SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between the United States of America, acting through the United States Department of Justice and on behalf of the United States Small Business Administration ("SBA") (collectively, the "United States"); Aidan Forsyth ("Relator"); and MED-EL Corporation ("MEC") (hereinafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. MEC is a cochlear implant company headquartered in North Carolina and incorporated under the laws of Massachusetts. During the relevant time, MEC was a U.S. subsidiary of and wholly owned by the Austrian company MED-EL Elektromedizinische Geräte Gesellschaft m.b.H.

B. The SBA is an independent agency of the United States government that provides aid, counsel, and assistance to small businesses and entrepreneurs. The Coronavirus Aid, Relief, and Economic Security Act, Section 1102, vested the SBA with the responsibility of managing the Paycheck Protection Program ("PPP") under the SBA's 7(a) Loan Program. The PPP was a federal program that provided emergency relief to small businesses affected by the COVID-19 pandemic. *See* 15 U.S.C. § 636(a)(36). The SBA administered the PPP and guaranteed loans that were made according to PPP regulations.

C. Under the PPP, an entity could receive up to two loans—a "first draw" PPP loan, which was available from March 2020 through March 2021, and a "second draw" PPP loan, which was available from January 2021 through May 2021. To apply for PPP funding, a business or entity had to certify that it met the requirements of the program. On May 5, 2020, the SBA issued guidance that explained that, for purposes of meeting size eligibility requirements—e.g., whether the applicant is a "small business concern" or otherwise falls below the cap on employee headcount—an applicant must count all of its employees *and* the employees of its U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules. *See* 85 Fed. Reg. 30835, 30836 (May 21, 2020). However, "as an exercise of enforcement discretion due to reasonable borrower confusion based on SBA guidance (which was later resolved through a clarifying FAQ on May 5, 2020)," SBA announced that it would "not find any borrower that applied for a PPP loan prior to May 5, 2020 to be ineligible based on the borrower's exclusion of non-U.S. employees from the borrower's calculation of its employee headcount." *Id.* at 30837.

D. On January 8, 2025, Relator Aidan Forsyth filed a qui tam action in the United States District Court for the District of Massachusetts captioned *United States ex rel. Forsyth v. Med-El Corporation*, No. 25-cv-10053-ADB, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). The Relator alleged that MEC violated the False Claims Act because it submitted a false application for second-draw PPP funds for which it was not eligible, because (although it certified that its headcount was under 300 employees) MEC and its affiliates together employed more than 300 individuals.

E. MEC received credit under the Department of Justice's guidelines for taking disclosure, cooperation, and remediation into account in False Claims Act cases, Justice Manual § 4-4.112. Among other actions, MEC produced materials without a subpoena, cooperated with the government's investigation, sought to resolve this matter expeditiously, and provided and committed to continue providing cooperation in the government's ongoing investigation.

F. The United States contends that it has civil claims against MEC for submitting or causing the submission of false claims to the SBA arising from its certification on its application for a PPP loan, and its receipt of funds from and forgiveness of the loan.

G. MEC admits, acknowledges, and accepts responsibility for the following facts:

1. On April 3, 2020, MEC applied for a first-draw PPP loan. The SBA approved that loan on May 1, 2020. MEC later applied for, and on June 14, 2021, the SBA granted, forgiveness of the first-draw loan (including interest).

2. On January 19, 2021, MEC applied for a second-draw PPP loan. On February 1, 2021, MEC certified as part of its promissory note that MEC "together with its affiliates . . . employs no more than 300 employees." In its second-draw PPP application, MEC certified that it employed 162 employees, but its headcount "together with its affiliates" (including its Austrian parent company) was actually more than the 300-employee cap.

3. On January 30, 2021, the SBA approved MEC's second-draw loan. MEC later applied for, and on December 14, 2021, the SBA granted, forgiveness of the second-draw loan (including interest).

H. The foregoing conduct described in Paragraph G, including subparagraphs, is hereinafter referred to as the "Covered Conduct." The United States contends that, as a result of the Covered Conduct, MEC caused the submission of false claims to the SBA. With the exception of the Covered Conduct, MEC expressly denies the allegations of Relator as set forth in the Civil Action.

I. The Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to the Relator's reasonable expenses, attorneys' fees and costs.

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

TERMS AND CONDITIONS

1. MEC shall pay to the United States the sum of **$2,077,315.07**, of which **$1,384,876.71** is restitution, plus interest at a rate of five percent (5%) from June 25, 2025, and continuing until and including the day payment is completed ("Settlement Amount"), pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Massachusetts. On September 8, 2025, MEC shall make an initial payment to the United States of **$534,840.05**. Over a period of one year, MEC shall pay the United States the remaining balance, plus accrued interest on the outstanding balance, pursuant to the payment schedule attached at **Exhibit A.**

a. Interest shall accrue on the unpaid settlement amount as indicated in **Exhibit A**. Collectively the settlement amount and interest received by the United States shall be referred to as the Settlement Payments.

b. If MEC is sold, merged, or transferred, or a significant portion of the assets of MEC or of any of its affiliates is sold, merged, or transferred into another non-affiliated entity, MEC shall promptly notify the United States, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

c. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Conditioned upon the United States receiving the Settlement Amount payments, the United States agrees that it shall pay to Relator by electronic funds transfer ten percent of each such payment received under the Settlement Agreement (Relator's Share) as soon as feasible after receipt of the payment.

