

## 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 Outcomes Technologies, Inc. ("Relator"), and East Jefferson General Hospital ("HOSPITAL" or "East Jefferson") (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. HOSPITAL is a hospital located in Metairie, LA, that provides inpatient treatment to Medicare beneficiaries.

B. The United States contends that 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. §§ 1395-1395ddd(1997).

C. 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.

D. The Medicare program relies upon participating hospitals to properly indicate the principal diagnosis through the use of standard diagnosis codes.<sup>1</sup>

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

F. The United States contends that it has certain civil claims against 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 5 below, for engaging in the following alleged conduct: during the period from 1992 through 1994 in that HOSPITAL submitted or caused to be submitted claims to Medicare with the 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, HOSPITAL received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against HOSPITAL under the provisions for permissive exclusion from 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.

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<sup>1</sup> International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM").

H. HOSPITAL 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 the Medicare program with the principal diagnosis code of 482.89, and HOSPITAL represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. HOSPITAL does not admit the contentions of the United States as set forth in Paragraphs F and G above.

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. HOSPITAL agrees to pay to the United States \$723,973.42 (the "Settlement Amount") as follows: HOSPITAL agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions as provided by the United States Attorney's Office for the Eastern District of Louisiana. HOSPITAL agrees to make this electronic funds transfer no later than the effective date of this Agreement.

2. HOSPITAL 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 2, however, affects any privilege that might be available to HOSPITAL or any statutory or regulatory obligation of HOSPITAL, or HOSPITAL'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 HOSPITAL.

HOSPITAL agrees to the following specific representations and undertakings:

a. HOSPITAL will use its best efforts to provide such information, and related documents, within ten (10) working days of receipt of a request. If necessary, HOSPITAL 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. HOSPITAL understands that it has undertaken an obligation to provide truthful and accurate information and testimony by itself and through its employees. HOSPITAL 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 HOSPITAL has failed to cooperate fully or has intentionally given false, misleading, or incomplete information or testimony, or has otherwise violated any provision of this Agreement, HOSPITAL thereafter shall be subject to prosecution for any criminal violation of which the United States has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

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

4. HOSPITAL releases the United States and 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 7 below, in consideration of the obligations of HOSPITAL set forth in this Agreement, conditioned upon HOSPITAL'S payment in full of the Settlement Amount, and subject to Paragraph 14, below (concerning bankruptcy proceedings commenced within 91 days of any payment

under this Agreement), the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 4), and Relator agree to release HOSPITAL, its predecessors, successors, assigns, and affiliates 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. The United States expressly reserves any claims against any entities and individuals other than HOSPITAL, its predecessors, successors, assigns, and affiliates.

6. In consideration of the obligations of HOSPITAL set forth in this Agreement and in the Corporate Integrity Agreement, attached as Exhibit A, and conditioned upon HOSPITAL'S payment in full of the Settlement Amount, and subject to Paragraph 14 below (concerning bankruptcy proceedings commenced within 91 days 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 Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against HOSPITAL 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. The OIG-HHS expressly reserves all rights to

comply with any statutory obligations to exclude HOSPITAL or others from Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). 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 7, below.

7. 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 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;

(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 HOSPITAL;

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

(8) Any claims against any individuals, including officers and employees of HOSPITAL.

8. 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 Clauses of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. HOSPITAL agrees that this settlement 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.

9. The Amount that HOSPITAL 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, or any State payer, related to the Covered Conduct; and HOSPITAL agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. HOSPITAL 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 HOSPITAL 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) HOSPITAL'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 and the Corporate Integrity 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 Federal Employee Health Benefits Program (FEHPB) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by HOSPITAL, and 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 HOSPITAL or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

HOSPITAL 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, VA and FEHBP fiscal agents, any unallowable costs (as

defined in this Paragraph 10) 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 HOSPITAL 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. HOSPITAL agrees that the United States will be entitled to recoup from HOSPITAL 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 HOSPITAL or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph 10) on HOSPITAL 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 10.

11. 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.

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

13. 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 (a) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to HOSPITAL, within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

14. In the event HOSPITAL commences, or a third party commences, within 91 days 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 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. 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 HOSPITAL'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 HOSPITAL for the claims that would otherwise be covered by the releases provided in Paragraphs 5-6 above. If the United States chooses to do so, HOSPITAL agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude HOSPITAL 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 HOSPITAL will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that 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 180 calendar days of written notification to 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 settlement; and (iii) the United States has a valid claim against HOSPITAL in the amount of \$2,645,960.13. 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. HOSPITAL acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. 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.

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

17. 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 Eastern District of Louisiana, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall be

resolved exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

18. 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 HOSPITAL and the OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement contained in Exhibit A.

19. After this Agreement is executed and the Settlement Amount is received by the United States, the United States and Relator will notify the Court that the Parties stipulate and request that HOSPITAL be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. East Jefferson General Hospital, et al., Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

20. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release HOSPITAL 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 attorneys' fees, expenses and costs.

21. Conditioned on HOSPITAL's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$101,356.27. The United States shall pay relator this amount within a reasonable time after receipt by the United States from 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 or any relator's share payments except as provided herein for funds actually collected and received by the United States.

22. On 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 as against HOSPITAL, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from HOSPITAL, and in full satisfaction and settlement of claims under this Agreement.

23. The undersigned individuals signing this Agreement on behalf of HOSPITAL and Relator 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. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

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

26. This Agreement is binding on all successors, heirs, assigns, and transferees of HOSPITAL.

THE UNITED STATES OF AMERICA

DATED: 9/14/99

BY: 

DIANE HOLLENSHEAD COPES  
Assistant United States Attorney  
Eastern District of Louisiana

DATED: 9/19/99

BY: 

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

DATED: 9/29/99

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

HOSPITAL

DATED: 9/14/99

BY: 

PETER J. BETTS  
President and Chief Executive  
Officer  
East Jefferson General Hospital  
4200 Houma Boulevard  
Metairie, LA 70006

DATED: 9/14/99

BY: 

SALVADOR ANZELMO  
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RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 9/22/95

BY: MP IH  
DRINKER, BIDDLE & REATH  
Attorneys for Relator  
Health Outcomes Technologies