

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the “United States”), the Commonwealth of Kentucky, acting through its Office of Attorney General and on behalf of the Division of Medicaid Services (collectively the “Commonwealth of Kentucky”), Saint Joseph Health System, Inc. d/b/a Saint Joseph London (“Saint Joseph London”), Michael R. Jones, Paula W. Hollingsworth, and Michael G. Rukavina (collectively, “Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Saint Joseph London is a regional hospital located at 1001 Saint Joseph Lane, London, Kentucky 40741, that provides health care services, including cardiovascular services, to Medicare and Medicaid beneficiaries.

B. On March 14, 2011, Relators filed a *qui tam* action in the United States District Court for the Eastern District of Kentucky captioned *United States ex rel. Jones, Hollingsworth, and Rukavina v. Saint Joseph Health System, Inc., et al.*, Civ. No. 6:11-cv-00081-GFVT (E.D. Ky.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The Relators filed an amended complaint in the Civil Action on August 8, 2012. In their amended complaint, the Relators alleged that, from 2007 to August 2012, certain cardiologists employed by or working at Saint Joseph London performed unnecessary cardiology procedures on Medicare and Medicaid beneficiaries at that hospital, including diagnostic cardiac tests, diagnostic cardiac

catheterizations, coronary artery bypass graft surgeries (“CABGS”), and the insertion of pacemakers and coronary stents. The Relators alleged that Saint Joseph London knew, deliberately ignored or recklessly disregarded the fact that it submitted claims for medically unnecessary cardiology procedures, and submitted false claims to Medicare and Medicaid seeking reimbursement for these services. In addition, Relators alleged that Saint Joseph London paid kickbacks to Defendants Dr. Satyabrata Chatterjee, Dr. Ashwini Anand, and/or clinics owned or operated by Drs. Chatterjee and Anand under the guise of professional service agreements. The United States intervened in the Civil Action on January 17, 2014.

C. The United States contends that Saint Joseph London 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. §§ 1395-1395kkk-1, and Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5.

D. The United States contends that it has certain civil claims against Saint Joseph London arising from the following conduct during the period of January 1, 2008 through August 31, 2011:

1. The United States contends that Saint Joseph London engaged in a scheme to maximize Medicare and Medicaid reimbursement for the performance of unnecessary diagnostic cardiac tests, diagnostic cardiac catheterizations, coronary stents, CABGS, and the implantation of temporary and permanent pacemaker devices (hereinafter collectively referred to as the “cardiac procedures”). The United States contends that Saint Joseph London knew, deliberately ignored or recklessly disregarded the fact that the cardiologists were performing unnecessary cardiac procedures. Between

January 1, 2008 and August 31, 2011, Saint Joseph London or its agents submitted claims for payment for medically unnecessary cardiac procedures to the Medicare and Medicaid programs, and received millions of dollars in reimbursement as a result of such claims.

2. The United States contends that between January 1, 2008 and August 31, 2011, Saint Joseph London entered into and maintained improper financial relationships with Dr. Satyabrata Chatterjee, Dr. Ashwini Anand, Cumberland Clinic PLLC (“Cumberland Clinic”), and Management Service Organization of Kentucky, Inc. (“MSO”), in violation of the Stark Law, 42 U.S.C. § 1395nn, and/or Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, as follows:

a. In 2008, contemporaneously with the negotiation and execution of an exclusive professional services agreement (“PSA”) with Cumberland Clinic, which was owned and operated by Chatterjee and Anand, Saint Joseph London create a joint venture with Chatterjee and Anand called Innovative Cardiac Solutions (“ICS”) in which Chatterjee and Anand had a 75% ownership share. Saint Joseph London agreed to compensate Chatterjee and Anand, through ICS, for management services that were either duplicative of services that Chatterjee and Anand were already obligated to provide under the terms of the PSA and/or which were not actually provided, and such amounts were intended to induce Chatterjee and Anand to direct Cumberland Clinic’s cardiology referrals to Saint Joseph London, and

b. In 2008, contemporaneously with the negotiation and execution of the PSA, Saint Joseph London entered into a billing and collection contract with MSO, which was owned by Chatterjee’s spouse. Between January 1, 2008 and August 31, 2011, Dr. Chatterjee, Dr. Anand, and other physicians associated with

