

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement ("Agreement") is entered by and among:

A. The United States of America, acting through its Department of Justice and the United States Attorneys' Offices for the Districts of Massachusetts and the Southern District of Florida, and on behalf of (1) the United States Department of Health and Human Services through its Office of Inspector General ("HHS-OIG"); (2) the United States Department of Defense through its TRICARE Support Office ("TSO") (formerly the Office of the Civilian Health and Medical Program of the Uniformed Services), a field activity of the Office of the Secretary of Defense, through counsel; (3) the United States Office of Personnel Management ("OPM"), through the Director of Programs; and (4) the United States Department of Veteran Affairs ("VA"), through counsel; (collectively the preceding will be referred to as the "United States");

B. National Medical Care, Inc. ("NMC"), a Delaware corporation, and its affiliate entities listed on Exhibit E hereto that provide or have provided dialysis services (jointly and severally "DSD"); and Fresenius Medical Care Holdings, Inc. ("FMCH") (d/b/a Fresenius Medical Care North America); and

C. Gregory S. Price ("Price"), individually, and Richard

Bradford ("Bradford"), individually, (collectively the "Relators"), each acting through his authorized representative. Collectively, all of the above will be referred to as "the Parties."

II. PREAMBLE

A. WHEREAS, at all relevant times, NMC primarily was in the business of providing dialysis and related services to patients with End-Stage Renal Disease ("ESRD") throughout the United States.

B. WHEREAS, DSD submitted or caused to be submitted ESRD claims for payment for dialysis, patient care, and related goods and services to the Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997), which is administered by HHS;

C. WHEREAS, DSD submitted or caused to be submitted ESRD claims for payment for dialysis, patient care, and related goods and services to the TRICARE Program (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")), 10 U.S.C. §§ 1071-1106, which is administered by the Department of Defense through the TSO;

D. WHEREAS, DSD submitted or caused to be submitted ESRD claims for payment for dialysis, patient care, and related goods and services to the Federal Employees Health Benefit Program ("FEHBP"), 5 U.S.C. §§ 8901-8914, which is administered by OPM;

E. WHEREAS, DSD submitted or caused to be submitted ESRD claims for payment for dialysis, patient care, and related goods and services to the Railroad Retirement Medicare program ("Railroad Medicare"), established under the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-231v, which is paid from the Medicare Trust Fund, and administered by the United States Railroad Retirement Board ("RRB");

F. WHEREAS, DSD submitted or caused to be submitted ESRD claims for payment for dialysis, patient care, and related goods and services to the Veteran Affairs Program, 38 U.S.C. §§ 1701-1743, which is administered by the VA;

G. WHEREAS, DSD submitted or caused to be submitted ESRD claims for payment for dialysis, patient care, and related goods and services to the Medicaid programs, 42 U.S.C. §§ 1396-1396v (1997), of the thirty-three states of Alabama, Arizona, Arkansas, California, Connecticut, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, (the "Participating States"), and to the Territory of Puerto Rico (the "Participating Territory");

H. WHEREAS, the United States contends that it has

certain civil claims against DSD and NMC, and against FMCH, as parent, for violations of the federal statutes and/or common law doctrines, specified in Paragraph 10 below in connection with the following conduct ("the Covered Conduct"):

(1) Failing to refund to HCFA or its fiscal intermediaries, overpayments (hereinafter "Unreconciled Payments") received by DSD from Medicare that DSD reported as Unreconciled Payments on HCFA Forms 838;

(2) Failing to report on HCFA Forms 838 filed or caused to be filed by DSD from 1991 to the present, Unreconciled Payments it had received from the Medicare program, and recognized as income during the period 1975-1993;

(3) In connection with amendments to the Medicare Secondary Payor provisions made by the Omnibus Budget Reconciliation Act ("OBRA") of 1993 ("OBRA '93"), failing to report to HCFA or its fiscal intermediaries on HCFA Forms 838 Unreconciled Payments at the time of billing to employer group health plans and otherwise failing to report in a timely fashion to HCFA or its fiscal intermediaries.

(4) Failing to report and/or refund to HCFA or its fiscal intermediaries overpayments that Home Dialysis Services, Inc. ("HDS"), a company established by NMC, had received from the Medicare program resulting from its billing of home dialysis services and equipment in excess of the Method II home dialysis

cost cap contained in OBRA '89;

(5) Failing to report and/or refund to HCFA and its fiscal intermediaries overpayments received by HDS from the Medicare program resulting from its billing in excess of the reasonable charge for home dialysis prior to OBRA '89;

(6) Failing to report and/or refund to the Participating States and Territory Medicaid programs overpayments received during the years 1975-1993;

(7) Failing to report and/or refund to TRICARE overpayments received during the years 1975-1993;

(8) Failing to report and/or refund to FEHPB overpayments received during the years 1975-1993; and

(9) Failing to report and/or refund to the VA overpayments received during the years 1975-1993.

