

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 Department of Homeland Security (“DHS”) (collectively the “United States”) and Kenneth John Buck, Ph.D. (“Buck”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. From July 2010 to January 2016, Buck was the Executive Director of the DHS Office of Management Integration (“OMI”) in the DHS Office of the Under Secretary for Management. In this capacity, Buck was a member of the Senior Executive Service. In March 2016, OMI and Intelligent Fiscal Optimal Solutions, LLC (“iFOS”) entered into contract HSHQDC-16-C-00040 (“iFOS-DHS contract”). The initial contract amount was \$320,997. On September 1, 2016, DHS modified the iFOS-OMI contract and added \$106,897 to the contract amount.

B. The United States contends that it has certain civil claims against Buck arising from his conduct in connection with the award and performance of the iFOS-DHS contract during the period of November 2015 to March 15, 2018. That conduct is referred to below as the Covered Conduct.

1. Prior to his resignation from DHS, Buck sought to enter into a subcontracting agreement with iFOS using his company, Transformation Systems International, LLC. While employed at DHS, Buck met with iFOS and told iFOS about a potential contract with DHS for which he claimed that he had written the statement of work. At no point did Buck seek DHS Ethics Office approval to pursue post-federal employment as a subcontractor with iFOS.

2. As a member of the Senior Executive Service, Buck was aware of federal prohibitions of Conflict of Interests, including but not limited to 18 U.S.C. § 207(c), which prohibited him, for a period of one year following his separation

from federal employment, from knowingly making, with the intent to influence, any communication to any DHS officer or employee on behalf of any other person seeking official action.

3. Before his Former Deputy Director of OMI (“his Former Deputy”) selected iFOS was selected for the DHS contract, Buck informed her that he was retiring from DHS and planned to enter into an employment arrangement with iFOS. Thereafter, his Former Deputy learned that she would be replacing Buck as the Executive Director of DHS OMI.

4. Within a week of learning of Buck’s plans to accept an engagement with iFOS, his Former Deputy selected iFOS for a no-bid contract. While still employed at DHS, Buck provided iFOS with advice regarding its pre-contract presentation to DHS.

5. During the one-year period following his separation from DHS, Buck had extensive direct contact with his Former Deputy. Among other things, Buck and his Former Deputy spoke using their personal cellular telephones during this period over 130 times for a total of 34 combined hours and exchanged over 650 text messages.

6. While DHS was evaluating the potential iFOS-DHS contract, Buck drafted work materials for his Former Deputy including a portion of a speech given by the Secretary of DHS and a presentation she gave to an industry group. He was not paid for this work.

7. The DHS request for proposal for the iFOS-DHS contract included a requirement that “[a]ll contractor and subcontractor personnel are required to complete a suitability/background investigation with the DHS Office of Security, Personnel Security Division.” iFOS and Buck intended for Buck to serve as the Strategic Advisor for the iFOS-DHS contract. Upon learning of the background check requirement, iFOS suggested that Buck’s Former Deputy accept another iFOS employee (“BAS.”), as both the Program Manager and the Advisor. On February 29, 2016, iFOS submitted a Technical Proposal to DHS which identified only BAS, not Buck, as the Strategic Advisor.

8. After the award of the iFOS-DHS contract, Buck, his Former Deputy, and iFOS took affirmative steps to conceal Buck’s direct contacts with his Former Deputy, as well as his work on the contract, from others at DHS, including by funneling Buck’s communications with his Former Deputy through her personal email account, texts and calls on her personal cell phone, sending coded messages via iFOS email accounts and removing Buck’s name from documents that he sent to his Former Deputy’s personal accounts. For about fifteen months, his Former Deputy was the only DHS employee who was aware of Buck’s work on the contract and the only DHS employee who knowingly had contact with him.

9. iFOS increased Buck's hourly rate for payments under his subcontract for the iFOS-DHS contract as a thank you for his role in obtaining the DHS contract.

10. Buck coordinated with BAS, the iFOS employee identified as the Strategic Advisor in iFOS's proposal, to conceal Buck from invoices submitted by iFOS to DHS by charging the time worked by Buck under the name of BAS. From April 2016 to June 2017, iFOS submitted to DHS 14 invoices totaling \$402,740.04 that falsely identified work performed by Buck as having been performed by BAS.

11. At the same time that iFOS and Buck concealed Buck's work on the iFOS-DHS contract, Buck sought and received payment from iFOS for his work performed on the iFOS-DHS contract. In 2016, iFOS paid Buck over \$87,000.

12. When Buck inadvertently emailed a DHS employee as well as his Former Deputy about the iFOS-DHS contract, his Former Deputy noticed Buck's mistake and instructed him to contact BAS. Buck informed his Former Deputy that BAS agreed to tell a misleading story about Buck's involvement with the iFOS contract in the event the agency made any further inquiries.

