iberia General that this Agreement has been rescinded, and (2) relate to the Covered Conduct, except to the extent these defenses were available on February 27, 1996.

11. Iberia General waives and will not assert any defenses Iberia General may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part upon a contention that, under the Double Jeopardy or Excessive Fines Clause of the Constitution or the holding or principles set forth in *United States v. Halper*, 490 U.S. 435 (1989), and *Austin v. United States*, 113 S. Ct. 2801 (1993) this settlement bars a remedy sought in such criminal prosecution or administrative action. Iberia General agrees that the Settlement Amount is not punitive in purpose or effect for purposes of such criminal prosecution or administrative action. 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.

12. After this Agreement is executed and the initial payment described in Paragraph 1 has been received by the United States, the United States will notify the Court that all Parties have

stipulated that Iberia General be dismissed with prejudice consistent with the terms of this Settlement Agreement from the Complaint, which is under seal.

13. The Amount that Iberia General must 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 related to the Covered Conduct; and Iberia General agrees not to resubmit to any Medicare carrier or intermediary, any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Iberia General 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. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of Iberia General, 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) Iberia General'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 and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Settlement Agreement), (4) the negotiation of this Agreement, the Corporate Integrity Agreement, and any plea agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program ("VA"), and FEHBP (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by Iberia General, and Iberia General will not charge such

unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Iberia General or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP programs.

15. Iberia General further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, and FEHBP fiscal agents, any unallowable costs (as defined in Paragraph 14) 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 Iberia General 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. Iberia General agrees that the United States will be entitled to recoup from Iberia General 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 Iberia General or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in Paragraph 14) on Iberia General 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.

16. 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 except as specifically provided in Paragraph 5 and 7 of this Agreement.

17. Iberia General 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. Iberia General waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

18. Iberia General 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 payments 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 Iberia General, 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.

19. In the event Iberia General commences, or a third party commences, within 91 days of the date of any payment under this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Iberia General's debts, or seeking to adjudicate Iberia General as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Iberia General or for all or any substantial part of Iberia General's assets, Iberia General agrees as follows:

a. Iberia General's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Iberia General will not argue or otherwise take the position in any such case, proceeding or action that: (i) Iberia General's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Iberia General was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Iberia General.

b. In the event that Iberia General's obligations hereunder are avoided pursuant to 11 U.S.C. § 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Iberia General for the claims that would otherwise be covered by the releases provided in Paragraphs 5 - 7, above. If the United States chooses to do so, Iberia General agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Iberia General from participation in Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Iberia General will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that Iberia General will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within ninety (90) calendar days of written notification to Iberia General that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on February 27, 1996, and (iii) the

United States has a valid claim against Iberia General in the amount of $1,554,156.00, and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

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

20. Except as otherwise provided in Paragraph 1, the United States and Iberia General will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement. Nothing in this Agreement shall be construed so as to either release Iberia General from or obligate Iberia General to any claim that Relator, and/or Relator's Counsel, may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel's attorney's fees, expenses, and costs.

21. Conditioned upon Iberia General's payment of the Settlement Amount, Relator shall receive from the United States a payment of $42,124.88 which shall be paid within a reasonable amount of time after receipt by the United States from Iberia General of the initial payment described in Paragraph 1 above.

22. Upon receipt of the payment described in Paragraph 21 above, Relator will release and will be deemed to have released and forever discharged the United States, its officers, agents, and employees, from any liability arising from the filing of the Complaint against Iberia General, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from Iberia General, and in full satisfaction of claims under this Agreement.

23. Iberia General represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

24. 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 Louisiana, except that disputes arising under the Corporate Integrity Agreement shall be resolved exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

25. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Iberia General and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement contained in Exhibit A.

26. The undersigned individuals signing this Agreement on behalf of Iberia General represent and warrant that they are authorized by Iberia General to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

28. This Agreement is binding on successors, transferees, and assigns.

29. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: July 24, 2000 BY:

WILLIAM J. FLANAGAN
United States Attorney
Western District of Louisiana

THE UNITED STATES OF AMERICA

DATED: 8/1/00 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

IBERIA GENERAL - DEFENDANT

DATED: 8/27/00

BY: James F. Youree
JAMES YOUREE
Chief Executive Officer
Iberia General

IBERIA GENERAL - DEFENDANT

DATED: 7/26/00

BY: _____

S. CRAIG HOLDEN
Ober, Kaler, Grimes, and Shriver
Counsel for Iberia General

RELATOR

DATED: 7/27/00

BY: _____

MICHAEL HOLSTON
Drinker, Biddle, & Reath
Counsel for Relator

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the United States Department of Justice and the United States Attorney's Office for the Southern District of Florida and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), Health Outcomes Technologies (the "Relator"), the law firm of Drinker, Biddle & Reath ("Relator's Counsel"), and CGH Hospital Ltd , d/b/a Coral Gables Hospital (the "Hospital") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Hospital is a corporation licensed under the State of Florida that operates an acute care hospital located in Coral Gables, Florida.

