

## SETTLEMENT AGREEMENT

*Qui Tam* Plaintiff Steven T. Hubbard, and defendants, Fire Protection District No. 5, Mason County, Richard A. Knight, Kenneth Lawson, Harold Raedel and William Dougherty (hereinafter collectively the "Defendants"), stipulate and agree as follows:

### Recitals

A. *Qui Tam* Plaintiff filed an action in the United States District Court for the Western District of Washington, captioned as United States of America ex rel. Steven T. Hubbard v. Fire Protection District No. 5, Mason County, et al., No. C94-5454RJB (hereafter "the Litigation") alleging that Defendants submitted invoices for payment by the United States from 1989 to the present which involved three types of false or fraudulent claims: (i) co-payment waivers, (ii) billing Medicare and Medicaid for Advanced Life Support services when Basic Life Support services were provided or where Advanced Life Support services were not medically necessary, and (iii) billing Medicare and Medicaid for transportation services provided by other entities. *Qui Tam* Plaintiff alleged that these false claims gave rise to a civil action under the False Claims Act, 31 U.S.C. §§ 3729-33;

B. Defendants deny all charges alleged in this action and any wrongdoing;

C. It is the desire of the parties to resolve completely and finally all of their differences, disputes, and claims in regard to these claims;

NOW, THEREFORE, in reliance upon and in consideration of the mutual promises, covenants, and obligations in this Settlement Agreement, and for good and valuable consideration receipt of which is by all parties acknowledged, the parties, subject to approval by the Court, agree as follows.

**1. Payment by Defendants.** In settlement and compromise of the above-referenced claims, Defendants agree to pay to the United States, within seven days of entry of the Order set forth in Exhibit A, the sum of Eighty Thousand Dollars (\$80,000.00). This sum shall be delivered to Michael F. Hertz, Director, Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 261, Ben Franklin Station, Washington, D.C., 20530, in the form of a cashier's or certified check made payable to the United States Treasury. In addition, pursuant to 31 U.S.C. § 3730(d)(2), Defendants agree to pay to *Qui Tam* Plaintiff the sum of Eighty Thousand Dollars (\$80,000.00) for attorneys' fees and costs.

**2. No Admission of Liability.** This Settlement Agreement is not a concession or admission and shall not be used as an admission or indication with respect to any claim or fault by any Defendant. Whether or not the Order set forth in Exhibit A is entered by the Court, neither this Settlement Agreement nor any reports or accounts thereof shall be construed or deemed to be evidence of a presumption or concession by Defendants of the truth of any fact alleged or the validity of any claim asserted in the Litigation or of any liability or wrongdoing by Defendants.

**3. Mutual Release.**

a. Steven T. Hubbard and Defendants hereby release, acquit, and forever discharge each other, their respective agents, attorneys, employees, officers, directors, representatives, insurers, and any persons acting for, by, or through them, of any and all claims, actions, causes of action, rights, damages, costs and compensation, which they have or had as of the date of this Settlement Agreement, whether or not known currently. Steven T. Hubbard also agrees and covenants not to make any claim, whether through a lawsuit or otherwise, against Fire Protection District Nos. 2, 3, 6 or 8, Mason County, that arises out of

an agreement or agreements that said Fire Protection Districts have, or have entered into, with Fire Protection District No. 5, Mason County, and which relates to conduct or actions taken at any time before the date of this Settlement Agreement.

b. In consideration of the Eighty Thousand Dollar payment set forth in paragraph 1 above, except as set forth in paragraph 3(e) below, the United States shall agree to the dismissal of the Litigation with prejudice.

c. This mutual release does not release *Qui Tam* Plaintiff, Steven T. Hubbard, or Defendants from liability for breach of this Settlement Agreement.

d. This Agreement is intended to be for the benefit of the United States, Steven T. Hubbard, and Defendants only, and by this instrument the United States does not waive, compromise, or release its claim or causes of action against any person or entity other than Defendants.

e. The parties agree that specifically excluded from the scope and terms of this Agreement are:

- (i) any other disputes, claims, and defenses which may arise under the contracts with the United States implicated herein or applicable law from the delivery or provision of any deficient or defective services or products and any express or implied warranties relating to such services or products;
- (ii) administrative action by the Department of Health and Human Services or any other Federal agency against Fire Protection District No. 5, Mason County, its affiliates, and present or former officers or employees;
- (iii) any disputes or claims arising under the Internal Revenue Code, and;
- (iv) any disputes or claims for the enforcement of the terms of this Agreement.