I. WHEREAS, the United States also contends that it has certain administrative claims against DSD and FMCH, as parent, 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.

J. WHEREAS, Relator Gregory S. Price has filed under seal a qui tam complaint on behalf of the United States: United States ex rel. Price v. W.R. Grace & Co., National Medical Care, Inc., et al., Civil Action No. 97-11022-NG (D. Mass.) (the "Price

Civil Action").

K. WHEREAS, Relator Richard Bradford has filed under seal a qui tam complaint on behalf of the United States: United States ex rel. Bradford v. National Medical Care, Inc., et al., Civil Action No. 96-3350-Hoeveler (S.D. Fla.) (the "Bradford Civil Action").

L. WHEREAS, DSD, and FMCH specifically deny and affirmatively contest the contentions of the United States as set forth in Paragraph H, above, and the allegations of the Relators in the Price and Bradford Civil Actions, and specifically deny any wrongdoing in connection with those claims; and further contend that DSD's practices described in the Covered Conduct were appropriate and lawful and did not result in any violations of federal law, state law, or common law doctrines, and do not give rise to any civil or administrative cause of action; and

M. WHEREAS, over the years, DSD reported Medicare Unreconciled Payments on HCFA Forms 838 through the quarter ended December 31, 1998, of which NMC and FMCH warrant and represent on Exhibit E attached hereto and incorporated herein by reference, that \$10,982,885.16 million has not yet been recouped by the fiscal intermediaries as of January 3, 2000 and remains outstanding ("Unrecouped Credit Balances"); and

N. WHEREAS, in order to avoid the delay, uncertainty,

inconvenience and expense of protracted litigation of these claims and contentions of the Parties, the Parties reach a full and final compromise for the Covered Conduct, pursuant to the Terms and Conditions set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. NMC and FMCH, collectively, shall pay to the United States and the Participating States and Participating Territory, collectively, the sum of sixteen million eight hundred seventeen thousand seven hundred eight dollars (\$16,817,708) (the "Settlement Amount"), and this sum shall constitute a debt immediately due and owing to the United States on the "First Payment Date", which is the later of the dates on which (a) the four civil Settlement Agreements are fully executed by the Parties, (b) all notices of dismissal described in the civil Settlement Agreements are docketed by the Court, or (c) the Court accepts LIFECEM, INC.'s, NMC Medical Products, Inc.'s, and NMC Homecare, Inc.'s guilty pleas and imposes the sentences set forth in their respective Plea Agreements. NMC and FMCH, collectively, shall pay the Settlement Amount to the United States according to

the schedule, terms and instructions contained in the Promissory Note executed contemporaneously with this Agreement, attached as Exhibit A, and incorporated herein by reference. Within a reasonable amount of time after receipt of the first payment from NMC and FMCH pursuant to the terms of the Promissory Note, the United States shall pay to (a) the Participating States, collectively, according to written payment instructions from the Participating States, an amount of seven hundred fifty four thousand one hundred twenty-five dollars (\$754,125) as their share of the Settlement Amount and (b) the Participating Territory, according to written payment instructions from the Participating Territory, an amount of sixty thousand one hundred fifty-five dollars (\$60,155) as its share of the Settlement Amount.

2. As an express condition of the Settlement Agreement, to secure NMC's and FMCH's payment obligations under Paragraph 1 of this Agreement (and the other civil Settlement Agreements and criminal Plea Agreements being executed at the same time), NMC and FMCH shall:

(a) procure from the Bank of Nova Scotia and deliver or cause to be delivered to the United States Attorney's Office for the District of Massachusetts, on or before January 19, 2000, an amendment to the unconditional, irrevocable Letter of Credit No. S020/43695/96 issued to the United States of America on September

27, 1996 (the "Letter of Credit") to increase the amount of the Letter of Credit to \$189,634,446.00. Such amendment shall be in the form attached as Exhibit B. Within 10 days of receipt by the U.S. Attorney's Office of written confirmation from the transferring bank that a quarterly payment, as described in Paragraphs 1.B. through 1.E. of the Promissory Note, or prepayment of such quarterly payments, has been made to the United States, the United States shall provide written permission to the Bank of Nova Scotia to reduce the amount available for drawing under Letter of Credit No. S020/43695/96 by the amount of the principal payment received. In the event that the entire outstanding payment obligation secured by the Letter of Credit is prepaid, then the United States shall provide written permission to reduce the amount available for drawing to zero. The United States shall return this Letter of Credit for cancellation when all obligations are paid in full or it is determined, by the United States, or pursuant to a final and non-appealable order of a court of competent jurisdiction, that NMC and FMCH have fulfilled all payment obligations pursuant to this Agreement.

