

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Attorney's Office for the District of Delaware (USAO) and on behalf of the National Aeronautics and Space Administration (NASA) (collectively the "United States") and the University of Delaware (UD) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. UD is a privately governed, state-assisted land-grant research university organized and existing under the laws of the State of Delaware located in Newark, Delaware.

B. UD received and/or administered research grants and/or research support agreement funding from NASA.

C. The United States contends that it has certain civil claims against UD arising from UD's certification to the United States that, between June 1, 2020, and August 31, 2023, funds it received from NASA pursuant to Grant No. 80NSSC20M0220 (the "'0220 Grant") would not be used to participate, collaborate, or coordinate with the People's Republic of China (China). The certification was false because Dr. Xiao-Hai Yan, who was a listed co-Investigator on the '0220 Grant, was affiliated with China throughout that time-period. In particular, Dr. Yan (1) was a faculty member at Xiamen University (XMU), a public university in China; (2) applied for and received funding from National Science Foundation of China and State Oceanic Administration; and (3) was a Thousand Talent Program recipient and specially appointed professor under the Program at XMU. This conduct is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by UD nor a concession by the United States that its 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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. UD shall pay to the United States seven hundred and fifteen thousand five hundred and eighty dollars (\$715,580.00) (Settlement Amount), of which three hundred and fifty-seven thousand seven hundred and ninety dollars (\$357,790) is restitution, by electronic funds transfer pursuant to written instructions to be provided by the USAO no later than 30 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases UD, 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; and the common law theories of breach of contract, payment by mistake, 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; and
- f. Any liability of individuals.

4. UD waives and shall not assert any defenses UD 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. UD 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 UD 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. 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 UD, 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) UD'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 UD 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 UD, and UD 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, UD shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by UD or any of its subsidiaries or affiliates from the United States. UD agrees that the United States, at a minimum, shall be entitled to recoup from UD 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 UD's books and records and to disagree with any calculations submitted by UD or any of its subsidiaries or affiliates

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

7. UD agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, UD 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. UD 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. UD and its counsel specifically reserve its right to assert any and all privileges, including work product, in response to a request for copies of any of the aforementioned materials.

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

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

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

11. 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 Delaware. 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.

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

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

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

16. This Agreement is binding on UD's successors, transferees, heirs, and assigns.

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

18. 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.

[SIGNATURE PAGE FOLLOWS]

THE UNITED STATES OF AMERICA

DAVID C. WEISS
United States Attorney

DATED: 12/16/24

BY:

Claudia L. Pare

Shamoor Anis
Claudia L. Pare
Assistant United States Attorneys
District of Delaware

UNIVERSITY OF DELAWARE

DATED: 12/13/24

BY:

Angela Downin

Angela Downin
General Counsel
The University of Delaware

DATED: 12/13/24

BY:

Nancy DePodesta

Nancy DePodesta
Counsel for the University of Delaware