B. Relator is a corporation doing business in the Eastern District of Pennsylvania. On February 27, 1996, Relator filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania styled *United States, ex rel. Health Outcomes Technologies v. Easton Hospital, et al.* Case No. 96-3062 **(UNDER SEAL)**. In July 2001, the district court for the Eastern District of Pennsylvania transferred a portion of the *qui tam* action as it relates to the Hospital to the Southern District of Florida. The Florida action is styled *United States, ex rel. Health Outcomes Technologies v. Parkway Regional Medical Center, et al.*, Civil No. 01-3332-Jordan **(UNDER SEAL)**. The Florida federal civil action arising from the aforementioned complaint is hereafter referred to as the "Qui Tam Action."

C. The United States contends that the Hospital submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg for the inpatient treatment of Medicare beneficiaries.

D. Medicare payments to a hospital for inpatient treatment rendered to a beneficiary generally are based upon the beneficiary's "principal diagnosis," as set forth by the hospital.

E. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.[1]

F. The United States conducted an investigation into inpatient payment claims submitted to Medicare by the Hospital with: (1) the principal diagnosis of ICD-9 codes 482.89 (pneumonia due to "other specified bacteria") and 482.83 (pneumonia due to gram negative bacteria); and (2) the principal diagnosis codes grouping to Diagnosis Related Group ("DRG") 416 (septicemia).

G. The United States contends that it has certain civil claims against the Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in paragraph 3 below, for engaging in the following alleged conduct during the period 1993 through 1997, inclusive: Hospital submitted or caused to be submitted claims to Medicare with the principal diagnosis codes of ICD-9 482.89 and 482.83, and with principal diagnosis codes grouping to DRG 416 that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States alleges that, as a result of these claims, the Hospital received payments to which it was not entitled.

H. The United States also contends that it has certain administrative claims against Hospital under the provisions for permissive exclusion from Medicare, Medicaid, and other

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[1] International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9").

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.

I. The Hospital expressly denies the contentions of the United States and Relator as set forth in Paragraph G and H above and as set forth in the Qui Tam Action. Specifically, Hospital contends that any payments improperly received by Hospital were the result of mere oversight or clerical error. Hospital further expressly denies that there was any knowing or deliberate intent to defraud the United States or otherwise obtain improper payments.

J. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

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. The Hospital agrees to pay to the United States a total of two million, seven thousand, three hundred and eleven ($2,007,311), plus interest accruing at a simple rate of 5% per annum from May 13, 2002 through and including the Payment Date (the "Settlement Amount") as follows: Hospital agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Florida. The Hospital agrees to make this electronic funds transfer within fourteen (14) business days after the Effective Date of this Agreement and receipt of written electronic funds transfer instructions, whichever occurs last. The "Payment Date" shall be the date that Hospital actually sends the Settlement Amount to the United States by electronic funds transfer.

2. Except as provided in Paragraph 4 below, the Hospital fully and finally releases the United States, HHS, and each of their agencies, officers, agents, employees, and contractors (and their employees), Relator, and Relator's Counsel from any and all claims, causes of action, adjustments, and set-offs of any kind arising out of or pertaining to the Covered Conduct and the Qui Tam Action, including the investigation of the Covered Conduct and/or Qui Tam Action and this Agreement.

3. Subject to the exceptions in paragraph 5 below, in consideration of the obligations of the Hospital set forth in this Agreement, conditioned upon the Hospital's payment in full of the Settlement Amount, and subject to paragraphs 12 and 13, below (concerning bankruptcy proceedings commenced within 91 days of the date of any payment under this Agreement), the United States (on behalf of itself, its officers, agents, and its agencies and departments) will and hereby does release the Hospital, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, from any civil or administrative monetary claim the United States, has 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, conversion, breach of contract and fraud, for the Covered Conduct and the Qui Tam Action (insofar as it relates to the Hospital).