(b) On January 19, 2000, NMC and FMCH shall establish an escrow account in an initial amount of \$236,401,919.00 to be held by an independent third party agreeable to the United States, and NMC and FMCH shall increase the escrow amount each day in an amount of \$48,546.00 (through accrued interest and/or

deposits), beginning on January 20, 2000 and continuing through April 15, 2000, when NMC and FMCH shall increase the escrow amount by an additional amount each day of \$7,271.00 (through accrued interest and/or deposits), for each quarterly payment due before the first payment is due on the First Payment Date. On the First Payment Date, all funds in the escrow account shall be paid to the United States to satisfy the payment obligation in Paragraph 1. The terms and conditions of this escrow account shall in no way limit NMC's and FMCH's payment obligations to the United States secured by the Letter of Credit.

3. NMC and FMCH, collectively, agree to pay to the Health Care Financing Administration ("HCFA") the Unrecouped Credit Balances, and this sum shall constitute a debt immediately due and owing to the United States upon the later of the date on which (a) this Agreement is fully executed by the Parties, or (b) the notices of dismissal described in Paragraph 18 of this Agreement are filed and docketed by the Court. NMC and FMCH shall pay the Unrecouped Credit Balances in accordance with written payment instructions to be provided by the United States Attorneys' Office for the District of Massachusetts. HCFA shall direct its fiscal intermediaries identified in Exhibit E, in writing, that they should cease any efforts to recoup the Unrecouped Credit Balances received by DSD prior to January 1, 1999 and reported by DSD on Forms 838. NMC and FMCH shall

provide HCFA with any additional documentation necessary to this process. In the event that HCFA or any fiscal intermediary initiates a recoupment contrary to such directions, NMC and FMCH shall notify Dara Corrigan, Associate General Counsel of HCFA, and HCFA shall instruct the fiscal intermediary to suspend the recoupment.

4. NMC and FMCH are in default of this Agreement on the date of occurrence of any of the following events ("Events of Default"):

a. NMC's and FMCH's failure to procure, deliver or maintain the Letter of Credit;

b. NMC's and FMCH's failure to pay any amount provided for in the Promissory Note attached as Exhibit A within two days of when such payment is due and payable;

c. NMC's and FMCH's failure to pay the Unreconciled Credit Balances as provided for in Paragraph 3 above;

d. If prior to making the full payment of the amount due under the Promissory Note or Paragraph 3 above, (i) NMC and/or FMCH commences 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 debtors, or seeking to adjudicate NMC and/or FMCH as bankrupt or insolvent, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for NMC and/or FMCH or for

all or any substantial part of NMC's and/or FMCH's assets; or (ii) there shall be commenced against NMC and/or FMCH any such case, proceeding or other action referred to in clause (i) which results in the entry of an order for relief and any such order remains undismissed, or undischarged or unbonded for a period of thirty (30) days; or (iii) NMC and/or FMCH takes any action authorizing, or in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth above in this sub-Paragraph 4.d.;

e. Failure by NMC and FMCH to establish, maintain or make the required payments to the escrow account described in Paragraph 2b.

5. If payments due under Paragraph 1 are received late, but within the two-day grace period provided in Paragraph 5 of the Promissory Note, interest incurred during such grace period will be assessed at two times the daily amount in effect on the date the payment was due.

6. NMC and FMCH shall provide the United States written notice of an Event of Default within two (2) business days of such event by overnight mail, or facsimile followed by overnight delivery, to the United States Attorney's Office, District of Massachusetts, One Courthouse Way, Suite 9200, Boston, MA 02210, Attention: Suzanne E. Durrell, Assistant U.S. Attorney (or to the attention of such other person as may be designated in writing by

the United States Attorney's Office).

7. Immediately upon the occurrence of an Event of Default, without further notice or presentment and demand by the United States:

a. The Settlement Amount plus accrued interest through the end of the applicable quarter as set forth in Paragraph 1 of the Promissory Note and the Unreconciled Credit Balances referenced in Paragraph 3 above (minus any payments to date of principle and accrued interest) shall become immediately due and payable ("Settlement Default Amount"). Interest shall be calculated on the Settlement Default Amount at the Prime Rate as published in the Wall Street Journal on the Effective Date of this Agreement, plus 5% from the date of the Event of Default.

b. In addition, NMC and FMCH will pay the United States all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses, plus interest described in Paragraph 7.a. above. The Settlement Default Amount, plus interest, described in Paragraph 7.a. above, together with the costs of collection and enforcement described in this sub-paragraph, will be referred to as the "Default Obligation".

