

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America ("United States"), acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), Newton Wellesley Hospital (the "Hospital"), and Relator Health Outcomes Technologies ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. The Hospital is a health care provider, and submitted or caused to be submitted claims to Medicare for the inpatient treatment of Medicare beneficiaries.

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

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

D. The United States conducted an investigation into inpatient payment claims submitted to Medicare by the Hospital with the principal diagnosis code of 482.89 (pneumonia due to "other specified bacteria"). In the course of that investigation, the Hospital has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to the Medicare Program with the principal diagnosis code of 482.89.

E. The United States alleges that it has certain civil claims against the Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines as more specifically identified in paragraph 4 below, for engaging in the following alleged conduct during the period from October 1, 1992 through September 30, 1997. In particular, the United States alleges that the Hospital submitted or caused to be submitted claims to Medicare with the principal diagnosis

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

code of 482.89 that were not supported by the corresponding medical records (hereinafter referred to as the "Covered Conduct"). The United States further alleges that, as a result of these claims, the Hospital received payments to which it was not entitled.

F. During the course of responding to the investigation by the United States, the Hospital discovered and disclosed to the United States that it may have received payments to which it was not entitled for claims involving septicemia (DRG 416) for the period January 1, 1995 to December 31, 2000 ("Disclosed Conduct").

G. The United States also alleges that it has certain administrative claims against the Hospital under the provisions for permissive exclusion from Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, and the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, for the Covered Conduct and the Disclosed Conduct.

H. The Hospital does not admit the contentions of the United States as set forth in Paragraphs E and G above, and as set forth in United States ex rel. Health Outcomes Technologies v. Newton Wellesley Hospital et al., Civil Action No. 96-1552 [UNDER SEAL], in the United States District Court for the

Eastern District of Pennsylvania. Further, the Hospital does not admit liability in connection with the Disclosed Conduct.

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

III. TERMS AND CONDITIONS

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

1. The Hospital agrees to pay to the United States \$2,789,682 for the Covered Conduct ("Covered Conduct Amount") and \$562,201 for the Disclosed Conduct ("Disclosed Amount") (together, the "Settlement Amount") as follows: the Hospital agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the undersigned Assistant U.S. Attorney. The Hospital agrees to make this electronic funds transfer no later than the effective date of this Agreement.

2. The 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, the Hospital 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 relating to the Covered Conduct.

3. The Hospital has entered into a Corporate Integrity Agreement with HHS, attached as Exhibit A, which is incorporated into this Agreement by reference.

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

5. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of the Hospital set forth in this Agreement, conditioned upon the Hospital'S payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 4), and Relator agree to release the Hospital, its predecessors, successors, assigns, and affiliates from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 or the common law, for the Covered Conduct. The United States expressly reserves any claims against any entities and individuals other than the Hospital.

6. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of the Hospital set forth in this Agreement, conditioned upon the Hospital'S payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, and its agencies and departments referenced above in paragraph 3), and Relator agree to release the Hospital, its predecessors, successors, assigns, and affiliates from any civil or administrative monetary claim the United States has or

may have under the common law for the Disclosed Conduct. The United States expressly reserves any claims against any entities and individuals other than the Hospital.

7. In consideration of the obligations of the Hospital set forth in this Agreement, conditioned upon the Hospital's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Hospital under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Hospital or others from Medicare, Medicaid or other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8, below.

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of

this Agreement as to any entity or person (including the Hospital) are any and all of the following:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (2) Any criminal liability;
- (3) Subject to the provisions of paragraphs 5 and 6 of this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct or the Disclosed Conduct;
- (5) Any claims based upon such obligations as are created by this Agreement;
- (6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by the Hospital;
- (7) Any claims based on a failure to deliver items or services billed;
- (8) Any claims against any individuals, including officers and employees.

9. The Hospital waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct or the Disclosed Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clause of the Constitution, this settlement bars a remedy sought in such criminal prosecution or administrative action. The Hospital agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

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

Covered Conduct or the Disclosed Conduct, and agrees not to appeal any such denials of claims.

