

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Defense (collectively the "United States"), and Siemens Medical Solutions USA, Inc. ("SMS") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. SMS is an entity that provides medical imaging equipment and healthcare technology to public and private clients in the United States. SMS manufactures for the United States military a range of medical imaging equipment and technology, including x-ray machines and MRI scanners.

B. The medical imaging and support equipment manufactured by SMS have base or list prices. For some commercial or private customers, SMS would sell the equipment at a discount to the base or list price. The greater the discount off the base or list price offered by SMS, the lower the net price for that product.

C. On behalf of the United States Department of Defense (the "DoD"), the Defense Supply Center of Philadelphia ("DSCP") negotiated and entered into an agreement with SMS for the purchase of medical imaging equipment and support products. The contract numbers of this agreement are SPO200-02-D-8314 and SPM200-02-D-8314. The United States Department of Veterans Affairs (the "VA") joined this purchasing agreement via two modifications in September 2004 and February 2005 (collectively, the "DSCP Contract"). The DSCP Contract was awarded on February 12, 2002 and ended on December 10, 2008.

D. The United States contends that for the duration of the DSCP Contract:

1. SMS had a continuing obligation under the DSCP Contract to provide the United States with the best price for medical imaging equipment and support products that SMS had provided to a commercial or private customer for a "like system." Accordingly, the United States' discount had to at least match the largest discount that SMS had given to a private or commercial customer for a "like system."

2. SMS did not always offer the DoD the best price on "like systems" purchased pursuant to the DSCP Contract. Specifically, SMS did not offer the DoD the largest discount that a private or commercial customer had received for a "like system." In doing so, SMS overcharged the United States.

3. SMS withheld information regarding this overcharging and kept money that it was not entitled to retain. The United States conducted two pre-award audits of sales data under the DSCP Contract which initiated an internal review of that data by SMS. SMS' internal review revealed evidence of the overcharging which it did not disclose to the United States. Instead, SMS issued mass discounts for certain product lines between August 2006 and April 2009 to address the mis-billing on a prospective basis. This action did not correct the overcharging that had occurred and, moreover, further concealed it from the United States.

4. SMS also overcharged the VA for certain imaging equipment orders – purchases made under the DSCP Contract – that had been converted to a newer model. Specifically, VA orders for the Axiom Artis, a digital imaging

system, were converted to a newer model – the Artis Zee – without providing the higher discount that applied to Artis Zee models. The DSCP informed SMS of this obligation, but the company initially failed to provide the higher discount to the VA for these conversions. Although the majority of these VA conversions were completed at the proper discount at a later date, several of the conversions were not.

E. The United States contends it has certain civil causes of action, as specified in Paragraphs 2 and 3 below, against SMS for failing to provide the DoD with the best price for “like system” purchases and for the conversion of orders to the Artis Zee model under the DSCP Contract. The conduct described in this Paragraph and Paragraph D above is collectively hereinafter referred to as the “Covered Conduct.”

F. The United States also contends that it has certain administrative claims, as specified in Paragraphs 2 and 3 below, against SMS for engaging in the Covered Conduct.

G. This Settlement Agreement is neither an admission of liability by SMS nor a concession by the United States that its claims are not well founded. SMS expressly denies the contentions and allegations of the United States as set forth herein.

H. 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. SMS shall pay to the United States \$5,900,000.00 ("Settlement Amount") and interest on the Settlement Amount at a rate of 3% from November 7, 2014 by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of Pennsylvania no later than 20 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon SMS's full payment of the Settlement Amount, the United States releases SMS together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, employees, and affiliates; and the successors and assigns of any of them 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; Contract Disputes Act, 41 U.S.C. §§ 7101 – 7109; any statutory provision creating a cause of action for civil damages or penalties which the Civil Division of the Department of Justice has actual or present authority to assert and compromise pursuant to 28 CFR Part O, Subpart I, Section 0.45(d); or the common law theories of breach of contract, payment by mistake, unjust enrichment, misrepresentation and fraud.

3. Notwithstanding the release given in paragraph 2 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 (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations 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 failure to deliver goods or services due; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct..

4. SMS waives and shall not assert any defenses SMS 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. 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.

5. SMS 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 SMS 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 up to the Effective Date of this Agreement.

6. 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 SMS, 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) SMS'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;
- (5) the payment SMS 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 SMS, and SMS 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, SMS shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by SMS or any of its subsidiaries or affiliates from the United States. SMS agrees that the United States, at a minimum, shall be entitled to recoup from SMS 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 SMS's books and records and to disagree with any calculations submitted by SMS or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by SMS, or the effect of any such Unallowable Costs on the amount of such payments.

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

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

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

10. 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 Eastern District of Pennsylvania. 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.

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

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

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

14. This Agreement is binding on SMS's successors, transferees, heirs, and assigns.

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

16. 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.

THE UNITED STATES OF AMERICA

DATED: 4/29/15

BY: 

ZANE DAVID MEMEGER
United States Attorney
Eastern District of Pennsylvania

DATED: 4/29/15

BY: 

MARGARET L. HUTCHINSON
Chief, Civil Division
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: 4/29/15

BY: 

ERIC D. GILL
VIVECA D. PARKER
Assistant United States Attorneys
Eastern District of Pennsylvania

SIEMENS MEDICAL SOLUTIONS USA, INC.

DATED: 5/5/15

BY:



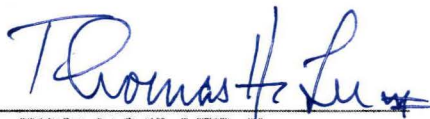
Amy Custon
SMS, CFO

Chief Executive Officer
Siemens Medical Solutions USA, Inc.

DATED:

5/6/15

BY:



THOMAS H. LEE, II
Dechert LLP
Counsel for Siemens Medical Solutions USA, Inc.