4. **Dismissal With Prejudice Upon Court Approval.** Upon execution of this Settlement Agreement by *Qui Tam* Plaintiff and Defendants, the *Qui Tam* Plaintiff, Defendants, and the United States shall also execute a Stipulation and Order permitting dismissal of the Litigation, with prejudice. The Stipulation and Order shall be presented to the Court for entry, unless the Court already has dismissed the Litigation and no party has moved to reopen it.

5. **Non-Entry of Order.** In the event the Court does not enter the Order attached hereto as Exhibit A, or a similar order dismissing the Litigation, with prejudice, then the parties to this Settlement Agreement shall be deemed to have reverted to their respective status as of January 12, 1996, and they shall proceed in all respects as if this Settlement Agreement had not been executed, and shall file a stipulated motion to schedule the trial at the earliest available date.

6. **Return or Destruction of Documents.**

a. Within thirty days after the entry of this Settlement Agreement, *Qui Tam* Plaintiff's Counsel shall return to Defendants' Counsel all documents and all copies thereof (except documents so modified as to constitute work product) produced by Defendants in this action. In the alternative, *Qui Tam* Plaintiff's Counsel may certify in writing that all such documents have been destroyed.

b. Within thirty days after the entry of this Settlement Agreement, Defendants' Counsel shall return to *Qui Tam* Plaintiff's Counsel all documents and copies thereof (except documents so modified as to constitute work product) produced by *Qui Tam* Plaintiff in this action, including all copies of Steven T. Hubbard's deposition. In the

alternative, Defendants' Counsel may certify in writing that all such documents have been destroyed.

7. It is agreed that all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47) incurred by or on behalf of Mason Fire Protection District No. 5, Mason County, and its officers, directors, agents, and employees, Richard A. Knight, Kenneth Lawson, Harold Raedel, and William Dougherty in connection with (1) the matters covered by this Settlement Agreement, (2) the government's audit and investigation of the matters covered by this Settlement Agreement, (3) Mason Fire Protection District No. 5, Mason County, Richard A. Knight, Kenneth Lawson, Harold Raedel, and William Dougherty's respective investigation, defense of the matters, and corrective actions, (4) the negotiation of this Settlement Agreement, and (5) the payment made to the United States pursuant to this Settlement Agreement shall be unallowable costs for government contract accounting purposes. Such unallowable costs shall be separately accounted for by Mason Fire Protection District No. 5, Mason County, Richard A. Knight, Kenneth Lawson, Harold Raedel, and William Dougherty.

8. **Effectiveness of Signatures.** The parties hereby affirm and acknowledge that they have carefully read this Settlement Agreement and have had an opportunity to consult counsel of their choice with respect to the Settlement Agreement; that they fully understand and appreciate its words and terms and their effect; that they each sign it voluntarily as his or her own free act; and that they have not relied upon any statements or promises other than those statements or promises contained in this Settlement Agreement.

9. **Headings.** The descriptive headings of any paragraphs of this Settlement Agreement are inserted for convenience and reference only and do not constitute a part of this Settlement Agreement.

10. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

**THE UNITED STATES OF AMERICA**

By: [Signature]  
Title: Fiscal Attorney  
Date: March 26, 1996

**STEVEN T. HUBBARD**

[Signature]  
Steven T. Hubbard  
Date: 3/20/96

**FIRE PROTECTION  
DISTRICT NO. 5, MASON COUNTY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RICHARD KNIGHT**

Richard Knight  
Date: \_\_\_\_\_

**KENNETH LAWSON**

\_\_\_\_\_  
Kenneth Lawson  
Date: \_\_\_\_\_

**HAROLD RAEDEL**

\_\_\_\_\_  
Harold Raedel  
Date: \_\_\_\_\_

**WILLIAM DOUGHERTY**

\_\_\_\_\_  
William Dougherty  
Date: \_\_\_\_\_

10. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

**THE UNITED STATES OF AMERICA**

By: [Signature]  
Title: Local Attorney  
Date: March 26, 1996

**STEVEN T. HUBBARD**

[Signature]  
Steven T. Hubbard  
Date: 3/26/96

**FIRE PROTECTION  
DISTRICT NO. 5, MASON COUNTY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**RICHARD KNIGHT**

Richard Knight  
Date: \_\_\_\_\_

**KENNETH LAWSON**

\_\_\_\_\_  
Kenneth Lawson  
Date: \_\_\_\_\_

**HAROLD RAEDER**

\_\_\_\_\_  
Harold Raedal  
Date: \_\_\_\_\_

**WILLIAM DOUGHERTY**

\_\_\_\_\_  
William Dougherty  
Date: \_\_\_\_\_

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**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**STEVEN T. HUBBARD**

\_\_\_\_\_  
Steven T. Hubbard  
Date: \_\_\_\_\_

**FIRE PROTECTION  
DISTRICT NO. 5, MASON COUNTY**

By: Duane A. Warner  
Title: Chairman  
Date: 3-20-96

**RICHARD KNIGHT**

Richard Knight  
Richard Knight  
Date: 3/20/96

**KENNETH LAWSON**

\_\_\_\_\_  
Kenneth Lawson  
Date: \_\_\_\_\_

**HAROLD RAEDEL**

\_\_\_\_\_  
Harold Raedel  
Date: \_\_\_\_\_

**WILLIAM DOUGHERTY**

\_\_\_\_\_  
William Dougherty  
Date: \_\_\_\_\_



## 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"); Health Outcomes Technologies (the "Relator"); and UPMC-McKeesport ("Hospital") (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, a Pennsylvania nonprofit corporation, provides medical and hospital services to Medicare and Medicaid beneficiaries. Hospital has its principal place of business and mailing address at 1500 Fifth Avenue, McKeesport, Pennsylvania 15132.

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. §§ 1395-1395ggg. At all times relevant to this Settlement Agreement, Hospital was a Medicare provider.

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

D. 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.")

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

E. The United States contends that it has certain civil claims against Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes, and/or common law doctrines, for engaging in the following conduct during the period from: October 1, 1992 to September 30, 1995. 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.

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

G. Hospital does not admit the contentions of the United States as set forth in Paragraphs E and F, above.

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

### III. TERMS AND CONDITIONS

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

1. Hospital shall pay to the United States Two Million Eight Hundred Seventy-Five Thousand Dollars (\$2,875,000.00) (the "Settlement Amount"), and this sum shall constitute a debt immediately due and owing to the United States upon the execution of this Agreement. Hospital agrees to make payment of the Settlement Amount by electronic funds transfer to the "United States Department of Justice" pursuant to the written instructions that shall be provided by the United States Attorney's Office for the Western District of Pennsylvania. Hospital agrees to make this electronic funds transfer by no later than 10 business days following 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. Upon reasonable notice, Hospital shall 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 shall furnish to the United States, upon reasonable request, all nonprivileged documents and records in its possession, custody, or control relating to the Covered Conduct.

3. Subject to the exceptions in Paragraph 5 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 15, below (concerning bankruptcy proceedings commenced within 91 days of any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Hospital, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud, for the Covered Conduct. No individuals are released by this Agreement.

4. In consideration of the obligations of Hospital set forth in this Agreement and the Declaration attached as Appendix A, conditioned upon Hospital's payment in full of the Settlement Amount, and subject to Paragraph 15, 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 action seeking exclusion from the 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 Paragraph 5, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 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 Hospital) are any and all of the following:

(a) Any civil, criminal, or administrative claims 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 claims based upon such obligations as are created by this Agreement;

(f) Any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(g) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents, or shareholders of defendant Hospital, who receive written notification that they are the targets of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

6. Hospital agrees that for a period of three (3) years following the execution of this Agreement:

(a) Hospital shall continue to adhere to provisions set forth in its Corporate Compliance Program, as described in the Declaration attached hereto and incorporated herein by this reference as Appendix A, and continue to provide, at a minimum, the same level of resources currently provided, throughout this time period. Hospital may amend its 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), and with the "Office of Inspector General's Compliance Program Guidance for Hospitals." 63 Fed. Reg. 8987 (February 23, 1998).