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion from Medicare, Medicaid, or other Federal heath care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), against Hospital, and its officers, directors, employees, and agents for the

Covered Conduct. The Hospital does not waive and expressly reserves the right to pursue any and all defenses that the Hospital may have, by statute, common law, or otherwise, against the United States, its agencies, employees, servants, and agents resulting from the United States' pursuit of administrative action seeking exclusion against the Hospital as a result of or related to the Covered Conduct or the Qui Tam Action, and all claims in direct response to such administrative action, if any.

5. 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 the Hospital) are any and all of the following:

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

(2) Any criminal liability;

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

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct or allegations set forth in the Qui Tam action;

(5) Any claims based upon such obligations as are created by this Agreement.

(6) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

(7) Any liability for failure to deliver goods or services due; and

(8) Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of the Hospital) who are indicted, charged or convicted, or who enter into a plea agreement related to the Covered Conduct.

6. The Hospital waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clause of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. The Hospital agrees that this settlement is not punitive in purpose or effect for purposes of such criminal prosecution or administrative action. 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.

7. The Settlement Amount that the Hospital must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary, related to the Covered Conduct; and the Hospital agrees not to resubmit to any Medicare carrier or intermediary any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. Upon receipt by the United States of the Settlement Amount described in Paragraph 1 above, Relator, for itself, its current and former parent corporations, direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors, shareholders, and assigns, along with the current and former employees, officers and directors of any of them, and Relator's Counsel, for itself, its partners, employees, successors and assigns, hereby releases and forever discharges the Hospital, together with its current and former parent corporations, direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers, and directors of any of them, from any and all actions, causes of action, demands, damages, debts, obligations, liabilities, accounts, costs, expenses, liens or claims of whatever

character, whether presently known or unknown, suspected or unsuspected, which are in any way involved or connected with, relate to, or arise from, the Covered Conduct or any of the allegations in the Qui Tam Action (insofar as it relates to the Hospital).

9. The Hospital agrees to the following:

a. Unallowable Costs Defined: 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 and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Hospital, or its current and former parent corporations, each of their direct and indirect subsidiaries, division, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, in connection with:

(1) the matters covered by this Agreement,

(2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) the Hospital's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees),

(4) the negotiation and performance of this Agreement, and

(5) the payments made pursuant or ancillary to this Agreement, including any costs and attorneys' fees,

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program ("VA"), and FEHBP (Federal

Employee Health Benefits Program). (All costs described or set forth in this Paragraph are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by the Hospital, and the Hospital will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Hospital further agrees that within 90 days of the effective date of this Agreement it 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) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost report, cost statements, information reports, or payment requests already submitted by the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns along with the current and former employees, officers and directors of any of them, 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. The Hospital agrees that the United States, at a minimum, will be entitled to recoup from the Hospital any overpayment plus applicable interest and penalties as a result of the inclusion of such

unallowable costs on previously submitted cost reports, information reports, cost statements, or requests for payment. If the Hospital fails to identify such costs in past filed cost reports in conformity with this Paragraph, the United States may seek an appropriate penalty or other sanction in addition to the recouped amount.

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 the Hospital or any of its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the cost reports, cost statements, or information reports of the Hospital or any of its current or former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them. 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.

10. This Agreement is intended to be for the benefit of the Parties only, including the Hospital (together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions, affiliates, predecessors, successors and assigns, along with the current and former employees, officers, directors of any of them) and by this instrument the Parties do not release any claims against any other person or entity.

11. The Hospital agrees that it shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or

sponsors. The Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

12. The Hospital 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 the Hospital, 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.

13. In the event the Hospital commences, or a third party commences, within 91 days of any payment of the Settlement Amount, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Hospital's debts, or seeking to adjudicate Hospital as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Hospital or for all or any substantial part of Hospital's assets, Hospital agrees as follows:

a. The Hospital's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Hospital will not argue or otherwise take the position in any such case, proceeding or action that: (i) Hospital's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Hospital was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Hospital.

b. In the event that any of the Hospital's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers

under the Bankruptcy Code, and to the extent the avoided obligation is not otherwise fulfilled by third parties (in which case the payment by the third party would be considered a payment of the Settlement Amount), the United States, at its sole option and upon 30 days' written notice and opportunity to cure such deficiency, may rescind the releases in this Agreement as to the Hospital, and bring any civil and/or administrative claim, action or proceeding against the Hospital for the claims that would otherwise be covered by the releases provided in Paragraph 3, above. If the United States chooses to do so, the Hospital agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude the Hospital from participation in federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that the Hospital will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; and (ii) the Hospital will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within one hundred eighty (180) calendar days of written notification to the Hospital that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Settlement Agreement.

c. The Hospital acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. After this Agreement is executed and the Settlement Amount is received by the United States, the United States, Relator and Relator's Counsel will notify the Court that the parties stipulate and request (in the form attached hereto as Exhibit A) that the Hospital be

dismissed with prejudice from the Qui Tam Action. The United States and Relator will undertake all reasonable efforts to ensure the Hospital's dismissal from the Qui Tam Action.