13. Despite working surreptitiously on the iFOS-DHS contract for over a year, Buck never completed the suitability/background investigation that was required for all personnel working on the contract.

C. This Settlement Agreement is neither an admission of liability by Buck nor a concession by the United States that its claims are not well founded. Buck denies the allegations set forth in the Covered Conduct.

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. Buck shall pay to the United States \$10,000, 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. Subject to the exceptions in Paragraph 3 (concerning reserved claims), Paragraph 6 (concerning disclosure of assets) and Paragraph 7 (concerning bankruptcy) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Buck 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; 18 U.S.C. § 207(c) for which a civil action is authorized under 18 U.S.C. § 216, or the common law theories of unjust enrichment and fraud.

3. Notwithstanding the release given in Paragraph 2 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;
- f. Any liability of individuals other than Buck; and
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Buck waives and shall not assert any defenses he 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.

5. Buck 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 Buck 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 and the United States' investigation and prosecution thereof.

6. Buck has provided sworn financial disclosures and supporting documents (Financial Disclosures) to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. Buck warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which Buck had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Buck's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Buck on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures

by \$10,000 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Buck's previously undisclosed assets. Buck agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, 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, pursuant to this paragraph rescinds this Agreement, Buck waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Buck that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 7, 2022.

7. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due solely to Buck's financial condition as reflected in the Financial Disclosures referenced in Paragraph 6.

a. In the event that Buck fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Buck shall be in Default of Buck's payment obligations ("Default"). The United States will provide a written Notice of Default, and Buck 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 Buck, or to such other representative as Buck shall designate in advance in writing. If Buck 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, Buck agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue any civil and/or administrative claim, action, or proceeding arising from the Covered Conduct against Buck for the claims that would otherwise be covered by the releases provided in Paragraph 2 and 5 above, with any recovery reduced by the amount of any payments previously made by Buck to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by initiating a civil and/or administrative claim, action, or proceeding arising from the Covered Conduct against Buck; (iii) offset the remaining unpaid balance from any amounts due and owing to Buck 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, Buck 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, Buck 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 Buck 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 March 31, 2022. Buck 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.

8. In exchange for valuable consideration provided in this Agreement, Buck acknowledge the following:

a. Buck has reviewed his financial situation and warrants that he 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 Buck, 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 Buck 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 Buck's 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, Buck 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 Buck's debts, or to adjudicate Buck as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Buck or for all or any substantial part of Buck'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

Buck for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Buck in the amount of \$2,444,910, less any payments received pursuant to Paragraph 1 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;

f. Buck agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17.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. Buck 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). Buck 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 Buck that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on

9. In addition to all other obligations in connection with this Agreement, and notwithstanding any term in this Agreement to the contrary, in the event that, during any calendar year from the date of execution of this Agreement to three years from the

execution of this Agreement, Buck receives earned income (excluding his pension or social security payments) arising from conduct before, on or after the date of execution of this agreement and which exceed the aggregate value of \$250,000 (referred to herein as a “Windfall Event”), Buck shall pay to the twenty percent of the value of the Windfall Event in excess of any Tax Liabilities paid to the federal or state tax authorities, until such time as the sum total collected by the United States under this Agreement equals \$50,000. The term “Tax Liabilities” shall mean all federal and Maryland State income taxes due in any calendar year to the United States Internal Revenue Service and/or the Maryland State Department of Revenue, including any penalties and interest, in repayment of any tax liability due for any year preceding the current tax year.

10. 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 Buck, 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) Buck’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;

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

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

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

14. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of Columbia. 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.

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

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

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

18. This Agreement is binding on Buck's successors, transferees, heirs, and assigns.

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

20. 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: April 7, 2022 BY: s/ Alicia J. Bentley
Alicia J. Bentley
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

KENNETH J. BUCK, Ph.D.

DATED: 4/6/2022 BY: Kenneth J. Buck
Kenneth J. Buck, Ph.D.

DATED: _____ BY: _____
Justin Shur
Molo Lamken LLP

Counsel for Kenneth J. Buck, Ph.D.

20. 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

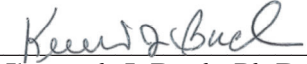
DATED: _____

BY: _____

Alicia J. Bentley
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

KENNETH J. BUCK, Ph.D.

DATED: 4/6/2022

BY: 
Kenneth J. Buck, Ph.D.

DATED: 4/7/2022

BY: 
Justin Shur
Molo Lamken LLP

Counsel for Kenneth J. Buck, Ph.D.