(b) Within 30 days after the Effective Date of this Settlement Agreement, UPMC-McKeesport shall screen all prospective employees and prospective contractors prior to engaging their services and screen physicians prior to granting staff privileges by: (i) requiring applicants to disclose whether they are Ineligible Persons; and (ii) appropriately querying the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>) (these lists shall hereinafter be referred to as the "Exclusion Lists"). Nothing in this Section affects the responsibility of (or liability for) UPMC-McKeesport to refrain from billing Federal health care programs for services of the Ineligible Person. UPMC-McKeesport shall report to the OIG-HHS within 30 days of implementation of this policy that they are in compliance with this provision.

(c) Hospital also agrees to promptly refund to the appropriate Federal healthcare program payor any identified overpayment(s). If, at any time, Hospital identifies or learns of any overpayments, Hospital shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days of identification of the overpayment and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring.

Also, within 30 days of identification of the overpayment, Hospital shall repay the overpayment to the appropriate payor to the extent such overpayment has been quantified. If not yet quantified, within 30 days of identification, Hospital 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 contractor shall be done in accordance with the contractor policies, and for Medicare contractors, shall include the information contained on the Overpayment Refund Form, provided as Appendix C to this Agreement. For purposes of this Agreement, an "overpayment" shall mean the amount of money that Hospital has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations, or program directives, including carrier and intermediary instructions.

Notwithstanding the above, notification and repayment of any overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such policies and procedures.

(d) Hospital shall report to the OIG-HHS within 30 days of making the determination that there is any Material Deficiency, which shall mean anything that involves a substantial overpayment, or anything that involves a matter that a reasonable person would

consider a potential violation of criminal, civil, or administrative laws applicable to any Federal health care program for which criminal penalties or exclusion or other penalties under the Federal False Claims Act or Civil Monetary Penalties Law may be authorized. In such report, Hospital shall include the following information:

(i) If the Material Deficiency results in an overpayment, Hospital shall notify the OIG-HHS at the same time it notifies the payor and shall include all 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) on which the overpayment was repaid/refunded;

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

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

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

(e) Nothing in this Settlement Agreement, or any communication or report made pursuant to its terms, shall constitute a waiver of, or be construed to require Hospital to waive, Hospital's attorney-client, work product, or other applicable privileges.



Notwithstanding that fact, the existence of any such privilege does not affect Hospital's obligation to comply with the provisions of this Settlement Agreement, e.g., by providing all documents necessary to determine whether Hospital is in compliance with the terms of the Settlement Agreement.

(f) Hospital shall provide OIG-HHS with an annual report that sets forth, under penalty of perjury, any changes that affect the structure or the resources dedicated to its Corporate Compliance Program, any reviews, audits, or analyses of its compliance program, and any response to those reviews, audits, or analyses. Hospital shall also provide a certification that its compliance program meets the requirements of this Paragraph and a summary of the date, amount, and payor for each overpayment refunded over the past year. The annual reports are due each year within 60 days following the anniversary of the Effective Date of this Agreement for each of the three one year Reporting Periods and shall be sent to:

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

Any notifications to Hospital shall be sent to:

Tom Nigra  
Chief Compliance Officer  
UPMC Health System  
Corporate Compliance Office  
Motor Square Garden  
5900 Baum Boulevard  
Pittsburgh, PA 15206  
Telephone: (412)623-6923  
Facsimile: (412)621-7614

with a copy to: Richard M. Kundravi  
Director, Risk and Service Performance Management  
UPMC-McKeesport  
1500 Fifth Avenue  
McKeesport, PA 15132  
Telephone: (412)664-6757  
Facsimile: (412)664-2703

