

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the District of Colorado, on behalf of the Department of the Navy (“Navy”), Department of the Army (“Army”), Department of the Air Force (“Air Force”), the Department of Energy (“Energy”), the National Nuclear Security Administration (“NNSA”), and the National Aeronautics and Space Administration (“NASA”) (collectively the “United States”); Instec, Inc. (“Instec”); Dr. Zhong “Henry” Zou (“Dr. Zou”); and Relator Bryan Swanton (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Instec is a scientific instrument technology company located in Boulder, Colorado. Government agencies and national laboratories have purchased Instec’s products for use in scientific research. Dr. Zou is the owner and president of Instec.

B. On June 15, 2020, Bryan Swanton (“Relator”) filed a *qui tam* action captioned *United States ex rel. Bryan Swanton v. Instec, Inc. et al.*, Civil Action No. 20-cv-01742 (D. Colo.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleged that Instec and Dr. Zou failed to comply with the requirements of the Buy American Act (“BAA”) when selling Instec products to federal agencies and national laboratories.

C. The BAA’s requirements are implemented through government contract clauses and create a preference for the government’s acquisition of domestic end products. During the time period covered by Relator’s complaint, an item was

considered a domestic end product if it met a two-part test: (i) the end product was manufactured in the United States; and (ii) at least 50% of the cost of the components were of U.S. origin. Under BAA requirements, an item that does not meet the two-part test is considered a foreign end product. When offering to sell an item to the federal government, Federal Acquisition Regulation (FAR) 52.225-1 and Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7001 require the offeror to certify whether the item is a foreign end product or a domestic end product. Relator alleged that Instec and Dr. Zou manufactured products in China and falsely certified to the government that they were providing a domestic end product.

D. The United States contends that it has certain civil claims against Instec and Dr. Zou arising from their false certification that they were providing a domestic end product in connection with the fifteen transactions listed below:

Customer	Award Date	Contract/PO#
1. Lawrence Berkeley National Laboratory	11/15/16	7323327
2. Lawrence Livermore National Laboratory	7/14/20	B642443
3. Brookhaven National Laboratory	9/8/20	BNL- 0000387271
4. Lawrence Berkeley National Laboratory	12/4/20	7564829
5. Naval Research Laboratory	9/20/13	N00173-13-P-3257
6. Naval Research Laboratory	1/3/18	N0017318P0369
7. NSWC Dahlgren	9/22/20	N0017820P6952
8. U.S. Naval Academy	8/7/15	N00189-15-P-0948
9. U.S. Naval Academy	9/27/17	N0018917P1572
10. NASA Goddard Space Flight Center	6/17/15	NNG15PF36P
11. NASA Jet Propulsion Laboratory	9/13/16	1559556
12. NASA Jet Propulsion Laboratory	8/21/17	1583554

Customer	Award Date	Contract/PO#
13. US Army Edgewood Chemical and Biological Center	9/10/18	W91ZLK-18PV-09-0008
14. US Army Edgewood Chemical and Biological Center	8/8/17	W91ZLK-17PV-06-0042
15. Air Force Institute of Technology	10/14/15	FA8601-16-P-0004

This conduct is referred to throughout this Agreement as the Covered Conduct.

E. This Agreement is neither an admission of liability by Instec and Dr. Zou, nor a concession by the United States that its claims are not well founded.

F. 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. Instec and Dr. Zou shall pay to the United States six hundred and twenty-five thousand dollars (\$625,000) ("Settlement Amount"), of which \$265,970 is restitution, 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 10 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 \$124,500 to Relator by electronic funds transfer ("Relator's Share").

3. Nothing in this Agreement shall dismiss or release any claims by Relator against Instec and Dr. Zou for expenses, reasonable attorneys' fees and costs pursuant to

31 U.S.C. § 3730(d)(2), and/or any employment-related claims, such as for wrongful termination, or any other claim not specifically released.

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 Instec and Dr. Zou 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; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraphs 3 and 6 herein, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Instec and Dr. Zou from any civil monetary claim Relator has 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 other than Dr. Zou's liability for the Covered Conduct;
- 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.

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. Instec and Dr. Zou waive and shall not assert any defenses Instec and Dr. Zou 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. Instec and Dr. Zou fully and finally release 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 Instec and Dr. Zou have 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. Instec and Dr. Zou fully and finally release Relator from any claims (including reasonable attorneys' fees, costs, and expenses of every kind and however denominated) that Instec and Dr. Zou have asserted, could have asserted, or may assert in the future against Relator, related to the *qui tam* complaint and Relator's investigation and prosecution thereof. Nothing in this Agreement shall dismiss or release any claims by Instec and Dr. Zou against Relator in connection with any employment-related claims, such as for wrongful termination, or any other claim not specifically released.

11. 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 Instec and Dr. Zou, and Instec's 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) Instec's and Dr. Zou'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 Instec and Dr. Zou make to the United States pursuant to this Agreement and any payments that Instec and Dr. Zou 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 Instec and Dr. Zou, and Instec and Dr. Zou 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, Instec and Dr. Zou shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Instec or any of its subsidiaries or affiliates from the United States. Instec and Dr. Zou agree that the United

States, at a minimum, shall be entitled to recoup from Instec and Dr. Zou 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 Instec's, and Dr. Zou's, books and records and to disagree with any calculations submitted by Instec and Dr. Zou or any of Instec's subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Instec, 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 receipt of the payment described in Paragraph 1, above, Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), consistent with the terms of this Agreement

14. Other than any claims referenced 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.

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 Colorado. 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 Instec's and Dr. Zou's successors, transferees, heirs, and assigns.

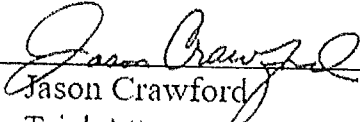
21. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

23. 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: 8/4/2022

BY:   
Jason Crawford  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 8/5/2022

BY: Jacob Licht  
Jacob Licht  
Assistant United States Attorney  
District of Colorado

INTEC, INC.

DATED: 8/4/2022

BY: Henry Zou  
Dr. Henry Zou  
President, Intec, Inc.

DR. HENRY ZOU

DATED: 8/4/2022

BY: Henry Zou  
Dr. Henry Zou

DATED: 8/5/2022

BY: Theodore Watson  
Theodore Watson  
Counsel for Intec, Inc. and Dr. Henry Zou

BRYAN SWANTON

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Bryan Swanton

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Kenneth M. Harmon  
David K. Colapinto  
Counsel for Mr. Swanton

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Jacob Licht  
Assistant United States Attorney  
District of Colorado

INTEC, INC.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Dr. Henry Zou  
President, Intec, Inc.

DR. HENRY ZOU

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Dr. Henry Zou

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Theodore Watson  
Counsel for Intec, Inc. and Dr. Henry Zou

BRYAN SWANTON

DATED: 8/5/2022

BY: \_\_\_\_\_

Bryan Swanton

DATED: 8/5/2022

BY: \_\_\_\_\_

Kenneth M. Harmon  
David K. Colapinto  
Counsel for Mr. Swanton