

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among 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"); Mary Scott (the "relator"); Metropolitan Health Corporation (MHC), Metropolitan Hospital (Hospital) and Metropolitan Enterprises (Enterprises) (collectively "Metropolitan"), (all 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. MHC, a non-profit, tax-exempt directorship corporation doing business in Grand Rapids, Michigan, wholly owns Hospital, a non-profit, general acute care osteopathic hospital located in Grand Rapids, Michigan. MHC also wholly owns Enterprises, a taxable for-profit Michigan corporation providing practice management services for Metropolitan-employed and non-employed physicians.

B. On June 11, 2002, Metropolitan submitted a self disclosure and was thereafter accepted into the OIG-HHS Provider Self Disclosure Protocol with respect to certain issues, including but not limited to the issues addressed herein.

C. The relator is an individual resident of the State of Michigan. On July 2, 2002, the relator filed a complaint (the "Complaint") in a qui tam action in the United States District Court for the Western District of Michigan, Southern Division, captioned United States ex rel. Mary Scott v. Metropolitan Health Corporation, d.b.a. Metropolitan Hospital, et al.

(hereinafter "the Civil Action"). The relator first worked with Metropolitan in 1996 as a consultant, was subsequently employed by Metropolitan in 1997 as Vice President of Network Services, and became Senior Vice President and Chief Network Development Officer in 1998.

D. Metropolitan 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.

E. The United States contends that it has certain civil claims, as specified in Paragraph 2 below, against Metropolitan for engaging in the following conduct (hereinafter referred to as the "Covered Conduct"):

(1) During January 1, 1995 through November 28, 2003, knowingly submitting Medicare claims for services referred by two certain physicians, identified in the Complaint, who received from Metropolitan compensation in excess of fair market value for interpreting vascular studies from January 1, 1995 through June 23, 2003, in violation of the Stark Law (42 U.S.C. § 1395nn);

(2) During January 1, 1996 through December 31, 1999, knowingly submitting Medicare claims for services referred by a primary care physician, identified in the Complaint, whose practice Metropolitan purchased in 1996 for an amount that exceeded fair market value, in violation of the Stark Law;

(3) During January 1, 2000 through December 31, 2002, knowingly submitting Medicare claims for services referred by two primary care physicians, identified in the Complaint, with whom Metropolitan entered into a below-fair market value, non-commercially reasonable rental arrangement, in violation of the Stark Law;

(4) During January 1, 1996 through December 31, 1998, knowingly submitting claims for payment to Medicare for services provided by Metropolitan's detoxification unit, for which medical necessity was not documented;

(5) During January 1, 1999 through December 31, 2002, knowingly submitting wound care claims for payment to Medicare representing a higher level of evaluation and management (E&M) services than documented;

(6) During January 1, 1996 through December 31, 2001, knowingly submitting claims to Medicare for services provided by a physician, identified in the Complaint, at the Cedar Springs clinic, representing a higher level of E&M services than documented and miscoding non-covered preventive care services as covered E&M services; and

(7) In 2002, knowingly submitting claims to Medicare for the multiple use of a single-use apligraf in the Metropolitan wound care clinic.

F. The United States also contends that it has certain administrative claims, as specified in Paragraph 4 below, against Metropolitan for engaging in the Covered Conduct.

G. This Agreement is neither an admission of liability by Metropolitan nor a concession by the United States that its claims are not well founded.

H. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Metropolitan agrees to pay to the United States \$6,250,000, which amount shall be immediately due and owing and payable as described below (the "Settlement Amount"). The United States agrees to pay 18% of the Settlement Amount (\$1,125,000 plus interest) to the

*Settlement Agreement Between United States, Mary Scott,
and Metropolitan Health Corp. et al.*

relator as her relator's share under 31 U.S.C. § 3730(d), payable as described below.

Metropolitan further agrees to pay relator her expenses and attorney's fees and costs, the amount thereof to be agreed upon or determined by the United States District Court for the District of Western Michigan following execution of this Agreement. The foregoing payments shall be made as follows:

a. Metropolitan agrees to pay the United States \$1,000,000 no later than five (5) business days after the Effective Date (the "First Installment"). Metropolitan shall make twelve quarterly payments to the United States in the sum of \$473,856.14 each (including interest), beginning on March 1, 2004, in accordance with the attached amortization schedule (Appendix A). At the time of execution of this Agreement, Metropolitan will provide a Promissory Note, attached hereto as Appendix B, in the total amount of \$6,250,000.