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 notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

(g) 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 Hospital's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Hospital's locations for the purpose of verifying and evaluating: (i) Hospital's compliance with the terms of this Agreement; and (ii) Hospital's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Hospital 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 Hospital's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG-HHS. Hospital agrees to assist OIG-HHS or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG-HHS's request. Notwithstanding such agreement, OIG recognizes that employees have the right to refuse to submit to interviews, and Hospital shall not be obligated to require their employees to submit to interviews. In those instances where Hospital is involved in ongoing litigation with the United States, or is under a government investigation manifested by the issuance of a subpoena, Civil Investigative Demand, Authorized Investigative Demand, or other formal civil or criminal request from HHS or any other Government agency for records at Hospital, Hospital shall retain the discretion (in accordance with the law) to prevent interviews sought pursuant to this paragraph or officers or employees of Hospital. Subject to the above, employees of Hospital may elect to be interviewed with or without a representative of the Hospital present.

7. Hospital waives and shall not assert any defenses Hospital 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. Hospital 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.

8. Hospital fully and finally releases the United States, its agencies, employees, servants, and agents and Relator from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Hospital has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, and/or Relator related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. In the event that the United States, pursuant to Paragraph 15(b)(2), opts to rescind this Agreement, Hospital expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims which (a) are filed by the United States within sixty (60) calendar days of written notification to Hospital that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the date this Agreement was executed.

10. The Settlement Amount that Hospital must pay pursuant to Paragraph 1 of this Agreement, shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary related to the Covered Conduct; and 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.

11. Hospital agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 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 on Hospital, 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):

- (i) the matters covered by this Agreement,
- (ii) the United States’ audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (iii) Hospital’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),
- (iv) the negotiation and performance of this Agreement,
- (v) the payment Hospital makes to the United States pursuant to this Agreement, including any costs and attorneys fees, and

(vi) the negotiation of, and the obligations undertaken pursuant to the Declaration to prepare and submit reports to the OIG-HHS.

However, nothing in this Paragraph affects the status of costs that are not allowable based on any other authority applicable to Hospital.

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Hospital, and Hospital shall 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, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Hospital further agrees that within 60 days of 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 Hospital 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. Hospital agrees that the United States, at a minimum, shall be entitled to recoup from Hospital any overpayment plus applicable interest and

penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payment 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) 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.

12. 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.

13. Hospital agrees that it shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

14. 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 shall 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 (2) have

concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

15. 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 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 assets, Hospital agrees as follows:

(1) Hospital obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Hospital shall not argue or otherwise take the position in any such case, proceeding, or action that: (A) Hospital's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (B) 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 (C) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Hospital.

(2) In the event that Hospital obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, 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 Paragraph 3-4, above. If the United States chooses to do so, Hospital agrees that (A) 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 shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (B) Hospital shall 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 Hospital that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date this Agreement was executed; and (C) the United States has a valid claim against Hospital in the amount of \$4,500,000.00, and the United States may pursue its claim, *inter alia*, in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding, but the validity of such claim is subject to any defenses which Hospital may plead,

argue or otherwise raise in such case, action or proceeding other than those defenses described in clause (A) and (B) above.

(3) Hospital acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. 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.

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

18. 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 Pennsylvania, except that disputes arising under the Integrity Requirements of Paragraph 6 shall be resolved exclusively under the dispute resolution provisions at Appendix B to this Agreement.

19. This Agreement and the Declaration which is incorporated herein by reference, constitute(s) the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only UPMC-McKeesport and OIG-HHS must agree in writing to modification of the integrity provisions of this Agreement.

20. 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 *United States of America, ex rel. Health*

*Outcomes Technologies v. McKeesport Hospital et al.*, Civil Action No.01-838 (UNDER SEAL),  
in the United States District Court for the Western District of Pennsylvania.

21. By this Agreement, 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. On receipt of the payment described in Paragraph 22 below, Relator will release and will be deemed to have released and forever discharged the Hospital for claims relating to the Covered Conduct.

