

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 U.S. Attorney’s Office for the Eastern District of Virginia, and on behalf of the United States (collectively the “United States”), Airbus U.S. Space & Defense, Inc. (formerly known as Airbus Defense and Space, Inc.) (“ADSI” or “Defendant”) and Maros Kmec (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Defendant ADSI, with offices in Arlington, Virginia, is a foreign-owned for-profit corporation, incorporated in Delaware, registered to do business in the Commonwealth of Virginia.

B. On May 18, 2019, Maros Kmec filed a *qui tam* action in the United States District Court for the Eastern District of Virginia captioned *United States ex rel. Kmec v. Airbus Defense & Space, et al.* pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Among the allegations, Relator alleges that ADSI and related or affiliated entities violated the FCA by overcharging various federal government contracts by: (1) charging inaccurate or unapproved indirect cost rates; (2) making false representations about the nature or type of goods and services provided; (3) engaging in impermissible fee-on-fee billing; and (4) providing phony help desk support.

C. The United States contends that it has certain civil claims against ADSI arising from the following conduct:

1. From January 2016 through January 2017, in price proposals it submitted to various federal agencies for the 62 contracts listed in Exhibit A (contracts on which ADSI later submitted claims for payment), ADSI knowingly applied an unapproved and, in some cases, undisclosed indirect cost rate in addition to indirect rates accepted by the Defense Contract Management Agency (DCMA) or other federal agencies. ADSI referred to this indirect cost rate as the “Orlando Factor.” In August 2017, ADSI knowingly failed to disclose the Orlando Factor in a proposal submitted to DCMA for audit.
2. During 2013 through 2020, under contracts with the federal agencies listed in Exhibit B, ADSI charged or caused to be charged its own fee and G&A rate on top of ADSI’s affiliates’ fee for aircraft and aviation equipment, satellite, radar, intelligence, and communications equipment, and related training, maintenance, and logistical services that ADSI acquired from its affiliates, in violation of Federal Acquisition Regulation 31.205-26(e), but failed to disclose this fee-on-fee charge in the certified cost or pricing data that ADSI submitted to the government.
3. During 2013 through 2020, in contracts for aircraft and aviation equipment, satellite, radar, intelligence, and communications equipment, and related training, maintenance, and logistical services, ADSI included an affiliate fee amount in Truth in Negotiations Act-certified cost and pricing data submitted with proposals for federal contracts with federal

agencies listed in Exhibit B that ADSI had not verified or did not have a reason to believe was accurate.

4. On Purchase Order No. 07722AMJHN, ADSI charged General Dynamics Bath Iron Works (“General Dynamics”) a \$10,000 monthly storage fee, for a period of eight months, from April to November 2019, to store a TRS 4D radar system that General Dynamics purchased for the U.S. Navy. General Dynamics passed along the full \$80,000 in storage fees charged by ADSI to the U.S. Navy. However, ADSI did not disclose to General Dynamics that it only paid its affiliate \$1,000 per month to store the radar system, for a total of \$8,000.

The conduct described in this paragraph C is hereinafter referred to as the “Covered Conduct.” For the avoidance of any doubt, the Covered Conduct does not include any allegations concerning the Army’s acquisition and sustainment of UH-74 Lakota helicopters on contracts, including Contract No. W58RGZ-06-C-0194.

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

E. 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. The Defendant shall pay to the United States \$1,043,475 (“Settlement Amount”), of which \$540,650 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 \$157,220 to Relator by electronic funds transfer (“Relator’s Share”).

3. Defendant shall pay to Relator \$200,000 for Relator’s expenses, and attorneys’ fees and costs (“Relator Payment”), by electronic funds transfer pursuant to written instructions to be provided by Relator, no later than 10 days after the Effective Date of this Agreement. No additional attorney’s fees or costs, whether related to 31 U.S.C. § 3730(d)(1) or otherwise, shall be paid to or claimed by Relator or its 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 the Defendant together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate 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; the Truth in Negotiations Act, 10 U.S.C. § 2306a; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases ADSI together with its current and former parent corporations and affiliates; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and from any other claims Relator has asserted, could have asserted, or may assert in the future related to the Civil Action and Relator's investigation and prosecution thereof.

6. Notwithstanding the releases given in Paragraphs 4 and 5 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, 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;
- 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. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases the Defendant, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d), for expenses or attorneys' fees and costs.

9. The Defendant waives and shall not assert any defenses the Defendant 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. The Defendant 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 the Defendant 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 Civil Action, Covered Conduct or the United States' investigation or prosecution thereof.

11. The Defendant fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Defendant 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 Defendant, 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) Defendant'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 Defendant makes to the United States pursuant to this Agreement and any payments that Defendant 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 Defendant, and Defendant 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, Defendant shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendant or any of its subsidiaries or affiliates from the United States. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from Defendant 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 Defendant's books and records and to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates regarding any Unallowable Costs

included in payments previously sought by Defendant, or the effect of any such Unallowable Costs on the amount of such payments.

13. The Defendant agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, the Defendant 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. The Defendant 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.

