

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 United States Department of Defense, the United States Department of Veterans Affairs, and the United States Department of Health and Human Services (collectively, the “United States”), ZOLL Medical Corporation (“ZOLL”), and Jing Zhang (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. ZOLL is a medical device and technology company headquartered in Chelmsford, Massachusetts that contracts with the federal government to provide, among other products, defibrillators and cardiac monitors.

B. On May 10, 2019, Jing Zhang filed a *qui tam* action in the United States District Court for the District of Rhode Island (the “Court”) captioned *United States of America ex rel. Jing Zhang v. ZOLL Medical Corporation, et. al.*, C.A. No. 19-cv-273-WES-PAS (the “Civil Action”).

C. The United States is entering into this Agreement as an alternate remedy under the False Claims Act within the meaning of 31 U.S.C. § 3730(c)(5).

D. The United States contends that ZOLL submitted claims for payment to the United States with respect to the sale of certain goods to certain federal government purchasers.

E. The United States contends that it has certain civil claims against ZOLL under the common law doctrines of payment by mistake and breach of contract, arising from the sale of replacement electrocardiogram (“ECG”) cables to the federal government purchasers in violation of the Trade Agreements Act, 19 U.S.C. § 2501, *et. seq.* Specifically, the United States alleges that in January of 2019, ZOLL inaccurately represented to government officials that replacement

ECG cables offered by ZOLL to the government for use with defibrillators and cardiac monitors were manufactured in the United States, when in fact, they were manufactured in China. The United States further contends that between January 2019 and November 2022, ZOLL sold these cables to federal government purchasers, despite having known or should have known that these goods did not comply with TAA requirements that such goods sold to the federal government purchasers cannot be manufactured in China. The United States alleges that, as a result of these claims, ZOLL received payments to which it was not entitled. That conduct is referred to below as the “Covered Conduct.”

F. This Agreement is neither an admission of liability by ZOLL nor a concession by the United States or Relator that their 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. ZOLL shall pay to the United States four hundred thousand dollars (\$400,000.00) (the “Settlement Amount”) no later than 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Rhode Island.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay eighty thousand dollars (\$80,000.00) to Relator by electronic funds transfer (“Relator’s Share”), pursuant to 31 U.S.C. §§ 3730(d) and 3730(c)(5).

3. ZOLL shall pay Relator thirty-five thousand dollars (\$35,000.00) to fully and finally resolve Relator’s claim for expenses, attorneys’ fees and costs (the “Fee Settlement

Amount”). The Fee Settlement Amount shall be paid no later than 14 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by Relator’s Counsel.

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 ZOLL, together with its current and former parents, subsidiaries, brother or sister corporations, divisions, current or former corporate owners, and the corporate predecessors, successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the common law theories of payment by mistake and breach of contract.

5. Upon the United States’ receipt of the Settlement Amount and Relator’s receipt of the Fee Settlement Amount, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, fully, forever, and unconditionally releases ZOLL, including its predecessors, and current and former parents, current or former corporate owners, divisions, subsidiaries, affiliates, related entities, successors, assigns, officers, directors, agents, employee benefit plans and fiduciaries, insurers, and employees (the “ZOLL Released Parties”) from any and all claims, demands, causes of action, whether known or unknown, that are based in whole or in part on any act or omission prior to the Effective Date, including without limitation, any claim that Relator has or purports to have against ZOLL on any basis, whether in contract (express or implied, written or oral), tort, or otherwise, asserted or unasserted, liquidated or unliquidated, at law or in equity and, for the avoidance of doubt, all claims that were or could have been asserted in the Civil Action. This release shall not, however, apply to any claim to enforce this Agreement. Relator waives any claim to reinstatement or re-employment with ZOLL.

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 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;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- j. Any civil claims by the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733 and common law fraud for the Covered Conduct.

7. 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 Relator's receipt of the Relator's Share, 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.

8. ZOLL waives and shall not assert any defenses ZOLL 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. ZOLL 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 ZOLL 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. ZOLL, including its predecessors, and current and former parents, divisions, subsidiaries, affiliates, related entities, successors, assigns, officers, directors, agents, employee benefit plans and fiduciaries, insurers, and employees, fully, forever, and unconditionally releases Relator, including himself, and his heirs, successors, legal representatives, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that ZOLL has asserted, could have asserted, or may assert in the future against the Relator related to the Civil Action, Relator's investigation and prosecution thereof, and/or any claims arising out of his prior employment at ZOLL. This release shall not, however, apply to any claim to enforce this Agreement.

11. ZOLL 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 ZOLL in connection with:

- (1) the matters covered by this Agreement;
 - (2) the United States' audit(s) and civil investigation of the matters covered by this Agreement;
 - (3) ZOLL's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation in connection with the matters covered by this Agreement (including attorneys' fees);
 - (4) the negotiation and performance of this Agreement; and
 - (5) the payment ZOLL makes to the United States pursuant to this Agreement and any payments that ZOLL 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 shall be separately determined and accounted for by ZOLL, and ZOLL shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, ZOLL shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by ZOLL or any of its subsidiaries or affiliates from the United States. ZOLL agrees that the United States, at a minimum, shall be entitled to recoup from

ZOLL 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 ZOLL's books and records and to disagree with any calculations submitted by ZOLL or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by ZOLL, or the effect of any such Unallowable Costs on the amount of such payments.

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

13. Upon the United States' receipt of the Settlement Amount and Relator's receipt of the Fee Settlement Amount, Relator shall file a Notice of Voluntary Dismissal of the Civil Action pursuant to Rule 41(a)(1), with prejudice as to the claims of the Relator, but without prejudice to the claims of the United States, and the United States will consent to dismissal of the Civil Action.

14. Except as otherwise provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

16. 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 Rhode Island. 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.

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

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

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

20. This Agreement is binding on successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 4/26/23

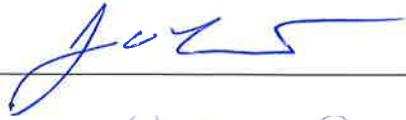
BY: ZACHARY A. CUNHA
United States Attorney



BETHANY N. WONG
Assistant United States Attorney
District of Rhode Island

ZOLL MEDICAL CORPORATION

DATED: _____

BY:  _____

DATED: 4/26/23

BY:  _____

Mark Pearlstein, Esq.
Laura McLane, Esq.
Counsel for ZOLL Medical Corporation

JING ZHANG

DATED: 4/26/2023

BY:



Jing Zhang

DATED: 4/26/2023

BY:



Erica Blachman Hitchings, Esq.
Suzanne Durrell, Esq.
Counsel for Jing Zhang

DATED: 4/28/2023

BY:



Louise Herman, Esq.
Counsel for Jing Zhang