Cumberland Clinic, Medical Specialists of Kentucky P.S.C., and the Heart Clinic of Southeast Kentucky, P.S.C., referred designated health services, including cardiovascular services, to Saint Joseph London, and Saint Joseph London or its agents submitted claims for payment for such referred services to the Medicare and Medicaid programs. The United States contends that the improper financial relationships tainted these claims such that they were not properly payable by the Medicare and Medicaid programs under the Stark Law and/or Anti-Kickback Statute.

3. The conduct alleged in Recital D.1. and D.2. is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by Saint Joseph London nor a concession by the United States that its claims are not well founded.

F. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. No later than 5 business days after the Effective Date of this Agreement, Saint Joseph London shall pay to the United States sixteen million, five hundred thousand dollars (\$16,500,000) (Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of Kentucky.

2. Conditioned upon the United States receiving the Settlement Amount from Saint Joseph London and as soon as feasible after receipt, the United States shall pay \$365,851 to the Commonwealth of Kentucky by electronic funds transfer, which represents the Commonwealth's share of the Settlement Amount.

3. Conditioned upon the United States receiving the Settlement Amount from Saint Joseph London and as soon as feasible after receipt, the United States shall pay \$2,458,810 to Relators by electronic funds transfer, pursuant to the instructions to be provided by the Relators. Subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) below, the United States' payment of \$2,458,810 is in full satisfaction of Relators' claim to a share pursuant to 31 U.S.C. § 3730(d)(1).

4. No later than 5 business days after the Effective Date of this Agreement, Saint Joseph London shall pay to the Relators \$295,000 by electronic funds transfer pursuant to instructions to be provided by Relators. Subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) below, Saint Joseph London's payment of \$295,000 is in full satisfaction of Relators' claim to expenses, attorneys' fees, and costs pursuant to 31 U.S.C. § 3730(d)(1), the laws of the Commonwealth of Kentucky, or any other common law theories of recovery.

5. Subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) below, and conditioned upon Saint Joseph London's full payment of the Settlement Amount, the United States releases Saint Joseph London, its current and former parents, subsidiaries, affiliates, and

successors in interest, and the officers, directors, and employees thereof from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) below, and conditioned upon Saint Joseph London's full payment of the Settlement Amount, the Commonwealth of Kentucky releases Saint Joseph London, its current and former parents, subsidiaries, affiliates, and successors in interest, and the officers, directors, and employees thereof from any civil or administrative monetary claim the Commonwealth of Kentucky has for the Covered Conduct under the Kentucky Control of Fraud and Abuse laws, KRS 205.8451-205.8483, 907 KAR 1:671; Kentucky Self-Referral Law, KRS 205.8461; or the common law theories of payment by mistake, unjust enrichment, and fraud.

7. Subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) below, and conditioned upon Saint Joseph London's full payment of the Settlement Amount, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Saint Joseph London from any civil monetary claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

Furthermore, conditioned upon Saint Joseph London's full payment of the Settlement Amount, Relators shall promptly dismiss the claims asserted in the Civil Action against Saint Joseph London with prejudice.

8. In consideration of the obligations of the Relators set forth in this Agreement, Saint Joseph London, on behalf of itself, its predecessors, and its current and former divisions, parents, subsidiaries, agents, successors, assigns, and their current and former directors, officers, and employees, fully and finally release, waive, and forever discharge the Relators and their respective heirs, successors, assigns, agents, and attorneys from any claims or allegations that Saint Joseph London has or could have asserted, arising from the Covered Conduct.

9. In consideration of the obligations of Saint Joseph London in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and Saint Joseph London, conditioned upon Saint Joseph London's full payment of the Settlement Amount and subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) below, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Saint Joseph London under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 11 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Saint Joseph London from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph

precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraphs 10 and 11, below.

