

AGREEMENT

THIS AGREEMENT ("Agreement") is entered between the **STATE OF FLORIDA**, acting through the **MEDICAID FRAUD CONTROL UNIT** of the **OFFICE OF THE ATTORNEY GENERAL** ("MFCU") and **EMSA LIMITED PARTNERSHIP**, a Florida Limited Partnership ("EMSA"), through its authorized representatives.

As a preamble to this Agreement, the MFCU and EMSA agree to the following:

A. **"EMSA" and "Parties" Defined:** As used in this Agreement, the term "EMSA" is defined as **EMSA LIMITED PARTNERSHIP**, a Florida Limited Partnership, its current and former subsidiaries, parents, affiliates, predecessors, successors, and assigns, including the agents, employees, officers, and directors of **EMSA LIMITED PARTNERSHIP**, its parents, affiliates, successors and assigns, to the extent such agents were acting for or on behalf of **EMSA LIMITED PARTNERSHIP**, a Florida Limited Partnership, its current and former subsidiaries, parents, affiliates, predecessors, successors, and assigns. The term EMSA, its parents or affiliates specifically does not include any health care provider, who is not an employee of EMSA, its parents or affiliates, who EMSA, its parents or affiliates utilized for services whether through written contract or otherwise, nor does the term include any person or entity with whom EMSA, its parents or affiliates contracted to provide health care to incarcerated persons. Collectively, EMSA and MFCU are the "Parties," as used herein.

B. **"Investigation" of the "Covered Conduct:"** The MFCU conducted an investigation of EMSA concerning its alleged role in the submission by off-site health care providers of claims for payment to the Florida Agency for Health Care Administration ("AHCA") or AHCA's fiscal agent for care provided to inmates incarcerated in facilities where EMSA contracted to provide health care. As used herein the term "Investigation" shall mean MFCU's investigation into EMSA's conduct for the period from December 1, 1998, to March 31, 2004. This MFCU-investigated conduct is the "Covered Conduct," as used hereafter.

C. **MFCU's Claims:** MFCU contends it has certain statutory and common-law civil claims against EMSA as a result of Covered Conduct.

D. **Motivation to Resolve Claims:** The Parties desire to conclude the aforementioned Investigation into the Covered Conduct and to settle and compromise on all claims against EMSA arising out of the said Investigation that the MFCU either asserted or maintained against EMSA or could have asserted or maintained against EMSA. The Parties enter into this full and final Settlement to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims.

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

1. **Settlement Amount:** EMSA agrees that EMSA will pay MFCU the sum of FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00). The foregoing payments shall be made under all of the following terms:

(a) EMSA agrees that EMSA will pay the one-lump-sum amount of \$5,000,000.00 to the MFCU.

(b) Said lump-sum payment shall be paid by either certified or cashier's check or wire transfer drawn on a bank in the United States, and in United States currency.

(c) The certified or cashier's check shall be payable to "Office of the Attorney General." A wire transfer should be made payable to MFCU's Bank of America account number 0260-0959-3.

(d) The certified or cashier's check or a copy of the receipt of transmittal for the wire transferred funds shall accompany this Settlement Agreement, which must be executed by the authorized representative of EMSA.

(e) If EMSA elects to have the Settlement Amount paid by wire transfer, EMSA agrees any such wire transfer shall be treated as a proposed payment whose acceptance can be affirmed only by the Deputy Attorney General's signature below on this Agreement. All other provisions regarding effective date will remain unchanged by the final acceptance of the payment by wire transfer.

(f) Prior to any other distribution, the MFCU shall transfer to AHCA, that portion of the Settlement Amount constituting the Medicaid program loss.

2. **MFCU's Release:** Subject to the exceptions in Paragraph 3 ("Scope of Release") and Paragraph 4 ("Bankruptcy Provisions"), upon full execution of this Agreement by all Parties and EMSA's simultaneous remittance to the MFCU of the settlement amount as provided in Paragraph 1, the MFCU agrees to release EMSA, its parents and affiliates, from any and all civil and administrative actions, causes of action, obligations, liabilities, claims, or demands for compensatory, special, punitive, exemplary, or treble damages, or demand whatsoever in law or in equity, which were asserted or maintained or could have been asserted or maintained, against EMSA, its parents and affiliates based upon or arising out of the Investigation of the Covered Conduct specifically defined in Preamble Paragraph B. However, the Agreement will have no actual or intended effect until executed by MFCU's authorized representative.

