(F) "Modal fee" means the fee charged most frequently during a calendar year by a VSP panel doctor for each service rendered to non-VSP patients and for each service rendered to VSP patients that is not covered by a plan insured or administered by VSP. For example, if in 1993, a VSP panel doctor performed a total of 12 eye examinations on non-VSP patients and charged 3 of those patients \$40, 5 of those patients \$50, and 4 of those patients \$60 for the eye examination, the doctor's modal fee for eye examinations provided to non-VSP patients would be \$50.

(G) "Median fee" means, considering all fees charged in a calendar year for each service rendered to non-VSP patients and for each service rendered to VSP patients that is not covered by a plan insured or administered by VSP, the fee below and above which there are an equal number of fees (or, if there are an overall equal number of fees under consideration, the fee that is the arithmetic mean of the tow middle fees.)

Ш

Applicability

This Final Judgment applies to:
(A) The Defendant and to its
successors and assigns, and to all other
persons (including VSP panel doctors)
in active concert or participation with
any of them, who have received actual
notice of the Final Judgment by personal
service or otherwise; and

(B) The Most Favored Nation Clause, as defined in Section II(C) of this Final Judgment, but to no other clause of the VSP Panel Doctor's Agreement, VSP

policy, or VSP practice.

IV

Prohibited Conduct

Except as permitted in Section V, Defendant is enjoined and restrained from:

- (A) Maintaining, adopting, or enforcing a Most Favored Nation Clause in any VSP Panel Doctor's Agreement, corporate bylaws, policies, rules, regulations, or by any other means or methods;
- (B) Maintaining, adopting, or enforcing any policy or practice linking payments made by VSP to any VSP panel doctor to fees charged by the doctor to any non-VSP patient or any non-VSP plan;
- (C) Differentiating VSP's payments to, or other treatment of, any VSP panel doctor because the doctor charges any fee lower than that charged by the doctor to VSP, to any non-VSP patient or to any non-VSP plan;
- (D) Taking any action to discourage any VSP panel doctor from participating

in any non-VSP plan or from offering or charging any fee lower than that paid to the doctor by VSP to any non-VSP patient or any non-VSP plan;

(E) Monitoring or auditing the fees any VSP panel doctor charges any non-VSP patient or any non-VSP plan; and

(F) Communicating in any fashion with any VSP panel doctor regarding the doctor's participation in any non-VSP plan or regarding the doctor's fees charged to any non-VSP patient or to any non-VSP plan.

V

Permitted Activities

Despite any prohibition contained in Section IV of this Final Judgment,

(A) For the purpose of calculating payments to be made to its panel doctors, defendant may request annually that a VSP panel doctor report sufficient information—provided such information is requested uniformly from all panel doctors within a meaningful geographic area comprising zip codes—from which Defendant is able to calculate either the doctor's modal or median fee, for each applicable service, provided by the doctor during the preceding calendar year;

(B) Defendant may calculate the fees that it pays to a VSP panel doctor for services rendered to VSP patients based on either the panel doctor's modal or median fees, provided that Defendant employs a uniform method of calculation at least within each meaningful geographic area, comprising zip codes, in which it does business;

(C) Only for the purposes of verifying whether the information reported by a VSP panel doctor, pursuant to Section V(A), is accurate or of investigating a VSP panel doctor's suspected excessive billing to VSP, upon reasonable belief that the reported fees may be inaccurate or excessive, and subject to the reasonable convenience of the VSP panel doctor, Defendant may audit the VSP panel doctor's charges to non-VSP patients;

(D) Consistently with Sections IV(C) and (D), Defendant may devise and utilize a fee system for doctors who apply for VSP panel membership after the date of this Final Judgment that is different from the system used to compensate current panel doctors, and that system may be based on the average fees VSP pays in a meaningful geographic area comprising zip codes;

(E) Consistently with Sections IV(C) and (D), Defendant may elect to maintain current fees for panel doctors at their existing levels and may base any future fee increases on the Consumer Price Index, VSP's own financial

growth, or any other meaningful economic indicator; and

(F) Consistently with Sections IV(C) and (D), Defendant may impose penalties on panel doctors who have misrepresented their fees or the frequency with which they charge those fees.

VI

Nullification

The Most Favored Nation Clause shall be null and void and Defendant shall impose no further obligation arising from it on any VSP panel doctor. Within 60 days of entry of this Final Judgment, Defendant shall disseminate to each present VSP panel doctor an addendum to the Panel Doctor's Agreement, nullifying the Most Favored Nation Clause, and Defendant shall eliminate the Most Favored Nation Clause from all Panel Doctor's Agreements entered into after entry of this Final Judgment.

VII

Complance Measures

The Defendant shall:

(A) Distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) All VSP officers and directors; (2) VSP employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with VSP panel doctors; and (3) all present VSP panel doctors and all former VSP panel doctors whom VSP should reasonably know have resigned because of the Most Favored Nation Clause:

(B) Distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A) (1) or (2);

(C) Obtain from each present or future officer, director, or employee designated in Section VII(A) (1) or (2), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) Maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VI(D), the certification has been obtained;

(E) The Defendant shall notify all former VSP panel doctors whom it should reasonably know have resigned