22. Conditioned on Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$402,500.00. 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.

23. On receipt of the payment described in Paragraph 22 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(c)(5) or (d) to a share of any settlement proceeds received from Hospital, and in full satisfaction and settlement of claims under this Agreement.

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

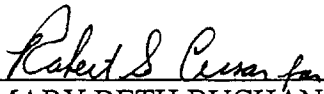
25. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

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

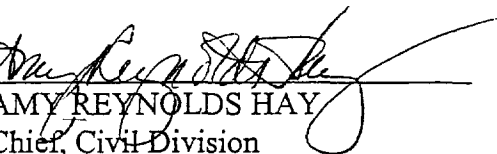
27. This Agreement is binding on successors, transferees, heirs, and assigns.

FOR THE UNITED STATES OF AMERICA

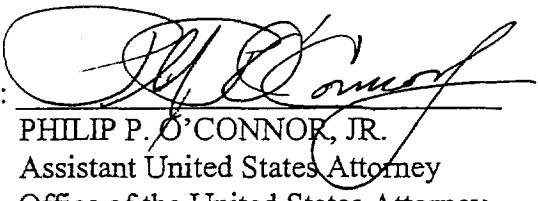
DATED: 1-29-03

BY:   
MARY BETH BUCHANAN  
United States Attorney  
Western District of Pennsylvania

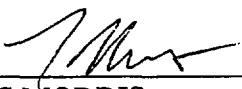
DATED: 1/29/03

BY:   
AMY REYNOLDS HAY  
Chief, Civil Division  
Office of the United States Attorney  
for the Western District of Pennsylvania

DATED: 1/29/03

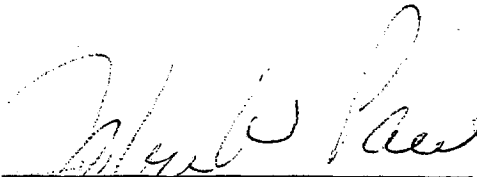
BY:   
PHILIP P. O'CONNOR, JR.  
Assistant United States Attorney  
Office of the United States Attorney  
for the Western District of Pennsylvania

DATED: 1/14/03

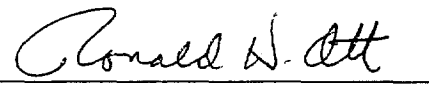
BY:   
LEWIS MORRIS  
Chief Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services

**FOR UPMC-McKEESPORT**

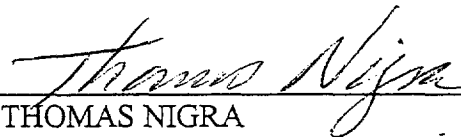
DATED: January 27, 2003

BY:   
JOHN W. PAUL  
Executive Vice President and COO  
UPMC Health System

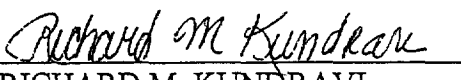
DATED: January 27, 2003

BY:   
RONALD H. OTT  
President/CEO  
UPMC-McKeesport

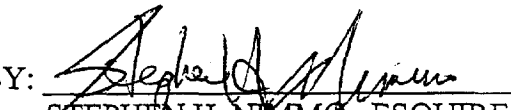
DATED: January 27, 2003

BY:   
THOMAS NIGRA  
Chief Compliance Officer  
UPMC Health System

DATED: January 27, 2003

BY:   
RICHARD M. KUNDRAVI  
Director, Risk and Service Performance  
Management  
UPMC- McKeesport

DATED: January 27, 2003

BY:   
STEPHEN H. NIMMO, ESQUIRE  
Associate Counsel  
UPMC Health System

**FOR RELATOR, HEALTH OUTCOMES TECHNOLOGIES**

DATED: 1-21-03

BY: 

RELATOR  
HEALTH OUTCOMES TECHNOLOGIES

DATED: 1-21-03

BY: 

KENNETH I. TRUJILLO  
TRUJILLO RODRIGUEZ & RICHARDS, LLC  
Counsel for Relator  
Health Outcomes Technologies