

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice (“United States”), and Vivint Smart Home, Inc. (“Vivint”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Vivint is a smart home company based in Provo, Utah, principally in the business of selling smart home equipment and monitoring services. Vivint offers potential customers the option of financing the cost of its smart home equipment through a federally insured financial institution as defined in 18 U.S.C. § 20.

B. The United States contends that it has certain civil claims set forth in Paragraph 3 below against Vivint arising from certain Vivint sales practices from April 2017 through December 31, 2020. More specifically, the United States contends that certain Vivint sales representatives used their personal funds, through credit cards, debit cards, or cash, to cover the cost of initial financing payments on behalf of Vivint customers who sought financing to purchase Vivint’s products. In so doing, the United States contends that certain Vivint sales representatives made false and misleading statements to a federally insured financial institution in connection with such financing that made it appear as if the borrower had funded, and had sufficient funds for, the initial payment. That conduct is referred to below as the “Covered Conduct.”

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

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. Vivint shall pay to the United States \$3,200,000.00 (“Settlement Amount”) within 7 days of the Effective Date of this Agreement. Payment shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice.

2. The entirety of the Settlement Amount is a civil monetary penalty recovered pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”), 12 U.S.C. § 1833a.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Vivint’s full payment of the Settlement Amount, the United States releases Vivint from any civil or administrative monetary claim the United States has for the Covered Conduct under FIRREA, 12 U.S.C. § 1833a.

4. Notwithstanding the release given in paragraphs 3 of this Agreement, or any other term of this Agreement, the following claims 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 this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States for any conduct other than the Covered Conduct;
- e. Any liability to or claims of any agency of the United States;
- f. Any liability based upon obligations created by this Agreement. or,
- g. Any liability of individuals;

5. Vivint waives and shall not assert any defenses Vivint 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.

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

7. 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 Vivint, 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) Vivint'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 attorney's fees);

- (4) the negotiation and performance of this Agreement;
- (5) the payment Vivint makes to the United States pursuant to this Agreement,

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 Vivint, and Vivint 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: If applicable, within 90 days of the Effective Date of this Agreement, Vivint shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Vivint or any of its subsidiaries or affiliates from the United States. Vivint agrees that the United States, at a minimum, shall be entitled to recoup from Vivint 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 Vivint's books and records and to disagree with any calculations submitted by Vivint or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Vivint, or the effect of any such Unallowable Costs on the amount of such payments.

8. Vivint agrees to cooperate fully and truthfully with the United States' investigation relating to the Covered Conduct of individuals and entities not released in this Agreement. Upon reasonable notice, Vivint shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony relating to the Covered Conduct, consistent with the rights and privileges of such individuals. Vivint further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged or otherwise unprotected documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

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

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

11. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

12. 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 Utah. 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.

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

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

15. This Agreement is binding on Vivint's successors, transferees, heirs, and assigns.

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

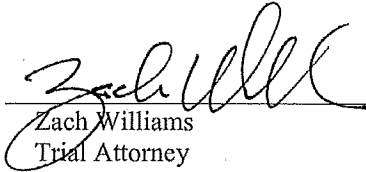
17. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

(Signatures to Follow)

THE UNITED STATES OF AMERICA

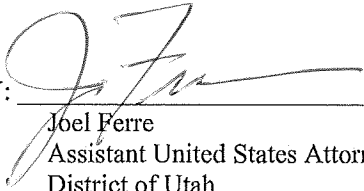
DATED: 1/5/21

BY:



Zach Williams  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice


BY:




Joel Ferre  
Assistant United States Attorney  
District of Utah  
United States Department of Justice

VIVINT SMART HOME, INC. – DEFENDANT

DATED: January 4, 2021

BY:   
Dale R. Gerard  
Chief Financial Officer  
Vivint Smart Home, Inc.

DATED: January 4, 2021

BY:   
Nicholas S. Goldin  
Jonathan K. Youngwood  
David Elbaum  
Michael S. Carnevale

Simpson Thacher & Bartlett LLP

Counsel for Vivint Smart Home, Inc.