Metropolitan's indebtedness to the United States will be secured by a letter of credit sufficient to pay the principal and interest due and owing under this Agreement.

b. In the event that Metropolitan disposes of any assets prior to the final Installment Payment, and the net proceeds of such disposition(s) exceed \$5 million (five million dollars), then Metropolitan shall pre-pay to the United States the excess over \$5 million. Any such pre-payments shall be applied to the principal owed to the United States, and the Installment Payments shall be adjusted accordingly. "Net proceeds" are defined to include all proceeds from the sale, less any taxes and real estate commissions arising from the sale, and less any liens on the property that were established prior to the Effective Date of this Agreement.

c. Metropolitan may prepay any or all of the installment amounts due under this Agreement at any time without penalty, and interest shall be calculated at a rate of 5% only through the date of such prepayment.

d. Contingent upon the United States receiving the Settlement

Amount from Metropolitan and as soon as feasible after receipt of each payment, the United States agrees to pay eighteen percent (18%) of each payment to the relator by electronic funds transfer.

2. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Metropolitan in this Agreement, conditioned upon Metropolitan's payment of the Settlement Amount as set forth in Paragraph 1, and subject to Paragraph 17 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Metropolitan, together with its current and former parent corporations, each of their direct and indirect subsidiaries, brother or sister corporations, divisions, current or former members/owners, officers, directors, and employees and the successors and assigns of any of them from any civil or administrative monetary claim the United States has or may have for the Covered Conduct 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; the Stark Law, 42 U.S.C. § 1395nn; the Federal Health Care Program Antikickback Statute, 42 U.S.C. § 1320a-7b(b) as it may be enforced under the False Claims Act; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud.

3. Subject to the exceptions in Paragraphs 5 and 6 below, in consideration of the obligations of Metropolitan in this Agreement, conditioned upon Metropolitan's payment of the Settlement Amount as set forth in Paragraph 1, and subject to Paragraph 17 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this

Agreement or any payment under this Agreement), relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Metropolitan, together with its current and former parent corporations, each of their direct and indirect subsidiaries, brother or sister corporations, divisions, current or former members/owners, officers, directors, and employees and the successors and assigns of any of them, from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. In consideration of the obligations of Metropolitan in this Agreement, including the Integrity Requirements at Paragraph 10 and at Appendices C through E, conditioned upon Metropolitan's payment of the Settlement Amount as set forth in Paragraph 1, and subject to Paragraph 17 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made hereunder), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Metropolitan, together with its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former members/owners, officers, directors, and entities and individuals set out in Appendix F ("OIG Released Parties"), under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct, except as reserved in Paragraph 5 below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the OIG Released Parties from the Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this

Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

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 Metropolitan and relator) are the following claims of the United States:

- a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due, other than as expressly stated in the Covered Conduct;
- h. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Metropolitan) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

6. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are:

a. Claims by relator, her estate, attorneys, or agents, or her family, heirs, successors, or assigns (hereinafter "Relator entity or person") against Metropolitan or any entity thereof, the current or former direct or indirect subsidiaries, brother or sister corporations, divisions, members, owners, directors, officers, employees, attorneys, or agents thereof, the successors or assigns of the foregoing (hereinafter "Metro entity or person"), or any other entity or person, said claims relating to Relator's employment with Metropolitan and/or to the termination thereof and/or to the treatment of a Relator entity or person caused by any Metro entity or person theretofore or thereafter, including any and all past, present or potential:

(i) Claims within the scope of Count IV of relator's Amended Complaint filed April 14, 2003 in the Civil Action,

(ii) Claims deriving from any harm to a Relator entity or person caused by any Metro entity or person, whether resulting from omission or commission, including but not limited to further claims arising under 31 U.S.C. § 3730(h); other retaliation claims; claims for breach of contract, violation of employment laws, other claims relating to Relator's employment with Metropolitan and/or to the termination thereof; claims for personal injury, bodily injury, property damage, emotional, mental, or psychological distress; claims for career harm; claims for defamation, and other claims arising upon acts or statements of disparagement of a Relator entity's or person's personal or professional character, reputation, fitness, competence, employability, job performance, or beliefs; and

(iii) Claims for attorneys' fees, costs, and expenses incurred in pursuing the aforementioned claims and/or in enforcing the remedies and/or settlement terms obtained thereby,

whether such claims are known or unknown as of the Effective Date.

b. All defenses and counterclaims by Metropolitan or any entity thereof, the current or former direct or indirect subsidiaries, brother or sister corporations, divisions, members, owners, directors, officers, employees, attorneys, or agents thereof, or the successors or assigns of the foregoing, thereto.

