

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 Department of the Air Force (“U.S. Air Force”), the Department of the Army (“U.S. Army”), the Department of the Navy (“U.S. Navy”), and the Defense Logistics Agency (“DLA”) (collectively the “United States”), Philips North America LLC (“Philips”), and Rick Finsterbusch and Brian Healey (together, the “Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Philips is a corporation based in Massachusetts and headquartered at 222 Jacobs Street, Cambridge, Massachusetts. Philips, among other things, manufactures medical devices that it sells to the federal government, including to U.S. military customers.

B. On September 19, 2019, the Relators filed a qui tam action in the United States District Court for the District of Massachusetts captioned *United States ex rel. Rick Finsterbusch and Brian Healey v. Philips North America LLC d/b/a Philips Healthcare, a subsidiary of Koninklijke Philips N.V.*, No. 19-cv-11921, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Relators allege that Philips sold mobile patient monitors called MP2s to the U.S. military. The Relators allege that after originally receiving military airworthiness certification for the MP2, Philips substituted key components of MP2s sold to military purchasers without re-certifying the device for military airworthiness.

C. The United States contends that it has certain civil claims against Philips for submitting or causing the submission of false claims for payment to the U.S. Air Force, the U.S. Army, the U.S. Navy, and the DLA arising from the conduct in Paragraph D.

D. Philips admits, acknowledges, and accepts responsibility for the following facts. During the period January 1, 2012 through November 27, 2018, Philips sold MP2s to the U.S. Air Force, the U.S. Army, the U.S. Navy, and the DLA. These agencies require airworthiness and safe-to-fly testing and certification on medical devices used in certain aircraft environments. After receiving initial airworthiness and safe-to-fly certifications for the MP2 from the U.S. Army in 2008 and the U.S. Air Force in 2011, Philips made modifications to the MP2. Philips did not adequately notify the relevant military testing facilities to determine whether the device modifications required retesting to maintain airworthiness and safe-to-fly certifications. The foregoing conduct in this Section D is referred to as the “Covered Conduct.”

E. With the exception of the Covered Conduct, Philips expressly denies the allegations of the Relators as set forth in the Civil Action.

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.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Philips shall pay to the United States Four Million Two Hundred Thousand Dollars (\$4,200,000) (“Settlement Amount”), of which \$2,100,000 is restitution, and interest on the Settlement Amount at a rate of 1% per annum from May 6, 2022, by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the

District of Massachusetts no later than thirty (30) days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$798,000 to Relators by electronic funds transfer (“Relators’ Share”).

3. Philips shall pay to Relators’ counsel a total of \$440,405.20 for expenses, attorneys’ fees, and costs no later than 60 days after the Effective Date of this Agreement. Relators’ counsel agrees that this amount constitutes all expenses and reasonable attorneys’ fees and costs pursuant to 31 U.S.C. § 3730(d)(2).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Philips, its predecessors, its current and former parents, divisions, subsidiaries, successors, and assigns 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 Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States’ receipt of the Settlement Amount plus interest due under Paragraph 1, Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, and those acting on their behalf or direction, fully and finally release Philips, together with each of its past, present and future directors, officers, managers, members, employees, partners, principals, agents, insurers, shareholders, attorneys, accountants, independent contractors, auditors, advisors, consultants, predecessors, successors, parents, subsidiaries, divisions, assigns, joint ventures and joint

venturers, related or affiliated entities, and all others acting on its or their behalf, and the corporate successors or assigns of any of them from any and all claims and potential claims arising or relating to the Covered Conduct, and from any and all claims, demands, damages, liabilities, causes of action, and rights, in law or in equity, whether known or unknown, suspected or unsuspected, accrued or unaccrued, foreseen or unforeseen, whether seeking damages, injunctive relief or any other remedy, and whether based on statute, common law, tort, operation of law, equity, compensatory or punitive damages, or any other theory of recovery and 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.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights 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 the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- 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;
- f. Any liability of individuals;
- g. Any liability for failure to deliver goods or services due;

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

7. 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 Relators' Share, 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.

8. Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, release Philips, and its officers, agents, and employees, from any liability to Relators arising from the Covered Conduct and the filing of the Civil Action, or for expenses or attorneys' fees and costs under 31 U.S.C. § 3730(d).

9. Philips waives and shall not assert any defenses Philips 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.

10. Philips fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Philips 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 or the United States' investigation or prosecution thereof.

11. Philips fully and finally releases the Relators from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Philips has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof.

12. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Philips, and 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 investigation(s) of the matters covered by this Agreement;
- (3) Philips's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Philips makes to the United States pursuant to this Agreement and any payments that Philips may make to Relators, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Philips, and Philips shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Philips shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Philips or any of its subsidiaries or affiliates from the United States. Philips agrees that the United States, at a minimum, shall be entitled to recoup from Philips any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Philips's books and records and to disagree with any calculations submitted by Philips or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Philips, or the effect of any such Unallowable Costs on the amount of such payments.

13. This Agreement is intended to be for the benefit of the Parties only.

14. 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 the Civil Action pursuant to Rule 41(a)(1).

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. 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 District of Massachusetts. 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.

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

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

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

21. This Agreement is binding on Philips's successors, transferees, heirs, and assigns.

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

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

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

THE UNITED STATES OF AMERICA

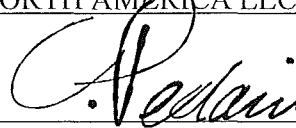
DATED: 8/30/22

BY: Lindsey Ross
LINDSEY ROSS
DIANE SEOL
Assistant United States Attorneys
United States Attorney's Office
District of Massachusetts

PHILIPS NORTH AMERICA LLC

DATED: 29 August 2022

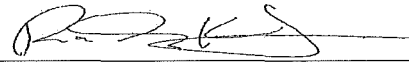
BY:



CHRISTOPH PEDAIN
Business Leader, Hospital Patient Monitoring

DATED: August 29, 2022

BY:



RANDY JONES
DANIEL GOODRICH
Counsel for Philips North America LLC

RICK FINSTERBUSH AND BRIAN HEALEY - RELATORS

DATED: Aug 29, 2022

BY: 
RICK FINSTERBUSCH

DATED: Aug 29, 2022

BY: BRIAN HEALEY
BRIAN HEALEY

DATED: Aug 30, 2022

BY: Bryan Wood
BRYAN WOOD

George W Price
George W Price (Aug 30, 2022 10:06 EDT)
GEORGE PRICE
Counsel for Relators