11. The Hospital agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf on the Hospital, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement,

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

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

(4) the negotiation and performance of this Agreement (except for costs associated with performance fo the CIA, ,which are exclusively addressed in subparagraph 6 below), and

(5) the payment the Hospital makes to the United States pursuant to this Agreement and any payments that the Hospital may make to relators, and

(6) the negotiation of the CIA, and the obligations undertaken pursuant to the CIA to:

(i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the OIG-HHS, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to the Hospital. (All costs described or set forth in this Paragraph 11 are hereafter, "unallowable costs").

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by the Hospital, and the Hospital will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment

for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by the Hospital or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: The Hospital further agrees that within 60 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) 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 the Hospital or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. The Hospital agrees that the United States, at a minimum, will be entitled to recoup from the Hospital any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost

statements, or request 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 the Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the 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. The Hospital agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. The Hospital waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

14. 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 the Hospital be dismissed with prejudice from the action captioned United States ex rel. Health Outcomes Technologies v. Newton Wellesley Hospital et al., Civil Action No. 96-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

15. By this Agreement, the Relator and Relator's Counsel will release and will be deemed to release the 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.

16. Conditioned on the Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to 14% of Medicare settlement proceeds for the Covered Conduct. The United States shall pay Relator this amount within a reasonable time after receipt by the United States from the Hospital of the Settlement Amount. It is expressly understood and agreed that the United States in no way promises or guarantees nor is liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment or any Relator's share payments except as provided herein for funds actually collected and received by the United States.

17. On receipt of the payment described in Paragraph 16 above, Relator 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 the Hospital, including any claim pursuant to 31 U.S.C. § 3730(d) to a share of any settlement proceeds received from the Hospital, and in full satisfaction and settlement of claims under this Agreement.

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

19. The Hospital represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. Pursuant to 31 U.S.C. § 3730(c)(2)(B), the Relator agrees that this Agreement is a fair, adequate, and reasonable compromise and settlement under the circumstances of the litigation which they initiated as it relates to the Hospital.

20. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the

District of Massachusetts, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall be resolved exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

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

22. The undersigned individual signing this Agreement on behalf of the Hospital represents and warrants that (s)he is authorized to execute this Agreement on behalf of that entity. 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.

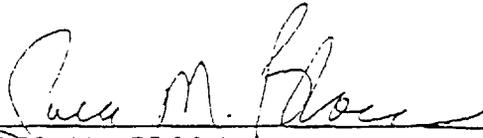
23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

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

25. This Agreement is effective on the date of signature of

the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

DATED: _____ BY: 
SARA M. BLOOM
Assistant U.S. Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

DATED: _____ BY: _____
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

NEWTON WELLESLEY HOSPITAL

DATED: _____ BY: _____
NAME

DATED: _____ BY: _____
Counsel for Newton Wellesley
Hospital

RELATOR HEALTH OUTCOMES TECHNOLOGIES

signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

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

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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

SARA M. BLOOM
Assistant U.S. Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

DATED: 7/26/01

BY: 

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

NEWTON WELLESLEY HOSPITAL

DATED: _____

BY: _____

NAME

DATED: _____

BY: _____
SARA M. BLOOM
Assistant U.S. Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

DATED: _____

BY: _____
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

NEWTON WELLESLEY HOSPITAL

DATED: 7/26/01

BY: 
Daniel Gross
Chief Financial Officer

DATED: 7/26/01

BY: 
Michelle S. Wolf
Counsel for Newton Wellesley
Hospital

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: _____

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

DATED: _____

BY: _____
SARA M. BLOOM
Assistant U.S. Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

DATED: _____

BY: _____
LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

NEWTON WELLESLEY HOSPITAL

DATED: 7/26/01

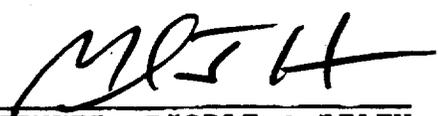
BY: 
Daniel Gross
Chief Financial Officer

DATED: 7/26/01

BY: 
Michelle S. Wolf
Counsel for Newton Wellesley
Hospital

RELATOR HEALTH OUTCOMES TECHNOLOGIES

DATED: 7/27/01

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

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 Greene County Memorial Hospital; (hereafter collectively referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Greene County Memorial Hospital is a hospital located in Waynesburg, Pennsylvania, that provides inpatient treatment to Medicare beneficiaries.