3. Within thirty (30) days of the Effective Date of this agreement, MEC shall pay to the Relator the sum of **$7,715.15** for expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d). Immediately upon execution of this Agreement, the Relator shall provide wire instructions to MEC in order to effectuate this payment.

4. Subject to the exceptions in Paragraph 5 (concerning reserved claims), Paragraph 13 (concerning default), and Paragraph 14 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases MEC from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33, the Administrative Remedies for the False Claims Act, 31 U.S.C. §§ 3801-12, or common law theories, including breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Notwithstanding the release 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 this 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.

6. The Relator and his 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 the Relator's receipt of the Relator's Share, the Relator and his 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.

7. Conditioned upon its receipt of the payment from MEC described in Paragraph 3, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases MEC, and its officers, agents, and employees, from any liability to the Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

8. MEC waives and shall not assert any defenses it 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.

9. MEC 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 MEC 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.

10. MEC fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that MEC 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.

11. MEC agrees to the following:

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 MEC, 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 and any criminal investigation(s) of the matters covered by this Agreement;

(3) MEC'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 attorneys' fees);

(4) the negotiation and performance of this Agreement; and

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

12. MEC agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, MEC 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, consistent with the rights and privileges of such individuals. MEC further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged 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.

13. In the event that MEC fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above and **Exhibit A**, MEC shall be in Default of MEC's payment obligations ("Default"). The United States will provide a written Notice of Default, and MEC shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to MEC, or to such other representative as MEC shall designate in advance in writing. If MEC fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, MEC agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against MEC for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by MEC to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to MEC and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, MEC agrees immediately to pay the United States the greater of (i) a ten percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, MEC waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against MEC within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on January 8, 2025. MEC agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

14. In exchange for valuable consideration provided in this Agreement, MEC and Relator acknowledge the following:

a. MEC has reviewed its financial situation and warrants that it 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 payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to MEC, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which MEC was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If any of MEC's payments or 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) or if, before the Settlement Amount is paid in full, MEC or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of MEC's debts, or to adjudicate MEC as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for MEC or for all or any substantial part of MEC's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against MEC for the claims that would otherwise be covered by the releases provided in Paragraph 4;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against MEC in the amount of **$6,260,564.21**, less any payments received pursuant to Paragraph 1 and **Exhibit A** of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official**,** the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 2 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 and **Exhibit A** of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

f. MEC agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 14.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. MEC shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). MEC waives and 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 claim, action, or proceeding brought by the United States within 120 days of written notification to MEC that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on January 8, 2025.

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

16. Upon receipt of the payments described in **Exhibit A** and Paragraph 1 and 3, above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal subject to the terms of this Settlement Agreement, including but not limited to the United States' rights described in Paragraphs 13 and 14. The Joint Stipulation of Dismissal shall state that: (1) claims for the allegations described in the Covered Conduct are dismissed with prejudice to the United States; (2) all other claims in the Civil Action, including claims under 31 U.S.C. §§ 3729-33, shall be dismissed without prejudice to the United States; and (3) all claims in the Civil Action shall be dismissed with prejudice as to the Relator.

17. Subject to Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

19. 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. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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 MEC's successors, transferees, heirs, and assigns.

22. This Agreement is binding on the 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 and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

9/5/25

Date

By: ______________________
Charles B. Weinograd
Assistant United States Attorney
United States Attorney's Office
District of Massachusetts

MED-EL CORPORATION

____
Date

By: ______________________
John Sparacio
President & CEO
MED-EL Corporation

____
Date

By: ______________________
Sean B. O'Connell
Baker Donelson
Counsel for MED-EL Corporation

RELATOR AIDAN FORSYTH

9/4/2025

Date

By: ______________________
Aidan Forsyth
Relator

9.4.25

Date

By: ______________________
Eric H. Jaso
Spiro Harrison & Nelson
Counsel for Aidan Forsyth

THE UNITED STATES OF AMERICA

______________	By:	______________
Date		Charles B. Weinograd Assistant United States Attorney United States Attorney's Office District of Massachusetts

MED-EL CORPORATION

9/04/2025	By:	______________
Date		John Sparacio President & CEO MED-EL Corporation
9/4/2025	By:	______________
Date		Sean B. O'Connell Baker Donelson Counsel for MED-EL Corporation

RELATOR AIDAN FORSYTH

______________	By:	______________
Date		Aidan Forsyth Relator
______________	By:	______________
Date		Eric H. Jaso Spiro Harrison & Nelson Counsel for Aidan Forsyth

EXHIBIT A
SCHEDULE OF PAYMENTS

Description	Days	Compounded Interest Rate	Balance
Payment Owed			$2,077,315.07
Interest 6/25/25-9/8/25	75	5.00%	$21,450.81
Balance Owed			$2,098,765.88
Payment #1 9/8/25			-$534,840.05
Balance 9/8/25			$1,563,925.83
Interest 9/8/25-1/5/26	119	5.00%	$25,701.29
Balance Owed			$1,589,627.12
Payment #2 1/5/26			-$534,840.05
Balance 1/5/26			$1,054,787.07
Interest 1/5/26 - 3/3/26	57	5.00%	$8,267.68
Balance Owed			$1,063,054.75
Payment #3 3/3/26			-$534,840.05
Balance 3/3/26			$528,214.70
Interest 3/3/26-6/2/26	91	5.00%	$6,625.35
Balance Owed			$534,840.05
Payment			-$534,840.05
Balance 6/2/26			$0.00