8. Upon the occurrence of an Event of Default, the United States may exercise, at its sole option, one or more of the following rights:

a. The United States may draw the full amount available for drawing under the Letter of Credit and retain all proceeds thereof.

b. The United States may enforce the terms of the Guarantee Agreement between the United States of America, Fresenius Medical Care GMBH, a German corporation and the predecessor of Fresenius Medical Care AG, W.R. Grace & Co., a New York corporation, and National Medical Care, Inc., dated July 31, 1996, attached as Exhibit C.

c. The United States retains any and all other rights and remedies it has or may have under law and equity.

d. No failure or delay on the part of the United States to exercise any right or remedy shall operate as a waiver of the United States' rights. No single or partial exercise by the United States of any right or remedy shall operate as a waiver of the United States' rights.

9. In an Event of Default under Paragraph 4.d. above (Commencement of Bankruptcy or Reorganization Proceeding):

a. NMC and FMCH agree not to contest or oppose any motion filed by the United States seeking relief from or modification of the automatic stay of 11 U.S.C. § 362(a); not to seek relief under 11 U.S.C. § 105 to enjoin or restrain the United States from recovering monies owed by NMC and FMCH arising out of this Agreement or the attached Promissory Note, or from

recovering monies through presentment against the Letter of Credit. NMC and FMCH recognize that this express waiver is in consideration for the settlement of claims by the United States described in Preamble Paragraph H above, under the terms and conditions contained in this Settlement Agreement.

b. By expressly waiving the automatic stay provision, NMC and FMCH agree not to oppose or interfere with any motion made in federal court (including bankruptcy courts) by the United States to suspend payments to NMC and DSD from the Title XVIII (Medicare), Title XIX (Medicaid) programs, and other federal health care programs;

c. This Agreement shall be voidable at the sole option of the United States;

d. If any term(s) of this Agreement are set aside for any reason, including as a result of a preference action brought pursuant to 11 U.S.C. § 547, the United States, at its sole option and in its discretion, may rescind all terms of this Agreement and seek recovery of the full amount of claims and allegations identified herein and in the Civil Actions, or, in the alternative, enforce the remaining terms of this Agreement. In the event of rescission of this Agreement, all Parties reserve all rights, claims, and defenses that are available under law and equity as of the Effective Date of this Agreement; and

e. In addition to the rights enumerated in Paragraph

8.a. through 8.d. above, the United States and all other Parties shall retain all rights and claims they have or may have under law and equity.

10. Subject to the exceptions and limitations in Paragraph 11 below, in consideration of the obligations of DSD and FMCH set forth in this Agreement, conditioned upon payment in full of the Settlement Amount and the Unrecouped Credit Balances, subject to Paragraph 30, (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement), the United States, on behalf of itself, and its officers, agents, agencies, and departments, will release and will be deemed to have released DSD including NMC, FMCH, and the subsidiaries of NMC and FMCH listed on the attached Exhibit D (collectively, the subsidiaries of NMC and FMCH listed on Exhibit D will be referred to as the "NMC Companies," and the corporate entities listed on Exhibit D comprise the only entities which constitute the "NMC Companies" within the meaning of this Agreement), and the current directors, officers, employees, and agents of the DSD, FMCH and the NMC Companies who were not employed by or in any way affiliated with DSD, FMCH and the NMC companies prior to September 30, 1996, from any civil or administrative monetary claim (including recoupment claims) that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the

Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; or common law claims for fraud, payment by mistake of fact, breach of contract or unjust enrichment for the conduct described in Preamble Paragraphs H and M above with respect to Medicare, Railroad Retirement Medicare, TRICARE, FEHBP, the VA, and/or the Medicaid programs of the Participating States and the Participating Territory.

11. Notwithstanding any term of this Agreement, the United States specifically does not release DSD, FMCH or the NMC Companies, or any individual from any and all of the following:

- (a) any potential criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) any criminal liability;
- (c) any potential liability to the United States (or any agencies thereof) for any conduct other than that identified in Preamble Paragraphs H and M above, including but not limited to any allegations in the Civil Actions not encompassed by Preamble Paragraphs H and M;
- (d) any entities not specifically included on the list of NMC Companies set forth in Exhibit D;
- (e) any claims based upon such obligations as are created by this Agreement;
- (f) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (g) any express or implied warranty claims or other claims for defective or deficient products and services provided by DSD, including

quality of testing or product claims; (h) any claims for personal injury or property damage or for other consequential damages arising from the conduct described in Preamble Paragraphs H and M above; (i) any claims based upon failure to deliver items or services; (j) any civil or administrative claims against any individual who was an officer, director, trustee, agent, employee, or was in any way affiliated with DSD or NMC's parents, subsidiaries, divisions, or affiliates at any time prior to September 30, 1996; or (k) any civil or administrative claims against any individual, including current directors, officers, employees and agents, who is criminally indicted or convicted of an offense, or who enters a criminal plea related to the conduct alleged in Preamble Paragraphs H and M above.