B. The United States contends that Greene County Memorial Hospital submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd(1997).

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

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

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

F. The United States contends that it has certain civil claims against Greene County Memorial Hospital under the False Claims Act, 31 U.S.C. §§ 3729-3733, and other federal statutes and/or common law doctrines for engaging in the following alleged conduct: during the period from January 1, 1993 to September 30, 1995 Greene County Memorial Hospital submitted or caused to be submitted claims with the 482.89 principal diagnosis code which 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, Greene County Memorial Hospital received payments to which it was not entitled.

G. The United States also contends that it has certain administrative claims against Greene County Memorial Hospital under the provisions for permissive exclusion from the Medicare, Medicaid and other Federal health care programs, 42 U.S.C. §

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

1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

H. Greene County Memorial Hospital has provided documents and information to the United States in response to the government's investigation of the Covered Conduct, including patient files for which claims were submitted to Medicare with the principal diagnosis code of 482.89, and Greene County Memorial Hospital represents that such response has been truthful, accurate, and complete to the best of its knowledge and ability.

I. Greene County Memorial Hospital does not admit the contentions of the United States as set forth in Paragraphs F and G above.

J. 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. Greene County Memorial Hospital agrees to pay to the United States \$300,000.00 (the "Settlement Amount"), as follows: Greene County Memorial Hospital agrees to make payment of the Settlement Amount by electronic funds transfer to the "United

States Department of Justice" as arranged through the Financial Litigation Unit, United States Attorney's Office, Western District of Pennsylvania. Greene County Memorial Hospital agrees to make this electronic funds transfer by no later than the effective date of this Agreement.

2. Greene County Memorial Hospital agrees to cooperate fully and in good faith with the United States in the civil or criminal 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, Greene County Memorial Hospital 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 relating to the Covered Conduct.

3. Greene County Memorial Hospital has entered into a Corporate Integrity Agreement with OIG-HHS, attached as Exhibit A, which is incorporated into this Agreement by reference. Greene County Memorial Hospital will implement its obligations

under the Corporate Integrity Agreement as set forth in the Corporate Integrity Agreement.

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

5. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of Greene County Memorial Hospital set forth in this Agreement, and conditioned upon Greene County Memorial Hospital's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments referenced above in Paragraph 4), and Relator agree to release Greene County Memorial Hospital and its predecessors, successors, assigns, and affiliates from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. The

United States expressly reserves any claims against any entities and individuals other than Greene County Memorial Hospital.

6. In consideration of the obligations of Greene County Memorial Hospital set forth in this Agreement and in the Corporate Integrity Agreement, attached as Exhibit A, and conditioned upon Greene County Memorial Hospital's payment in full of the Settlement Amount, 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 Greene County Memorial Hospital under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Greene County Memorial Hospital or others from Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion). Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 7, below.

7. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Greene County Memorial Hospital) are any and all of the following:

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

(2) Any criminal liability;

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

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

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

(6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Greene County Memorial Hospital;

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

(8) Any claims against any individuals, including officers and employees of Greene County Memorial Hospital.

8. Greene County Memorial Hospital waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy or Excessive Fines Clauses of the Constitution, this settlement bars a remedy sought in such

criminal prosecution or administrative action. Greene County Memorial Hospital agrees that this settlement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

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

10. Greene County Memorial Hospital agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of Greene County Memorial Hospital, in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) Greene County Memorial Hospital's

investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees and including the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Agreement), (4) the negotiation of this Agreement, and (5) the payment made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA), and Federal Employees Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by Greene County Memorial Hospital, and Greene County Memorial Hospital will not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Greene County Memorial Hospital or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

Greene County Memorial Hospital further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph)

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 Greene County Memorial Hospital or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Greene County Memorial Hospital agrees that the United States will be entitled to recoup from Greene County Memorial Hospital any overpayment as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Greene County Memorial Hospital or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on Greene County Memorial 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.

11. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

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

13. Greene County Memorial Hospital expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Greene County Memorial Hospital, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

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

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

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Western District of Pennsylvania, except that disputes arising under the Corporate Integrity Agreement (attached as Exhibit A) shall be resolved-exclusively under the dispute resolution provisions set forth in the Corporate Integrity Agreement.

17. This Agreement, including Exhibit A which is incorporated by reference, constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only Greene County Memorial Hospital and OIG-HHS must agree in writing to modification of the Corporate Integrity Agreement attached as Exhibit A, as provided in the Corporate Integrity Agreement.

18. 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 Greene County Memorial Hospital be dismissed with prejudice from *United States of America, ex rel. Health Outcomes Technologies v. Greene County Memorial Hospital et al.*, Civil

Action No.95-1552 (UNDER SEAL), in the United States District Court for the Eastern District of Pennsylvania.

19. By this Agreement, Relator and Relator's Counsel will release and will be deemed to release Greene County Memorial 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.

20. Conditioned on Greene County Memorial Hospital's payment in full of the Settlement Amount, Relator shall receive from the United States a payment amounting to \$42,000.00. The United States shall pay Relator this amount within a reasonable time after receipt by the United States from Greene County Memorial 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.

21. On receipt of the payment described in Paragraph 20 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 Greene County Memorial Hospital, including any claim pursuant to 31 U.S.C. § 3730(c)(5) or (d) to a share of any settlement proceeds received from Greene County Memorial

Hospital, and in full satisfaction and settlement of claims under this Agreement.

22. The undersigned individuals signing this Agreement on behalf of Greene County Memorial Hospital and Relator, Health Outcomes Technologies, represent and warrant that they are authorized to execute this Agreement on behalf of those entities. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

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

25. This Agreement is binding on all successors, assigns, transferees and heirs of Greene County Memorial Hospital.

FOR THE UNITED STATES OF AMERICA, U.S. DEPARTMENT OF JUSTICE:

DATED: 2/14/00

BY: 
HARRY LITMAN

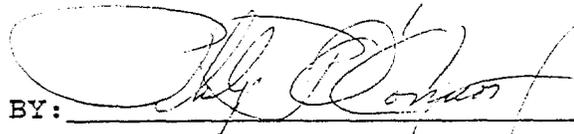
 United States Attorney for the
Western District of Pennsylvania

DATED: 2/7/00

BY: 

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

DATED: 2/7/00

BY: 

PHILIP F. O'CONNOR, JR.
Assistant U.S. Attorney
Office of the United States
Attorney for the Western
District of Pennsylvania

On Behalf of the United States Department of
Health and Human Services:

DATED: 12/17/99

BY: 

LEWIS MORRIS
Assistant Inspector General
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

FOR GREENE COUNTY MEMORIAL HOSPITAL:

DATED: 1/7/00

BY: Raoul M. Walsh
Raoul M. Walsh
Chief Executive Officer
Greene County Memorial Hospital

ATTORNEY FOR GREENE COUNTY MEMORIAL HOSPITAL:

DATED: 1/6/00

BY: Robert B Ramsey III
ROBERT B. RAMSEY, III, ESQUIRE
Buchanan Ingersoll, P.C.
Attorney for
Greene County Memorial Hospital

FOR RELATOR, HEALTH OUTCOMES TECHNOLOGIES

DATED: 12/22/99

By: 
RELATOR
HEALTH OUTCOMES TECHNOLOGIES

DATED: 12/22/99

By: 
MICHAEL J. HOLSTON, ESQ.
Drinker, Biddle & Reath
Counsel for Relator
Health Outcomes Technologies