3. **Scope of Release:** Notwithstanding any term of this Agreement, the following are specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person, including EMSA:

(a) MFCU, AHCA or other appropriate law enforcement or regulatory agency or private party suit against EMSA or any predecessor, successor, director, officer, employee, assign or agent of EMSA for:

(1) Any administrative or civil cause of action for any violation of law arising out of the covered conduct and not encompassed within the Investigation as defined in Paragraph 1; or

(2) Any criminal liability.

Accordingly, EMSA agrees not to assert the defenses of res judicata, collateral estoppel, excessive fines, or double jeopardy as to actions described in Subparagraphs (a)(1) and (a)(2).

(b) Any administrative action(s) relating to professional licensure or adjudication of claims by persons or entities who are not parties to this Settlement Agreement;

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

(d) Any liability to the State of Florida, including MFCU and OAG, for any conduct other than the Covered Conduct;

(e) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by EMSA;

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

(g) Any action against a healthcare professional, including EMSA and any of its employees or agents, for practicing without the necessary license or certification.

4. **Bankruptcy:** The Parties warrant and agree to the following bankruptcy provisions:

(a) EMSA warrants that its has reviewed its own financial position and EMSA is solvent within the meaning of Title II of the United States Code (hereinafter "11 U.S.C."), §§ 547(b)(3) and 548 (a)(1)(B)(ii)(I), and will remain solvent following their payment to the MFCU of the Settlement Amount.

(b) Further, the Parties warrant that, in evaluating whether to execute this Agreement, they

(1) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to EMSA, within the meaning of 11 U.S.C. § 547(c)(1); and

(2) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

(c) Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which EMSA was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

(d) The Parties agree that the Settlement Amount as defined in Paragraph 1 constitutes a recovery of the type defined in 11 U.S.C. §523(a)(7) and §1141(d)(2).

(e) Accordingly, the Parties agree within ninety-one (91) days of the later of the Effective Date, if EMSA commences any action under any law of bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of EMSA's debts; seeking to adjudicate EMSA as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for EMSA or for all or any substantial part of EMSA's assets, EMSA agrees as follows:

(1) EMSA's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and EMSA shall not argue or otherwise take the position in any such case, proceeding, or action that: EMSA's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; EMSA was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the MFCU hereunder; or the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to EMSA.

(2) If EMSA's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the MFCU, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against EMSA for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3.

(3) EMSA agrees that any such claims, actions, or proceedings brought by the State of Florida (including any proceedings to exclude EMSA 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 immediately preceding Subparagraph 4(d)(2). EMSA will not argue or otherwise contend that the State of Florida's claims, actions, or proceedings are subject to an automatic stay. EMSA will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the State of Florida within 90 calendar days of written notification to EMSA that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the first day of the Investigated period.

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

5. **Continual Compliance:** EMSA agrees to abide by and obey all statutes, regulations and official directives of the United States and Florida, including their departments and agencies, pertaining to Medicaid, to the extent the said statutes, regulations, and official directives apply to EMSA. Should EMSA fail to abide by and obey the aforesaid Medicaid statutes, regulations, and official directives of the United States and Florida, the release of claims against EMSA as set forth in Paragraph 2, shall terminate and the MFCU shall be free to continue its Investigation as identified in Paragraph B, above, and to pursue such civil or criminal actions against EMSA as it deems appropriate. The remaining provisions of this Agreement shall remain binding upon EMSA.

6. **No Admission of Fault:** This Agreement, any exhibit or document referenced herein, any action taken to reach, effectuate, or further this Agreement, and the terms set forth herein, shall not be construed as, or used as, an admission by or against any of the Parties of any fault, wrongdoing, or liability whatsoever. Entering into or carrying out this Agreement, or any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by any of the Parties, or to be a waiver of any applicable defense. However, with the exception of certain bankruptcy provisions in Paragraph 4, nothing in this Agreement, including this Paragraph, shall be construed to limit or to restrict EMSA's right to utilize this Agreement, or payments made hereunder, to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any legal or equitable defenses in any pending or future legal or administrative action or proceeding arising out of the specific subject matter of the Investigation, as defined in Paragraph 1. EMSA does not admit MFCU's contentions that arise from its Investigation of the Covered Conduct, set forth in Preamble Paragraph B, and specifically denies EMSA intentionally submitted any claims in violation of state or federal law. This Agreement, and the payment, promises, and release provided hereunder, are not and shall not be construed to be an admission of liability or any acknowledgment of the validity of any of the claims that were or that could have been

asserted by the MFCU against EMSA, arising out of the Investigation, which liability or validity is hereby expressly denied by EMSA.