7. Conditioned upon receipt of the payments described in Paragraph 1.b., the relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 in connection with this Civil Action, or arising from the filing of the Civil Action, including 31 U.S.C. §§ 3730(b), (c), (c)(5), (d), and (d)(1) in connection with this Civil Action. The relator agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

8. Subject to the exceptions in Paragraph 6 above and conditioned upon receipt of the payments described in Paragraph 1(d), the relator, for herself, her immediate family, and her heirs, successors, attorneys, agents, and assigns, releases and will be deemed to have released and forever discharged Metropolitan, together with its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former members/owners, officers, directors, agents and employees, and all other named defendants identified in the Complaint, from any and all causes of action, known or unknown, as of the Effective Date of Agreement, including, but not limited to, all causes of action and claims identified in the

Complaint (plus attorney's fees, costs and expenses of any kind and however denominated) which Relator or Relator's counsel could have asserted or may assert in the future against Metropolitan, or any of its direct and indirect subsidiaries, brother or sister corporations, divisions, current or former members/owners, officers, directors, agents or employees, including but not limited to:

- a. Claims for personal injury, bodily injury, emotional distress, retaliation, breach of contract and violation of employment laws;
- b. All claims under the False Claims Act, 31 U.S.C. § 3729 *et seq.* (as amended), except 31 U.S.C. § 3730(h); the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.*, the Civil Monetary Penalties Law; the Federal Health Care Antikickback Statute, 42 U.S.C. § 1320a-7b(b) as it may be enforced under the False Claims Act; or the common law for any acts or omissions described in the Complaint and in the Settlement Agreements;

- c. All other claims asserted or which could be asserted by Relator or Relator's counsel in this action or any other action, including all past, present or potential claims and all causes of action related to any federal or state civil claims which Relator or Relator's Counsel asserts or could have asserted under any federal or state False Claims Act or under any other federal or state statute which are known or could have been known by Relator or Relator's Counsel as of the Effective Date with respect to Metropolitan and its present and former directors, officers, employees and agents, including, but not limited to, the allegations set forth in the Complaint.

9. Metropolitan waives and shall not assert any defenses Metropolitan 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 Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the

Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Metropolitan agrees that this Agreement is not punitive in purpose or effect. 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. Integrity Requirements. Metropolitan and OIG-HHS agree that Metropolitan shall, for a period of three (3) years from the Effective Date of this Agreement:

a. Continued Implementation of Corporate Compliance Program.

Metropolitan shall continue to implement its Corporate Compliance Program, as described in the Declaration attached hereto and incorporated herein by this reference as Appendix C, and continue to provide, at a minimum, the same level of resources currently provided, throughout this time period, except for compliance expenditures that arose from the internal investigation, self disclosure, and defense of the action giving rise to this Agreement. Metropolitan may amend its Corporate Compliance Program as it deems necessary, so long as those amendments are consistent with the overall objective of ensuring compliance with the requirements of Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f).

b. Reporting of Overpayments. Metropolitan shall promptly refund to the appropriate Federal health care program payor any identified Overpayment(s). For purposes of this Agreement, an "Overpayment" shall mean the amount of money Metropolitan has received in excess of the amount due and payable under any Federal health care program requirements. If, at any time, Metropolitan identifies or learns of any Overpayment, Metropolitan shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification

(or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from recurring. Also, within 30 days after identification of the Overpayment, Metropolitan shall repay the Overpayment to the appropriate payor to the extent such Overpayment has been quantified. If not yet quantified, within 30 days after identification, Metropolitan shall notify the payor of its efforts to quantify the Overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor's policies, and for Medicare contractors, shall include the information contained on the Overpayment Refund Form, provided as Appendix D to this Agreement.

c. Reportable Events. Metropolitan shall report to OIG-HHS in writing within 30 days after making a determination (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) that there is a Reportable Event, which shall mean anything that involves: (1) a substantial Overpayment, or (2) a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized. In such report, Metropolitan shall include the following information:

(1) If the Reportable Event results in an Overpayment, the report to OIG-HHS shall be made at the same time as the notification to the payor required in Paragraph 10.b., and shall include all of the information on the Overpayment Refund Form, as well as:

(A) the payor'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) by which the Overpayment was repaid/refunded;

- (2) a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;
- (3) a description of Metropolitan's actions taken to correct the Reportable Event; and
- (4) any further steps Metropolitan plans to take to address the Reportable Event and prevent it from recurring.

d. Notification of Government Investigation or Legal Proceedings.