12. FMCH, on behalf of itself and its parents, affiliates, subsidiaries, and divisions, including but not limited to NMC, has entered into a Corporate Integrity Agreement with HHS-OIG, which is incorporated by reference into this Agreement. FMCH will immediately upon execution of this Agreement implement its obligations under the Corporate Integrity Agreement.

13. In consideration of the obligations of DSD and FMCH set forth in this Agreement, conditioned upon payment in full of the Settlement Amount and the Unrecouped Credit Balances, subject to Paragraph 30 below (concerning bankruptcy proceedings

commenced within 91 days of any payment under this Agreement), and conditioned upon FMCH's entering into the Corporate Integrity Agreement incorporated by reference, 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 DSD, FMCH or the NMC Companies and their current directors, officers, employees, and agents who were not employed by or in any way affiliated with DSD or any of NMC's parents, subsidiaries, divisions, or affiliates at any time prior to September 30, 1996, under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b) (permissive exclusion) for the conduct described in Preamble Paragraphs H and M, except as reserved in Paragraph 11 above and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the DSD, FMCH and the NMC Companies from the 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 individuals for conduct and practices for which civil claims have been reserved in Paragraph 11 above.

14. In consideration of the obligations of DSD and FMCH set forth in this Agreement, conditioned upon payment in

full of the Settlement Amount and Unrecouped Credit Balances, and subject to Paragraph 30 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement), TSO agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the TRICARE program against DSD, FMCH or the NMC Companies and their directors, officers, employees, and agents who were not employed by or in any way affiliated with DSD or NMC's subsidiaries, divisions, and affiliates at any time prior to September 30, 1996, under 32 C.F.R. § 199.9 for the conduct described in Preamble Paragraphs H and M, except as reserved in Paragraph 11 above and as reserved in this Paragraph. The TSO expressly reserves all rights to comply with any statutory obligations to exclude DSD, FMCH and the NMC Companies from the TRICARE program under 32 C.F.R. §§ 199.9(f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(D), and (f)(1)(iii). Nothing in this Paragraph precludes the TSO from taking action against entities or persons, or for conduct or practices, for which civil claims have been reserved in Paragraph 11 above.

15. In consideration of the obligations of DSD and FMCH as set forth in this Agreement, conditioned upon payment in full of the Settlement Amount and Unrecouped Credit Balances, and subject to Paragraph 30 below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement),

OPM agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from FEHBP against DSD, FMCH and the NMC Companies and their directors, officers, employees, and agents who were not employed by or in any way affiliated with DSD or NMC's subsidiaries, divisions, or affiliates at any time prior to September 30, 1996, under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the conduct described in Preamble Paragraphs H and M including that in the Civil Action, except as reserved in Paragraph 11 above, and except if the DSD, FMCH or the NMC Companies or any individuals are excluded by the Office of Inspector General of HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this paragraph precludes OPM from taking action against entities or persons, or for conduct and practice for which civil claims have been reserved in Paragraph 11 above.

16. Bradford agrees that the settlement of his Civil Action is fair, adequate and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Price agrees that the settlement of his Civil Action is fair, adequate and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). On the United States' receipt of the First Payment pursuant to Paragraph 1 above, each of Relator Price and Bradford, for himself, his heirs, successors and assigns, will release and will be deemed to have released DSD, FMCH and the NMC

Companies and their parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, and transferees, and any of their current or former directors, officers, employees, counsel, agents, and representatives from any and all claims that he has or may have that arise from or relate to any and all of the allegations in his Civil Action, the conduct described in Preamble Paragraphs H and M, and his employment with any of the corporate entities referenced in this Paragraph, except claims by Relators Price and/or Bradford for attorney's fees and costs pursuant to 31 U.S.C. § 3730(d)(1). If NMC and FMCH default on their payment obligations under Paragraph 1 above, the respective releases given by Relator Price and Bradford shall, at the sole option and discretion of each Relator, upon written notice to NMC and FMCH, be rescinded.

