

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the District of Arizona and on behalf of the United States Small Business Administration (collectively the “United States”), Hemisphere GNSS (USA), Inc. (“Hemisphere”), and GNGH2, Inc. (the “Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Hemisphere is a satellite global positioning system manufacturer with a principal place of business at 8515 E. Anderson Drive, Scottsdale, Arizona 85255. During the relevant time period, Hemisphere was fully owned by Hemisphere GNSS, Inc. (Alberta) with a principal place of business in Canada. Hemisphere GNSS, Inc. (Alberta) was fully owned by Hemisphere Co., LTD, with a principal place of business in Hong Kong. Hemisphere Co., LTD was in turn fully owned by Beijing Unistrong Science & Technology Co., LTD, with a principal place of business in Beijing, China.

B. On or about February 8, 2022, Relator filed a qui tam action in the United States District Court for the District of Arizona captioned *United States ex rel. GNGH2, Inc. v. Hemisphere GNSS (USA) Incorporated*, 2:22-cv-00224, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that it has certain civil claims against Hemisphere arising from Hemisphere’s application for and receipt of funds under the Paycheck Protection Program (“PPP”), specifically:

1. On or about February 4, 2021, Hemisphere applied for a second draw PPP loan authorized by the Economic Aid to Hard-Hit Small Businesses, Nonprofit, and Venues Act. Like the first draw PPP loans established by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the second draw PPP loan was guaranteed by the SBA.
2. In submitting the PPP loan application, Hemisphere certified that it “is not a business concern or entity (a) for which an entity created in or organized under the laws of the People’s Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People’s Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership; or (b) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People’s Republic of China.”
3. At the time Hemisphere submitted the application, Hemisphere was in fact “a business concern or entity [] for which an entity created in or organized under the laws of the People’s Republic of China . . . or that has significant operations in the People’s Republic of China . . . owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership.”

Hemisphere also retained “as a member of the board of directors ... a person who is a resident of the People’s Republic of China.” Thus, Hemisphere was ineligible for the second draw PPP loan under the applicable rules in effect at the time of the application, and Hemisphere’s application was false.

4. Based on Hemisphere’s application, the SBA approved a second draw PPP loan to Hemisphere totaling \$1,570,200.00. In connection with that PPP loan, the SBA also paid a loan processing fee to the lender totaling approximately \$47,106, and interest on the PPP loan of approximately \$10,324.
5. On or about October 20, 2021, and upon attesting to the accuracy of its underlying application and eligibility for the second draw loan, Hemisphere applied for forgiveness of its second draw PPP loan, which the SBA subsequently forgave. Hemisphere would not have qualified for forgiveness if it had accurately represented its relationship to China.

The conduct described in this paragraph is referred to below as the “Covered Conduct.”

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

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s 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. Hemisphere shall pay to the United States two million, six-hundred thousand dollars (\$2,600,000) (“Settlement Amount”), of which one million, six hundred twenty-seven thousand, six hundred thirty dollars (\$1,627,630) is restitution, by electronic funds transfer, pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice, 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 two hundred, sixty thousand dollars (\$260,000) to Relator by electronic funds transfer (“Relator’s Share”).

3. Within ninety (90) days of the Effective Date, Hemisphere will pay to Relator, through Relator’s counsel, two thousand, two hundred dollars (\$2,200) in full and complete satisfaction of any claim Relator has or could have asserted for attorney’s fees, costs, or expenses arising out of, relating to, or in connection with the Civil Action.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Hemisphere, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them (“Related Entities”), 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, Relator, for itself and for its heirs, successors, attorneys, agents, and assigns, releases Hemisphere, its Related Entities, as well as its officers, agents, employees, and servants, from any claims the Relator has asserted, could have asserted, or could assert in the future against Hemisphere, its Related Entities or its officers, agents, employees, and servants related to the Covered Conduct, including but not limited to claims 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;
and
- f. Any liability of individuals.

7. Relator and its 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 Relator's receipt of the Relator's Share, Relator and its 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. Relator, for itself, and for its heirs, successors, attorneys, agents, and assigns, releases Hemisphere, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Hemisphere waives and shall not assert any defenses Hemisphere 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. Hemisphere 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 Hemisphere 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. Hemisphere fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Hemisphere has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's 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 Hemisphere, 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) Hemisphere'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; and
- (5) the payment Hemisphere makes to the United States pursuant to this Agreement and any payments that

Hemisphere may make to Relator, 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 Hemisphere, and Hemisphere 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, Hemisphere shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Hemisphere or any of its subsidiaries or affiliates from the United States. Hemisphere agrees that the United States, at a minimum, shall be entitled to recoup from Hemisphere 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 Hemisphere's books and records and to disagree with any calculations submitted by Hemisphere or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Hemisphere, 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 Relator and the United States 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. Except as provided in Paragraph 3 above, 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 Arizona. 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 Hemisphere's successors, transferees, heirs, and assigns.

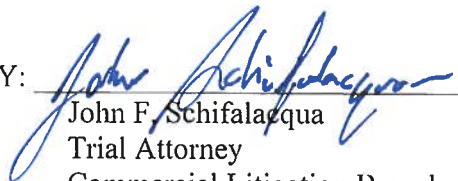
22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.


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 of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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THE UNITED STATES OF AMERICA

DATED: 7/11/2024 BY: 
John F. Schifalacqua
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 7/10/2024 BY: 
Anne E. Nelson
Assistant United States Attorney
U.S. Attorney's Office
District of Arizona

Hemisphere GNSS (USA), Inc. - DEFENDANT

7/10/2024
DATED: _____ BY: Jacob Wurth
Jacob Wurth
Authorized Representative

7/10/2024
DATED: _____ BY: Amy Walsh
Amy Walsh
Counsel for Hemisphere GNSS (USA), Inc.
Orrick, Herrington & Sutcliffe LLP

GNGH2, Inc. - RELATOR



DATED: 7/1/2024

BY: _____

David Abrams, Esq.
GNGH2, Inc.
Relator