

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 National Aeronautics and Space Administration (“NASA”), the Defense Advanced Research Projects Agency, the Missile Defense Agency, the Office of the Secretary of Defense, and the Departments of the Army, Navy and Air Force (collectively the “United States”), The Pennsylvania State University (“Penn State”), and Matthew Decker (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Penn State is a Commonwealth-related institution of higher education with its principal place of business at 208 Old Main, University Park, PA 16802. Penn State solicits and receives funding opportunities from federal agencies and departments to administer and conduct research.

B. On October 5, 2022, Relator filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned *United States ex rel. Decker v. Pennsylvania State University*, Case No. 2:23-cv-03895-PD (E.D. Pa.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Concurrent with this Agreement, the United States is intervening in the Civil Action for purposes of settling and resolving the Civil Action.

C. Defense Federal Acquisition Regulation Supplement (“DFARS”) clauses 252.204-7008 and 252.204-7012 require Department of Defense contractors and subcontractors to provide adequate security on all covered contractor information systems

by, at a minimum, implementing the security requirements specified by National Institute of Standards and Technology (“NIST”) Special Publication (“SP”) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” by not later than December 31, 2017. DFARS 252.204-7012 additionally mandates that any external cloud service provider used by a contractor to “store, process, or transmit covered defense information” must meet “security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline.” DFARS 252.204-7012(b)(2)(ii)(D).

D. DFARS clauses 252.204-7019 and 252.204-7020 require Department of Defense contractors and subcontractors to post summary level scores of a current NIST SP 800-171 Department of Defense assessment to the Supplier Performance Risk System (“SPRS”). In addition to the summary level score, contractors and subcontractors must provide the date by which “all requirements are expected to be implemented (*i.e.*, a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.” *See* DFARS 252.204-7019(d)(1)(i)(F); 252.204-7020(d)(1)(F).

E. NASA Federal Acquisition Regulation Supplement (“FARS”) 1852.204-76 requires NASA contractors and subcontractors to provide security for unclassified information technology resources. The clause provides that the requirements, regulations, policies, and guidelines applicable to NASA contractors and subcontractors are set forth on NASA’s Applicable Documents List. The Applicable Documents List

requires contractors and sub-contractors to comply with NIST SP 800-171 for certain unclassified information.

F. The United States contends that it has certain civil claims against Penn State arising from false claims submitted or caused to be submitted by Penn State as a result of its alleged failure, during the period from January 2018 to November 2023, to implement certain NIST SP 800-171 controls in connection with the fifteen (15) contracts or subcontracts listed in Exhibit A (“Contracts”). Each of the Contracts involved the collection, development, receipt, transmission, use, or storing of unclassified information for which NIST SP 800-171 controls are required, known as Covered Defense Information or Controlled Unclassified Information (“CDI/CUI”), and incorporated either DFARS 252.204-7008, DFARS 252.204-7012, or NASA FARS 1852.204-76 into its requirements. In particular, the United States contends that Penn State did not implement certain NIST SP 800-171 security requirements, and did not adequately document, develop and implement plans of action designed to correct deficiencies and reduce or eliminate vulnerabilities in the systems involved in the performance of the Contracts. The United States contends that, beginning in November 2020, Penn State disclosed in its submissions to the SPRS that it had not implemented certain NIST SP 800-171 security requirements. Penn State also allegedly knowingly misstated, in its submissions to the SPRS, the dates by which it expected to implement all 110 of NIST SP 800-171’s requirements for those systems and failed to pursue plans of action for their implementation. Additionally, for certain of the Contracts, the United States contends that Penn State did not use an external cloud service provider that met the security requirements in the FedRAMP Moderate baseline, in violation of DFARS 252.204-

7012(b)(2)(ii)(D). The conduct in this Recital F is referred to below as the Covered Conduct.

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

H. 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. Penn State shall pay to the United States One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) (Settlement Amount), 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 \$250,000 to Relator by electronic funds transfer (Relator's Share).

3. No later than ten (10) days after the Effective Date of this Agreement, Penn State shall pay \$150,000 to Relator's counsel, by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel for expenses, attorneys' fees, and costs relating to 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 Penn State 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. Upon the United States' receipt of the Settlement Amount due under Paragraph 1, and upon Relator's counsel's receipt of the funds specified in Paragraph 3, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Penn State and its current or former officers, agents, employees, trustees, directors, representatives, attorneys, and servants from any liability or claims of any kind whatsoever, (whether in law or equity, whether known or unknown, whether on Relator's own behalf or on behalf of another, including on behalf of any state or the United States, and including for attorneys' fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against Penn State and its current or former officers, agents, employees, trustees, directors, representatives, attorneys, and servants related to the Civil Action including but not limited to under 31 U.S.C. § 3730(h), 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs, and any civil monetary claim the Relator has, could have asserted, or may assert in the future against Penn State and its current or former officers, agents, employees, trustees, directors, representatives, attorneys, and servants on behalf of the United States 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;
- 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

8. 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.