17. The United States agrees to pay Relators Bradford and Price according to the terms set forth below:

a. The United States agrees to pay Relator Bradford 18% from the Federal Share of the Settlement Amount attributable to the allegations in the Bradford qui tam (\$799,194), a total principal amount of one hundred forty three thousand eight hundred fifty five dollars (\$143,855) plus 18% of the interest paid by NMC and FMCH on that principal amount, if any. To satisfy this obligation, the United States will pay Relator Bradford as payments by NMC are received under the terms of the

Promissory Note, as more particularly set forth in Exhibit A to the Promissory Note as those payments relate to this Agreement. The first payment to Relator Bradford will be made within 21 days after the First Payment Date, and subsequent payments to Relator Bradford will be made within 21 days after each additional payment is received by the United States, by wire transfer to Relator Bradford in accordance with instructions to be provided by Relator's counsel. Relator Bradford, for himself individually, and for his respective heirs, successors, and assigns, will release and will be deemed to have released and forever discharged the United States from any claims pursuant to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (d) and (d)(1), for a share of the proceeds of the Civil Action, from any claims for a share of the Settlement Amount, and from any claims arising from the filing of his Civil Action, and in full settlement of claims under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against Relator Bradford, arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

b. The United States agrees to pay Relator Price 18% of the Federal Share of the Settlement Amount attributable to the allegations of the Price qui tam (\$15,204,234), a total principal amount of two million seven hundred thirty six thousand seven

hundred sixty two dollars (\$2,736,762), plus 18% of the interest paid by NMC and FMCH on that principle amount of \$15,204,234, if any. To satisfy this obligation, the United States will pay Relator Price as payments by NMC are received under the terms of the Promissory Note, as more particularly set forth in Exhibit A to the Promissory Note as those payments relate to this Agreement. The first payment to Relator Price will be made within 21 days after the First Payment Date, and subsequent payments to Relator Bradford will be made within 21 days after each additional payment is received by the United States, by wire transfer to Relator Price in accordance with instructions to be provided by Relator's counsel. Relator Price, for himself individually, and for his respective heirs, successors, and assigns, will release and will be deemed to have released and forever discharged the United States from any claims pursuant to 31 U.S.C. § 3730, including 31 U.S.C. §§ 3730(b), (c), (d) and (d)(1), for a share of the proceeds of the Civil Action, from any claims for a share of the Settlement Amount, and from any claims arising from the filing of his Civil Action, and in full settlement of claims under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against Relator Price, arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

18. After this Agreement is fully executed, the United States and the Relators will notify the Court that all pertinent Parties have stipulated that, to the extent alleged in Paragraph H only, the Civil Action shall be dismissed with prejudice effective upon receipt by the United States, the Participating States and Participating Territory of the payments described in Paragraph 1 above, pursuant to and consistent with the terms of this Agreement. The United States and the Relators will also notify the court that all pertinent Parties have stipulated that the remaining claims by the Relators in the Civil Actions, to the extent not alleged in Preamble Paragraph H, shall be dismissed with prejudice as to the respective Relator and without prejudice as to the United States with the exception of Relators' claims for attorney's fees and costs pursuant to 31 U.S.C. § 3730(d)(1), which shall not be dismissed. The Parties agree that, except for Relator Bradford's claims for statutory attorney's fees and costs, which will remain in the jurisdiction of the United States District Court for the Southern District of Florida, the United States District Court for the District of Massachusetts shall maintain jurisdiction of any remaining claims in each Civil Action, in any Events of Default as defined in Paragraph 4, or in the event of disputes under this Agreement.

19. Effective upon the filing and docketing of the notices of dismissal described in Paragraph 18, DSD, FMCH and the NMC

Companies, and their parent, successor, subsidiary and affiliate corporations release and will be deemed to have released each of Bradford and Price, individually, any and all claims that these corporations have or may have related to or arising from any of the allegations in the Civil Actions, the conduct described in Preamble Paragraph H and any matters arising from either Relator's employment with the corporate entities referenced in this Paragraph.

20. DSD, FMCH and the NMC Companies waive and will not assert any defenses these entities may have to any criminal prosecution or administrative action relating to the conduct described in Preamble Paragraphs H and M, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or Excessive Fines Clause of the Eighth Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action. DSD and the NMC Companies further agree that nothing in this Agreement is punitive in purpose or effect.

21. FMCH and the NMC Companies covenant to cooperate fully and truthfully with the United States' civil investigation of individuals and entities not specifically released in this Agreement. Upon reasonable notice, the NMC Companies will make reasonable efforts to facilitate access to, and encourage the

cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control.

22. On the effective date of this Agreement, DSD, FMCH and the NMC Companies release and will be deemed to have released the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which DSD and the NMC Companies have or may have against the United States, its agencies, employees, servants, and agents, related to or arising from the United States' civil, criminal and administrative investigation and prosecution of DSD, NMC and FMCH.

23. The Settlement Amount and the Unrecouped Credit Balances that NMC and FMCH must pay pursuant to Paragraphs 1 and 3 of this Agreement 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, Railroad Retirement Medicare carrier, TRICARE, FEHBP, VA, or any Medicaid payor, related to the conduct described in Preamble Paragraph H; and DSD and the NMC Companies agree not to resubmit to any Medicare carrier or intermediary, Railroad Retirement Medicare carrier, TRICARE, FEHBP, VA, or any Medicaid payor any previously denied

claims related to the conduct described in Preamble Paragraph H, and agree not to appeal any such denials of claims.