15. By this Agreement, the Relator and Relator's Counsel hereby release the Hospital, together with its current and former parent corporations, each of their direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, from any claim that the Relator and/or Relator's Counsel may have under 31 U.S.C. § 3730(d) to pay Relator's or Relator's Counsel's attorneys' fees, expenses and costs.

16. Conditioned on the Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to a 14% share of the principal amount of $942,411, plus actual accrued interest paid to the United States by Hospital on that principal amount from May 13, 2002 through the Payment Date. The United States shall pay Relator this amount within a reasonable time after receipt by the United States from the Hospital of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment of any Relator's share payments except as provided herein for funds actually collected and received by the United States.

17. On receipt of the payment described in paragraph 16 above, Relator and Relator's Counsel will release and will be deemed to have released and forever discharged the United States, its officers, agents, and employees from any liability arising from the filing of the Qui Tam Action as against the Hospital, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from the Hospital, and in full satisfaction and settlement of claims under this Agreement.

18. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. The Hospital, Relator and Relator's Counsel represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. 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 Southern District of Florida.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. Relator and Relator's Counsel consent to the United States' disclosure of this Agreement to the public.

23. The undersigned individuals signing this Agreement on behalf of the Hospital, Relator and Relator's Counsel represent and warrant that they are authorized to execute this Agreement on behalf of those entities. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

24. Relator and Relator's Counsel warrant and represent that they have not heretofore assigned or transferred or purported to assign or transfer to any third party any claim released hereunder. Relator and Relator's Counsel shall indemnify and hold harmless Hospital, together with its current and former parent corporations, direct and indirect subsidiaries, divisions, affiliates, brother and sister corporations, predecessors, successors and assigns, along with the current and former employees, officers and directors of any of them, from any and all claims, demands, or liabilities, including attorneys' fees, resulting from the breach of this warranty and representation.

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

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

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

28. Any notices required under this Agreement shall be directed to the following persons:

On behalf of the Hospital:

Christi R. Sulzbach (or her successor)
General Counsel and Executive Vice President
Tenet Healthcare Corporation
Legal Department
3820 State Street
Santa Barbara, California 93105

On behalf of the United States, its agencies, departments and divisions:

Michael F. Hertz (or his successor)
Director, Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044

On behalf of Relator and Relator's Counsel:

Michael Holston (or his successor)
Drinker, Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996

THE UNITED STATES OF AMERICA

DATED: 1/17/03 BY: _____

MARK A. LAVINE
Assistant United States Attorney
Southern District of Florida

DATED: 1/9/03 BY: _____

MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA YOUNTS
Civil Division
U.S. Department of Justice

DATED: _____ 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

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____
MARK A. LAVINE
Assistant United States Attorney
Southern District of Florida

DATED: _____ BY: _____
MICHAEL F. HERTZ
JOYCE R. BRANDA
DIANA YOUNTS
Civil Division
U.S. Department of Justice

DATED: 1/13/03 BY: _____
LEWIS MORRIS
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of
Health and Human Services

HOSPITAL

DATED: 5/23/02 BY: Martha Garcia
MARTHA C. GARCIA
CEO

DATED: 5/21/02 BY: Nicola T. Hanna
NICOLA T. HANNA
GIBSON, DUNN & CRUTCHER LLP
Counsel for HOSPITAL

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____ BY: _____
MICHAEL HOLSTON
DRINKER, BIDDLE & REATH
Attorneys for Relator
Health Outcomes Technologies

RELATOR'S COUNSEL

DATED: _____ BY: _____
MICHAEL HOLSTON
DRINKER, BIDDLE & REATH

settagrcoralgables.wpd

HOSPITAL

DATED: _____ BY: _____
MARTHA C. GARCIA
CEO

DATED: _____ BY: _____
NICOLA T. HANNA
GIBSON, DUNN & CRUTCHER LLP
Counsel for HOSPITAL

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 1/8/03 BY: _____
MICHAEL HOLSTON
DRINKER, BIDDLE & REATH
Attorneys for Relator
Health Outcomes Technologies

RELATOR'S COUNSEL

DATED: 1/8/03 BY: _____
MICHAEL HOLSTON
DRINKER, BIDDLE & REATH

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