9. Penn State waives and shall not assert any defenses Penn State 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. Penn State 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 Penn State 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. Penn State fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Penn State has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action 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 Penn State, 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) Penn State'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;
- (5) the payment Penn State makes to the United States pursuant to this Agreement and any payments that Penn State 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 Penn State, and Penn State 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, Penn State shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Penn State or any of its subsidiaries or affiliates from the United States. Penn State agrees that the United States, at a minimum, shall be entitled to recoup from Penn State 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 Penn State's books and records and to disagree with any calculations submitted by Penn State or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Penn State, 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 payments described in Paragraphs 1 and 3, above, the Parties 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. Excepting as set forth in 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.

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 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.

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 Penn State'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.


THE UNITED STATES OF AMERICA

DATED: 10/22/24

BY:


KIMBERLY FRIDAY
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 10/22/24



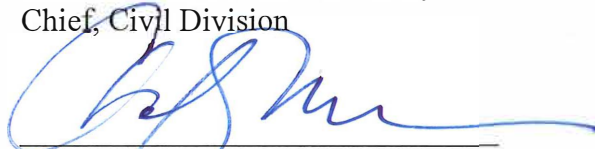
JACQUELINE C. ROMERO
United States Attorney
Eastern District of Pennsylvania

DATED: 10/22/24




GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

DATED: 10/22/24



CHARLENE KELLER FULLMER
Assistant United States Attorney
Deputy Chief, Civil Division

DATED: 10/22/24



PETER CARR
REBECCA S. MELLEY
Assistant United States Attorneys

THE PENNSYLVANIA STATE UNIVERSITY

DATED: 16-Oct-2024

BY: *Sara F Thorndike*
Sara F Thorndike (Oct 16, 2024 08:01 EDT)
Sara F. Thorndike
Senior Vice President for Finance & Business /
Treasurer
The Pennsylvania State University

DATED: 10/16/2024

BY: *Daniel R. Walworth*
Daniel R. Walworth, Esq.
Counsel for The Pennsylvania State University

RELATOR

DATED: _____

BY: _____
Matthew Decker

DATED: _____

BY: _____
Julie Keeton Bracker
Counsel for Matthew Decker

THE PENNSYLVANIA STATE UNIVERSITY

DATED: _____

BY: _____

Sara F. Thorndike
Senior Vice President for Finance & Business /
Treasurer
The Pennsylvania State University

DATED: _____

BY: _____

Daniel R. Walworth, Esq.
Counsel for The Pennsylvania State University


RELATOR

DATED: 10/3/2024

BY:  _____

Matthew Decker

DATED: 10/3/2024

BY:  _____

Julie Keeton Bracker
Counsel for Matthew Decker

EXHIBIT A

1. Advanced Technology International, subcontract CWMD 2018-867 to OTA W15QKN-18-9-1004
2. Advanced Technology International, Master Agreement 2021-378 for Naval Surface Technology and Innovation Consortium:
 - a. Task Order 1 NSTIC-20-01-041 N001782190019
 - b. Task Order 2 NSTIC-20-01-055 N001782190010
 - c. Task Order 3 NSTIC-20-01-052 N001782190009
3. Advanced Cooling Technologies, Inc., subcontract 41768 to HQ086021C7000
4. Battelle Ohio, PO US001-0000812865 to HR001121C0029
5. Innovative Technology Applications Company, LLC, subcontract 233535 to N00014-20-P-1002
6. Invercon, LLC, subcontract 201040 to FA8650-17-C-5067
7. Lockheed Martin Aeronautics Company, PO 6574020275 to N00014-17-C-1020
8. Project sub-agreement M2200284 to University Consortium for Applied Hypersonics Agreement number HQ00342190007
9. N0002418D6401, Proposal 26742-VS
10. N0002418D6401, Delivery Order N0002421F8385
11. NextGen Aeronautics, Inc., PO 15-04 to W15QKN15C0029
12. Physical Sciences Inc., subcontract 72977-1926-46 to HQ0147-16-C-7808
13. Pratt and Whitney, Agreement No. 22205 Task Order 146 to 80GRC-021-C-A008
14. Reaction Systems, Inc., subcontract 7405-1901 to FA8650-19-C-2405
15. Ultramet, subcontract 18046 to FA8649-21-P-0434