24. The FMCH and the NMC Companies agree 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 DSD and the NMC Companies, and their divisions, subsidiaries and affiliates, and their present and former officers, directors, employees, shareholders and agents in connection with: (a) the matters covered by this Agreement; (b) the Government's audits, administrative, civil and criminal investigation and prosecution of DSD and FMCH; (c) these corporate entities' investigation, defense, and corrective actions undertaken in response to the Government's administrative, civil and criminal investigations, and in connection with the matters covered by this Agreement, and including the obligations undertaken pursuant to the Corporate Integrity Agreement (including attorneys fees); (d) the negotiation and performance of this Agreement, and the Corporate Integrity Agreement; and (e) the payments made to the United States provided for in this Agreement, and to Relators for attorney's fees and costs, are unallowable costs on Government contracts and under Medicare, Railroad Retirement Medicare, Medicaid, TRICARE, FEHBP, and the VA programs (hereafter,

"unallowable costs"). These unallowable costs will be separately estimated and accounted for by DSD and the NMC Companies and these entities will not charge such unallowable costs directly or indirectly to any contracts with the United States or any Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by the NMC Companies or any of their divisions, subsidiaries or affiliates to the Medicare, Railroad Retirement Medicare, Medicaid, TRICARE, VA or FEHBP programs.

FMCH and the NMC Companies further agree that within 270 days of the effective date of this Agreement these entities will identify to applicable Medicare, Railroad Retirement Medicare, and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined above) included in payments previously sought from the United States, or any Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the NMC Companies or any of their subsidiaries, affiliates, or divisions 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. FMCH and the NMC Companies

agree that the United States will be entitled to recoup from the NMC Companies 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 DSD, FMCH and the NMC Companies, or any of their subsidiaries, affiliates or divisions, on the effect of inclusion of unallowable costs (as defined above) on the NMC Companies or any of their subsidiaries, affiliates or divisions' 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 above.

25. 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 identified in Paragraphs 10, 13, 14, 15, 16, 17 and 19 above.

26. FMCH and the NMC Companies agree that they will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents,

sponsors, estates, heirs, successors or assigns. DSD and the NMC Companies waive any causes of action against these beneficiaries or their parents, sponsors, estates, heirs, successors, or assigns based upon the claims for payment covered by this Agreement.

27. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the amounts paid hereunder for purposes of any proceeding under Title 26 of the Internal Revenue Code.

28. Except as provided in Paragraph 7.b., and except for Relators' claim for statutory attorney's fees and costs, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including by way of example only, all costs incurred in the investigation and defense of this matter, the preparation and performance of this Agreement, and all corrective actions taken in response to the investigation and resolution of this matter.

29. NMC and FMCH expressly warrant that they have reviewed their financial condition and that they currently are solvent on a consolidated basis within the meaning of 11 U.S.C. Section 547(b)(3), and expect to remain solvent on a consolidated basis following 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 DSD, NMC and FMCH within the meaning of 11 U.S.C. Section 547(c)(1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

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

a. NMC and FMCH's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and NMC and FMCH will not argue or otherwise take the position in any such case, proceeding or action that: (i) NMC and/or FMCH's obligations under this Agreement may be avoided under 11 U.S.C. Section 547; (ii) NMC and FMCH were insolvent on a consolidated basis at the time this Agreement was entered into, or became insolvent on a consolidated basis 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 NMC and/or FMCH.

b. In the event that NMC and/or FMCH's obligations hereunder are avoided pursuant to 11 U.S.C. Section 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 DSD, and/or FMCH for the claims that would otherwise be covered by the releases provided in Paragraphs 10, 13, 14 and 15 above. If the United States chooses to do so, DSD and FMCH agree that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to suspend payments to NMC and DSD from Medicare, Medicaid, or other federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that DSD and FMCH will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) that DSD and FMCH 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 NMC and FMCH that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date of this Agreement; and (iii) the United States has a valid claim against NMC and FMCH in the amount of the Default Obligation, and the United States may pursue its claim, inter alia, in the Price and Bradford Civil Actions, as well as in any other case, action, or proceeding.

c. DSD and FMCH acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

31. DSD and FMCH and the Relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

32. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any disputes arising between and among the Parties under this Agreement will be the United States District Court for the District of Massachusetts, except that disputes arising under the Corporate Integrity Agreement shall be resolved exclusively upon the dispute resolution provisions set forth in the Corporate Integrity Agreement.

33. The undersigned DSD and FMCH signatories represent and warrant that they are authorized by their respective Board of Directors to execute this Agreement. The undersigned United

States signatories represent that they are signing this Agreement in their respective official capacities and that they are authorized to execute this Agreement.