10. Specifically excepted from the releases of civil and administrative monetary claims described in Paragraphs 5 through 7 and Paragraph 9 above are the following individuals and entities: Dr. Ashwini Anand, Dr. Anis Chalhoub, Dr. Satyabrata Chatterjee, Dr. Minoo Kavarana, Dr. Sandesh Patil, Dr. Srikanth Sadhu, Dr. James Shoptaw, Dr. Raul Vilca, Cumberland Clinic PLLC, Medical Specialists of Kentucky P.S.C., Heart Clinic of Southeast Kentucky, P.S.C., Management Service Organization of Kentucky, Inc., and Innovative Cardiac Solutions LLC.

11. Notwithstanding the releases given in Paragraphs 5 through 8 and Paragraph 9 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; or
- f. Any liability of individuals (including current or former directors, officers, employees, agents, or shareholders of St. Joseph London)

who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted or charged, or who enter into a plea agreement related to the Covered Conduct, including, but not limited to, any individual or entity identified in Paragraph 9;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; or
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

12. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relators' receipt of the payment described in Paragraph 3, and subject to the exceptions in Paragraph 10 (concerning non-released parties) and Paragraph 11 (concerning excluded claims) above, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

13. Saint Joseph London waives and shall not assert any defenses Saint Joseph London may have to any criminal prosecution or administrative action relating to the

Covered Conduct that 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. 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.

14. Saint Joseph London fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Saint Joseph London has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

15. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Saint Joseph London agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. Saint Joseph London agrees to the following:

a. Unallowable Costs Defined: 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the

regulations and official program directives promulgated thereunder) incurred by or on behalf of Saint Joseph London, 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 and criminal investigation(s) of the matters covered by this Agreement;
- (3) Saint Joseph London's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Saint Joseph London makes to the United States pursuant to this Agreement and any payments that Saint Joseph London may make to Relators, including costs and attorneys' fees; and
- (6) the negotiation of, and 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 for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health

Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in Paragraph 16.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Saint Joseph London.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Saint Joseph London, and Saint Joseph London 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 Saint Joseph London or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Saint Joseph London further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 Saint Joseph London 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. Saint Joseph London agrees that the United States,

at a minimum, shall be entitled to recoup from Saint Joseph London any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

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

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

17. Saint Joseph London agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Saint Joseph London shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Saint Joseph London further agrees to furnish to the United States, upon request, complete and un-redacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning

any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

18. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 19 (waiver for beneficiaries paragraph), below.

19. Saint Joseph London agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payers based upon the claims defined as Covered Conduct.

20. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of all claims asserted in the Civil Action against Saint Joseph London pursuant to Rule 41(a)(1). The Joint Stipulation of Dismissal shall provide that the Civil Action is being dismissed subject to the terms of the settlement; that as to the United States, the Civil Action is being dismissed with prejudice only with respect to the Covered Conduct released in the Settlement Agreement, and without prejudice as to any other claims; and that as to the Relators, all claims against Saint Joseph London asserted in the Civil Action are being dismissed with prejudice.

21. Subject to the exception in Paragraph 4, each party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

22. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

23. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Kentucky. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

24. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

25. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

27. This Agreement is binding on Saint Joseph London's successors, transferees, heirs, and assigns.

28. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

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

30. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Paul C. McCaffrey  
Assistant United States Attorney  
Eastern District of Kentucky

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Kavitha J. Babu  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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

**THE COMMONWEALTH OF KENTUCKY**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Michael E. Brooks  
Executive Director  
Medicaid Fraud and Abuse Control Unit  
Office of the Attorney General for the  
Commonwealth of Kentucky

**SAINT JOSEPH HEALTH SYSTEM, INC. d/b/a**  
**SAINT JOSEPH LONDON**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Greg D. Gerard  
President, Saint Joseph London

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Daniel Reinberg  
Polsinelli P.C.  
Counsel for Saint Joseph Health System, Inc. dba  
Saint Joseph London

**RELATORS**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Michael R. Jones, M.D.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Paula W. Hollingsworth, M.D.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Michael G. Rukavina, M.D.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Andrew M. Beato  
Jed Wulfekotte  
Stein, Mitchell Muse & Cipollone LLP  
Counsel for Relators