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

15. Upon receipt of the payment described in Paragraph 1, above, the Relator and the United States shall promptly sign and file a Joint Stipulation of Dismissal of the action against ADSI pursuant to Rule 41(a)(1). The dismissal shall be: (i) with prejudice to the United States and the Relator as to the Covered Conduct; and (ii) without prejudice to the United States and with prejudice to the Relator as to all other claims asserted in the Relator's Complaint. Relator also shall dismiss the Civil Action against the non-settling defendants with prejudice to himself and without prejudice to the United States, to which the United States will consent. Pursuant to the Settlement and *Kokkonen v. Guardian*

Life Insurance Co. of America, 511 U.S. 375 (1994), the Parties request that in the order of dismissal the Court shall retain jurisdiction to enforce the terms of the Agreement.

16. Except as provided 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.

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

18. 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 Virginia. 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.

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

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

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

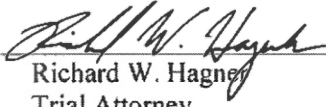
22. This Agreement is binding on the Defendant's successors, transferees, heirs, and assigns.

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

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


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


THE UNITED STATES OF AMERICA

DATED: 9/10/2021 BY: 
Richard W. Hagne
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

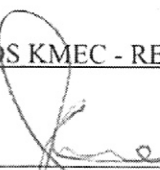
DATED: _____ BY: _____
Krista Anderson
Assistant United States Attorney
Eastern District of Virginia

AIRBUS U.S. SPACE & DEFENSE, INC.

DATED: 9/10/2021 BY: 
Robert Geckle
SVP, COO, and Head of Corporate Functions
Airbus U.S. Space & Defense, Inc.

DATED: 9/10/2021 BY: 
Lisa Rivera
Bass, Berry and Sims
Counsel for Airbus U.S. Space & Defense, Inc.

MAROS KMEC - RELATOR

DATED: 9-10-21 BY: 
Maros Kmec
Relator


DATED: 9/10/2021 BY: 
Benjamin Vernia
The Vernia Law Firm
Counsel for Relator

Exhibit A

1	50ESM923484
2	50ESM923484
3	HSCG40-16-P-40335
4	HSCG40-16-P-40448
5	N00024-11-C-2300
6	N00024-11-C-2300
7	N00024-15-G-2303
8	N00024-15-G-2303
9	N00024-15-G-2303
10	N00024-15-G-2303
11	N0010416PXB28
12	N0010416PXB29
13	N63394-15-C-0012
14	N63394-15-C-0012
15	N63394-15-C-0012
16	SPE4A6-16-M-K901
17	SPE4A6-16-V-G371
18	SPE4A6-17-P-C196
19	SPE5E8-16-M-5312
20	SPE7L7-16-M-4114
21	SPE7L7-16-M-4115
22	SPE7L7-16-M-4117
23	SPE7L7-16-V-1626
24	SPE7L7-17-P-1228
25	SPE7M1-17-P-0308
26	SPE7M1-17-P-1618
27	SPE7M1-17-P-2642
28	SPE7M4-17-P-1593
29	SPE7M5-17-P-0719
30	SPE8EN-17-P-0570
31	SPRMM1-16-C-YB84
32	SPRMM1-16-C-YB84
33	SPRMM1-16-P-WH23
34	SPRMM1-16P-WH32
35	SPRMM1-16P-WH39 P00001
36	SPRMM1-16-P-YM82
37	SPRMM1-17-C-WA47
38	SPRMM1-17-P-WB05
39	SPRMM1-17-P-WB11

40	SPRMM1-17-P-WB18
41	SPRMM1-17-P-WB27
42	SPRMM1-17-P-WB37
43	SPRMM1-17-P-WC02
44	SPRMM1-17-P-WC05
45	SPRMM1-17-P-WC09
46	SPRMM1-17-P-WC10
47	SPRMM1-17-P-WC11
48	SPRMM1-17-P-WC65
49	SPRMM1-17-P-WC94
50	SPRMM1-17-P-WD02
51	SPRMM1-17-P-WD08
52	SPRMM1-17-P-WD09
53	SPRMM1-17-P-WD13
54	SPRMM1-17-P-WD20
55	SPRMM1-17-P-WD37
56	SPRMM1-17-P-WD66
57	SPRMM1-17-P-WD93
58	SPRMM1-17-P-WJ42
59	SPRMM1-17-P-WJ42
60	SPRMM1-17-P-YB31
61	SPRMM1-17-P-YD28
62	SPRMM1-17-P-YE70

Exhibit B

1	Defense Advanced Research Projects Agency (DARPA)
2	Defense Information Systems Agency (DISA)
3	Defense Logistics Agency (DLA)
4	Federal Acquisition Service
5	National Aeronautic and Space Administration (NASA)
6	National Geospatial-Intelligence Agency (NGA)
7	National Security Agency (NSA)
8	U.S. Air Force
9	U.S. Army
10.	U.S. Customs and Border Protection (CBP)
11	U.S. Coast Guard
12.	U.S. Department of State
13.	U.S. Navy
14.	U.S. Special Operations Command