7. **Complete Resolution :** The Parties have agreed that the terms of this Agreement constitute a complete resolution and settlement of the claims asserted against EMSA by the MFCU, as well as the claims that could have been asserted against EMSA by the MFCU arising out of or as a result of the Investigation described in Paragraph 1. Upon EMSA's continued fulfillment of its obligations under this Agreement as provided in Paragraph 1, and payment of the lump-sum amount provided in Paragraph 1, the Investigation, as defined in Preamble, Paragraph B, shall be concluded.

8. **Survival:** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, transferees, heirs, and assigns.

9. **Merger:** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein and all prior negotiations and understandings between the Parties shall be deemed merged into this Agreement.

10. **No External Representations:** No representations, warranties, or inducements have been made by the MFCU concerning this Agreement other than those representations, warranties, and covenants contained in this Agreement.

11. **No Oral Modifications or Waivers:** No waiver, modification, or amendment of the terms of this Agreement shall be valid or binding unless in writing, signed by the Party to be charged, and then only to the extent set forth in such written waiver, modification, or amendment.

12. **Failure of Strict Performance:** Any failure by any Party to the Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

13. **Choice of Law:** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to its conflict of law principles.

14. **Release of Florida:** EMSA, for itself and its affiliates, only fully and finally releases the MFCU, the OAG, and the State of Florida, its agencies, employees, servants, and agents from any claims (including attorney's fees and costs of any kind) that EMSA has asserted, could have asserted, or may assert in the future against the MFCU, the OAG, or the State of Florida, its agencies, employees, and agents arising out of or resulting from the Investigation as defined in Paragraph 1.

15. **Contract Beneficiaries:** This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, except to the extent provided for in the immediately preceding Paragraph.

16. **Litigation Costs:** With exception of investigative costs and litigation costs which may be specifically provided for in Paragraph 1, 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. **Unenforceable Clause :** Neither Party shall challenge the legality or enforceability of this Agreement. If any clause, provision, or section of this Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

18. **Arms Length Negotiations:** The Parties executed this Agreement after arms length negotiations and it reflects the conclusion of the Parties that this Agreement is in the best interest of all the Parties. Each Party is satisfied with the Agreement 's language and construction, and therefore the interpretation of the terms of this Agreement shall not be construed against any of the Parties. Each Party represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. **No Third-Party Beneficiaries:** The parties agree that they have not entered into this Agreement for the benefit of any private person(s) or entity not named in this agreement, and it is their express intention that the Agreement is intended to be for their respective benefit only and not for the benefit of others who might otherwise be deemed to constitute third-party beneficiaries hereof.

20. **Authority to Execute Agreement:** The undersigned individuals signing this Agreement on behalf of EMSA represent and warrant that they are authorized to execute this Agreement. The undersigned MFCU signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

22. **Non-Punitive Effect :** The Parties agree that this Settlement is not punitive in purpose or effect.

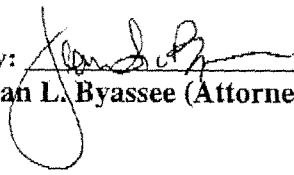
23. **IRS Characterization :** Nothing in this Agreement constitutes an agreement or representation characterizing the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United States Code.

24. **Public Disclosure** : All Parties consent to the MFCU's disclosure of this Agreement, and information about this Agreement, to the public.

5 **Introductory Signals** : The introductory paragraph signals are for subject identification only and do not affect the meaning or become part of the Agreement.

EMSA Limited Partnership

By a duly authorized officer of its General Partner

By: 

Jean L. Byassee (Attorney in Fact)

**FOR FLORIDA'S OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL AFFAIRS**

CHARLES J. CRIST, JR.

George S. LeMieux
Deputy Attorney General

Date:

Date: 3/30/2004