Within 30 days after discovery, Metropolitan shall notify OIG-HHS, in writing, of any ongoing investigation or legal proceeding known to Metropolitan conducted or brought by a governmental entity or its agents involving an allegation that Metropolitan has committed a crime or has engaged in fraudulent activities. 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. Metropolitan shall also provide written notice to OIG-HHS within 30 days after the resolution of the matter, and shall provide OIG-HHS with a description of the findings and/or results of the proceedings, if any.

e. Annual Reporting Requirements. Each one-year period, beginning with the one-year period following the Effective Date of this Agreement, shall be referred to as a "Reporting Period." Metropolitan shall submit to OIG-HHS annually a report that sets forth, under penalty of perjury, the following information for each Reporting Period (Annual Report):

- (1) A description of any material amendments to its Corporate Compliance Program;
- (2) Any changes to the level of resources dedicated to its Corporate Compliance Program;

(3) A summary of any internal or external reviews, audits, or analyses of its Corporate Compliance Program and any corrective action plans developed in response to such those reviews, audits, or analyses;

(4) A summary of any internal or external reviews, audits, or analyses related to physician financial relationships and billing and documentation issues and any corrective action plans developed in response to such reviews, audits, or analyses;

(5) A report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each state separately, if applicable), and other Federal health care programs. Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report; and

(6) A certification that, during the Reporting Period, Metropolitan has complied with the Integrity Requirements of this Agreement.

The first Annual Report shall be received by OIG-HHS no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG-HHS no later than the anniversary date of the due date of the first Annual Report.

f. Notifications and Submission of Annual Reports. Unless otherwise specified in writing after the Effective Date of the Agreement, all notifications and Annual Reports required under this Paragraph 10 shall be submitted to the following addresses:

OIG:

Administrative and Civil Remedies Branch
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, S.W.
Washington, D.C. 20201
Telephone: 202-619-2078
Facsimile: 202-205-0604

Metropolitan:
Christine Lawrence
Corporate Compliance Officer
Metropolitan Hospital
1919 Boston SE
Grand Rapids, Michigan 49506-4160
Telephone: 616-252-7397
Facsimile: 616-252-6946

Unless otherwise specified, all notifications and reports required by this Paragraph may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such report or notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

g. OIG-HHS Inspection, Audit, and Review Rights. In addition to any other rights OIG-HHS may have by statute, regulation, or contract, OIG-HHS or its duly authorized representative(s) may examine or request copies of Metropolitan's books, records, audits, and other documents and supporting materials and/or conduct on-site reviews of any of Metropolitan's locations for the purpose of verifying and evaluating: (a) Metropolitan's compliance with the terms of the Integrity Requirements of this Agreement; and (b) Metropolitan's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Metropolitan to OIG-HHS or its duly authorized representative(s) at all reasonable times for inspection, audit, or reproduction. Furthermore, for purposes of this provision, OIG-HHS or its

duly authorized representative(s) may interview any of Metropolitan'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 OIG-HHS. Metropolitan shall assist OIG-HHS or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG-HHS's request. Metropolitan's employees may elect to be interviewed with or without a representative of Metropolitan present. However, nothing in this Paragraph 10.g. shall require a waiver of Metropolitan's attorney-client, attorney-work product, or other applicable privileges. Notwithstanding that fact, the existence of any such privilege shall not be used by Metropolitan to avoid its obligations to comply with the provisions of this Paragraph 10.g.

h. Document and Record Retention. Metropolitan shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with the Integrity Requirements of this Agreement, for four (4) years (or longer if otherwise required by law).

11. Subject to the exceptions in Paragraph 6 above, Metropolitan fully and finally releases the United States, its agencies, employees, servants, and agents, and relator, her heirs, successors, attorneys, agents, and assigns, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Metropolitan has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, or relator, her heirs, successors, attorneys, agents and assigns, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. The Settlement Amount 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,

or any State payer, related to the Covered Conduct; and Metropolitan shall not resubmit to any Medicare carrier or intermediary, or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

13. Metropolitan agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 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 Metropolitan, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on contracts with the United States and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) :

(1) the matters covered by this Agreement,

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

(3) Metropolitan's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

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

(5) the payments Metropolitan makes to the United States pursuant to this Agreement and any payments that Metropolitan may make to the relator, including costs and attorneys fees, and

