CIVIL SETTLEMENT AGREEMENT

I. PARTIES

This Civil 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"); and Bakul Desai, M.D. ("Desai") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

A. Desai is an individual who resides in the State of New Jersey. At all times relevant herein, Desai was a Medical Doctor licensed in the State of New Jersey.

B. The United States contends that Desai 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. §§ 1395-1395hhh.

C. The United States contends that it has certain civil claims, as specified in Paragraph 3, below, for engaging in the following conduct from on or about January 1, 2003 through November 22, 2006:

i. During the relevant time period, Desai received payments from The University of Medicine and Dentistry of New Jersey ("UMDNJ") which is located in Newark, New Jersey. Said payments were purportedly for Desai's services as a Clinical Associate Professor for UMDNJ. However, it was understood that said services would not be rendered by Desai and that in return for said payments, Desai would instead refer cardiac patients

to UMDNJ's hospital, University Hospital, which is also located in Newark, New Jersey (the "Hospital").

ii. Desai then submitted or caused to be submitted claims for cardiac services rendered at the Hospital to agents of the Medicare program through the Hospital's cost reports. Said claims resulted from the improper referrals of patients by Desai to the Hospital.

(hereinafter referred to as the "Covered Conduct").

D. Desai denies the contentions of the United States set out in Paragraphs B and C. This Agreement is neither an admission of liability by Desai, nor a concession by the United States that its claims are not well founded.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Desai agrees to pay to the United States $1,478,750.00 (the "Settlement Amount"). Desai agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office, District of New Jersey. An initial payment of $295,750.00 shall be due within ten days of the Effective Date of this Agreement. The second and final payment of $1,183,000.00 shall be due three months from the Effective Date of this Agreement.

2. If Desai fails to make any of the payments at the specified times described in Paragraph 1, above, then upon written notice to Desai of this default, Desai shall have ten (10)

calendar days to cure the default. If the default is not cured within the ten-day period, the United States may elect any of the following non-exclusive options: (a) the remaining unpaid principal portion of the Settlement Amount shall become accelerated and immediately due and payable, with interest at a simple rate of 4.75% from the Effective Date of this Agreement to the date of default, and at a simple rate of 12% per annum from the date of default until the date of payment; (b) file an action for specific performance of the Agreement; (c) offset the remaining unpaid balance of the Settlement Amount (inclusive of interest) from any amounts due and owing to Desai by any department, agency, or agent of the United States; or (d) rescind this Agreement and file suit based on the Covered Conduct. Desai agrees not to contest any collection action undertaken by the United States pursuant to this Paragraph, and to pay the United States all reasonable costs of collection and enforcement of this Agreement, including reasonable attorney's fees and expenses. In the event that the United States opts to rescind this Agreement following a default, Desai agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (i) are filed by the United States within 120 calendar days of written notification to Desai that this Agreement has been rescinded, and (ii) relate to the Covered Conduct.

3. Subject to the exceptions in Paragraph 5, below, in consideration of the obligations of Desai set forth in this Agreement, conditioned upon Desai's full payment of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and

departments) agrees to release Desai 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 civil monetary penalty provisions of the Stark Statute, 42 U.S.C. §§ 1395nn(g)(3) and (4); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Desai from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Desai) are the following:

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

b. Any criminal liability;

c. Any administrative liability, including mandatory and permissive 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 such obligations as are created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and

h. Any liability for failure to deliver goods or services due.

6. Desai waives and shall not assert any defenses Desai may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. 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.

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

8. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and Desai agrees not to resubmit to any Medicare

carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

9. Desai agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Desai, his companies, his present or former employees and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(1) the matters covered by this Agreement and any related plea agreement;

(2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

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

(4) the negotiation and performance of this Agreement and any plea agreement;

(5) the payments Desai makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Desai, and Desai 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 Desai or any of his subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Desai further agrees that within 90 days of the Effective Date of this Agreement he 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 Desai or any of his 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. Desai agrees that the United States, at a minimum, shall be entitled to recoup from Desai 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 Desai or any of

his subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Desai or any of his subsidiaries or affiliates' 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.

10. 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 11, below.

11. Desai 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 payors based upon the claims defined as Covered Conduct.

12. Desai warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following his payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Desai, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Desai was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

13. If, within 91 days of the Effective Date of this Agreement or any payment made under this Agreement, Desai commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Desai's debts, or seeking to adjudicate Desai as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Desai or for all or any substantial part of Desai's assets, Desai agrees as follows:

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

b. If Desai'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 United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Desai for the claims that would otherwise be covered by the releases provided in Paragraph 3, above. Desai agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Desai from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. §

362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and Desai shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Desai shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the United States within 90 calendar days of written notification to Desai that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this agreement; and (iii) the United States has a valid claim against Desai in the amount of $ 1,774,500.00, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Desai acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. 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.

15. Desai 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 is the United States District Court for the District of New Jersey.

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

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

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

20. This Agreement is binding on Desai's successors, transferees, heirs, and assigns.

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

22. 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.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

DATED: 6/30/08

BY: _____
ALEX KRIEGSMAN
Assistant United States Attorney

DATED: 6/27/08

BY: _____
GREGORY E. DEMSKE
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

BAKUL DESAI - DEFENDANT

DATED: 6/10/08 BY: _____
BAKUL DESAI

WILLIS & YOUNG, P.C.

DATED: 6/10/08 BY: _____ for John A. Young, J.
PETER R. WILLIS, ESQ
Counsel for Bakul Desai