34. Except for the representations in Paragraph 29 (regarding solvency), Paragraph 30 (concerning bankruptcy proceedings commenced within 91 days of any payments under this Agreement), and Preamble Paragraph M (express representations by NMC and FMCH upon which the United States relies), the Parties agree that nothing in this Agreement constitutes an admission by any person or entity with respect to any issue of law or fact.

35. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date").

36. This Agreement shall be binding on all successors, transferees, heirs and assigns.

37. This Agreement, together with Exhibits A through E, and the Corporate Integrity Agreement, constitute the complete agreement among the Parties with regard to the conduct described in Preamble Paragraphs H and M and the Civil Actions. This Agreement may not be amended except by written consent of the Parties, except that only FMCH and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement.

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

THE UNITED STATES OF AMERICA

By: *Suzanne E. Durrell* Dated: *January 18, 2000*
SUZANNE E. DURRELL
Assistant U.S. Attorney
District of Massachusetts

By: _____ Dated: _____
MARK LAVINE
Assistant U.S. Attorney
Southern District of Florida

By: *Patricia M. Connolly* Dated: *January 18, 2000*
PATRICIA M. CONNOLLY
Special Assistant U.S. Attorney
District of Massachusetts

By: *Maya Guerra* Dated: *January 18, 2000*
MAYA GUERRA
Trial Attorney
Civil Division
U.S. Department of Justice

THE UNITED STATES OF AMERICA

By: _____ Dated: _____
SUZANNE E. DURRELL
Assistant U.S. Attorney
District of Massachusetts

By: Mark A. Lavine Dated: January 18, 2000
MARK LAVINE
Assistant U.S. Attorney
Southern District of Florida

By: _____ Dated: _____
PATRICIA M. CONNOLLY
Special Assistant U.S. Attorney
District of Massachusetts

By: _____ Dated: _____
MAYA GUERRA
Trial Attorney
Civil Division
U.S. Department of Justice

By: *L Morris*
LEWIS MORRIS
Assistant Inspector General
Office of Inspector General
U.S. Department of Health and
Human Services.

Dated: 1/13/00

By: _____
FRANK D. TITUS
Assistant Director for
Insurance Programs
U.S. Office of Personnel
Management

Dated: _____

By: _____
ROBERT L. SHEPHERD
Deputy General Counsel
TRICARE Support Office
U.S. Department of Defense

Dated: _____

By: LEWIS MORRIS
Assistant Inspector General
Office of Inspector General
U.S. Department of Health and
Human Services

Dated: _____

By: *Frank D Titus*
FRANK D. TITUS
Assistant Director for
Insurance Programs
U.S. Office of Personnel
Management

Dated: *Jan 18, 2000*

By: ROBERT L. SHEPHERD
Deputy General Counsel
TRICARE Support Office
U.S. Department of Defense

Dated: _____

By: _____ Dated: _____
LEWIS MORRIS
Assistant Inspector General
Office of Inspector General
U.S. Department of Health and
Human Services.

By: _____ Dated: _____
FRANK D. TITUS
Assistant Director for
Insurance Programs
U.S. Office of Personnel
Management

By: Robert D. Seaman Dated: 1-18-00
~~ROBERT L. SHEPHERD~~ ROBERT D. SEAMAN
Deputy General Counsel
TRICARE Support Office
U.S. Department of Defense

NATIONAL MEDICAL CARE, INC.
FRESENIUS MEDICAL CARE HOLDINGS, INC.

By: Ben J Lipps
Ben J. Lipps
President
National Medical Care, Inc.

Dated: 1/12/00

By: Ben J Lipps
Ben J. Lipps
President
Fresenius Medical Care Holdings, Inc.

Dated: 1/12/00

Acknowledged:

By: Ronald L. Castle
RONALD L. CASTLE
Counsel to NMC Dialysis
Services Division, Inc.
National Medical Care, Inc.
Fresenius Medical Care Holdings, Inc.

Dated: 1/12/00

By: Alan E. Reid
ALAN E. REIDER
Counsel to NMC Dialysis
Services Division, Inc.
National Medical Care, Inc.
Fresenius Medical Care Holdings, Inc.

Dated: 1/12/00

RELATOR GREGORY S. PRICE

By: Gregory S. Price
Gregory S. Price

Dated: 1/18/00

Acknowledged:

By: W. Christopher Hoyer
W. Christopher Hoyer
Counsel to Messr. Price

Dated: 1/18/00

RELATOR RICHARD BRADFORD

By: Richard Bradford
Richard Bradford

Dated: 1/13/00

Acknowledged:

By: Robert Barnett
Robert Barnett
Counsel to Messr. Bradford

Dated: 1/18/00