(6) the negotiation of, and obligations undertaken pursuant to the Integrity Requirements of this Agreement, including the preparation and submission of reports to the OIG-HHS, except

those amounts necessary for the operation of Metropolitan's existing Corporate Compliance Program as described in Paragraph 10.a. However, nothing in this Paragraph 13.a.(6) that may apply to the obligations undertaken pursuant to the Integrity Provisions affects the status of costs that are not allowable based on any other authority applicable to Metropolitan.

b. Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for in non-reimbursable cost centers by Metropolitan, and Metropolitan 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 Metropolitan or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Metropolitan further agrees that within 90 days following the Effective Date of this Agreement it shall 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 reports, cost statements, information reports, or payment requests already submitted by Metropolitan or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Metropolitan agrees that the United States, at a minimum, shall be entitled to recoup from Metropolitan any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost

reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Metropolitan or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Metropolitan or any of its subsidiaries' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine or re-examine Metropolitan's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 2, 3, 4, 8, and 11, above.

15. Metropolitan waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

16. Metropolitan 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 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Metropolitan, within the meaning of 11 U.S.C. § 547(c)(1); and

(b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Metropolitan was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

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

b. If Metropolitan's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against

Metropolitan for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3 above. Metropolitan agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Metropolitan 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 Metropolitan will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Metropolitan 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 90 calendar days of written notification to Metropolitan that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date; and (iii) the United States has a valid claim against Metropolitan in the amount of \$ 43,095,000, and the United States may pursue its claim 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. Metropolitan acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

18. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Metropolitan represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. Relator represents that this Agreement is freely and voluntarily entered

into without any degree of duress or compulsion whatsoever.

21. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Western District of Michigan, except that dispute arising under the Integrity Requirements set forth in Paragraph 10 shall be resolved exclusively under the dispute resolutions in the Integrity Requirements of Paragraph 10 and Appendices C-E.

22. This Agreement constitutes the complete agreement between the Parties, although the cost and attorney fee provisions of Paragraph 1 shall be determined subsequent to the execution hereof. This Agreement may not be amended except by written consent of the Parties except that only Metropolitan and OIG-HHS must agree in writing to modification of the Integrity Requirements set forth in Paragraph 10.

23. Upon receipt of the First Installment Payment described in Paragraph 1(a) and the payment to relator described in Paragraph 1(c) above, the United States and relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal whereby (a) the Complaint, except for those claims, counts, and allegations set forth in Paragraph 6, shall be dismissed in its entirety with prejudice as to the relator; (b) the allegations in the Complaint based on the Covered Conduct shall be dismissed with prejudice as to the United States; and (c) the allegations in the Complaint that are not based on the Covered Conduct as defined in the Settlement Agreement shall be dismissed without prejudice as to the United States.

24. The individuals signing this Agreement on behalf of Metropolitan represent and warrant that they are authorized by Metropolitan to execute this Agreement. The individual(s) signing this Agreement on behalf of the relator represent and warrant that they are

authorized by relator to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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 binding on Metropolitan's successors, transferees, heirs, and assigns.

27. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

28. 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.

THE UNITED STATES OF AMERICA

DATED: 12/3/03

BY: 
LAURA F. LAEMMLE

Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/4/03

BY: 
LARRY J. GOLDBERG

Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of
Health and Human Services

METROPOLITAN - DEFENDANTS

DATED: _____ BY: _____
MICHAEL D. FAAS
President and Chief Executive Officer

DATED: _____ BY: _____
CARRIE VALLANT, ESQ.
Epstein Becker & Green, P.C.
As counsel for Metropolitan

DATED: _____ BY: _____
MARC HANDLER, ESQ.
Epstein Becker & Green, P.C.
As counsel for Metropolitan

MARY SCOTT - RELATOR

DATED: 11-5-03 BY: Mary T. Scott
MARY T. SCOTT

DATED: 12-5-03 BY: Mark S. Scott
MARK S. SCOTT
Counsel for Mary T. Scott

METROPOLITAN - DEFENDANTS

DATED: 12/4/03

BY: Michael D. Faas
MICHAEL D. FAAS
President and Chief Executive Officer

DATED: 10/9/03

BY: Carrie Valiant
CARRIE VALIANT, ESQ.
Epstein Becker & Green, P.C.
As counsel for Metropolitan

DATED: 12/9/03

BY: Marci Handler
MARCI HANDLER, ESQ.
Epstein Becker & Green, P.C.
As counsel for Metropolitan

MARY SCOTT - RELATOR

DATED: _____

BY: _____
MARY T. SCOTT

DATED: _____

BY: _____
MARK S. SCOTT
Counsel for Mary T. Scott