

## 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 Defense Contract Management Agency (collectively the "United States") and The Charles Stark Draper Laboratory, Inc. ("Draper") (hereafter the United States and Draper are referred to as the "Parties"), through their authorized representatives.

### RECITALS

- A. Draper, headquartered in Cambridge, Massachusetts, is a not-for-profit research company and a defense contractor.
- B. The Defense Contract Management Agency ("DCMA") provides contract administration services for the United States Department of Defense and other federal agencies.
- C. As a government contractor, Draper is subject to the Federal Acquisition Regulation ("FAR"). Under the FAR, Draper is subject to the allowable cost and payment clause (48 C.F.R. § 52.216-7), and its costs must be allowable pursuant to FAR Part 31.
- D. Draper submitted its Fiscal Year ("FY") 2016 final indirect incurred cost rate proposal, which it certified on February 16, 2017, to the government for reimbursement of its FY 2016 incurred costs.
- E. The Defense Contract Audit Agency ("DCAA") audited Draper's FY 2016 indirect incurred cost rate proposal (DCAA Audit No. 1151-2016T10110001) (the "Audit") and concluded, among other things, that Draper included unallowable or expressly unallowable indirect costs for (1) certain projects that Draper categorized

internally as “Opportunity Investments;” (2) certain Independent Research & Development (“IR&D”) projects; and (3) a project called “Sembler” (collectively these three categories of costs are the “Questioned Costs”).

F. Draper disagreed with the findings in the DCAA Audit Report.

G. DCMA discussed DCAA’s findings with Draper but ultimately referred the matter to the United States Attorney’s Office for the District of Massachusetts (“USAO”).

H. The USAO initiated an investigation about allegations that Draper deliberately misled and misrepresented the nature of the Questioned Costs to the government.

I. The United States contends that it has certain civil claims against Draper concerning the Questioned Costs. Specifically, the United States alleges as follows:

a. During Draper’s FY 2016, Draper created the category of projects known as Opportunity Investments for its smaller-scale internal projects. Draper had previously classified some Opportunity Investment-type projects as indirect IR&D costs. During FY 2016, Draper lacked adequate internal controls and had no policy or procedure concerning the proper classification of the Opportunity Investments costs.

b. During and after DCAA’s audit of Draper’s FY 2016 indirect incurred cost rate proposal, Draper claimed to DCAA and DCMA that the Opportunity Investments projects were allowable under the FAR as indirect Selling and indirect Manufacturing and Production Engineering costs.

c. Throughout the discussions with DCMA over the Opportunity Investments, Draper failed to provide documentation to support some of the Opportunity

Investments. Rather than providing materials created in the ordinary course of Draper's business concerning the Opportunity Investments, as DCMA requested, Draper drafted written summaries about each of the forty-three Opportunity Investment projects. The summary sheets indicated that Draper had historically classified some of these types of projects as IR&D costs but now considered them Selling or Manufacturing and Production Engineering costs.

d. For some Opportunity Investments projects, Draper lacked sufficient supporting documentation justifying its classification of these costs. Draper did not reveal the lack of sufficient supporting documentation to DCMA until months after submitting the summary sheets and after DCMA requested more information. After the government issued a subpoena to Draper, the company produced additional records that it had not provided to DCAA or DCMA concerning the Opportunity Investments. These records failed to support Draper's position concerning some of the Opportunity Investments.

e. Draper also lacked sufficient support for certain indirect costs related to the IR&D projects and Sembler.

The conduct in this Paragraph I and its subparts is referred to below as the "Covered Conduct." For avoidance of doubt, the Covered Conduct does not include costs other than the Questioned Costs.

J. Draper agrees not to make or permit to be made any public statement denying, directly or indirectly, any of the Covered Conduct or creating the impression that the Covered Conduct is without factual basis. Nothing in this paragraph affects

Draper's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the United States is not a party.

In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Draper shall pay to the United States three million four hundred ninety-nine thousand eight hundred and nine dollars (\$3,499,809) (the "Settlement Amount"), of which the full Settlement Amount is restitution. Draper shall make payment of the Settlement Amount pursuant to written instructions from the Office of the United States Attorney for the District of Massachusetts, no later than ten days after the Effective Date of this Agreement, with interest accruing on the Settlement Amount at a rate of 1.5% per annum from November 9, 2021.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Draper from any civil claim the United States has for the Covered Conduct under the common law theories of breach of contract, payment by mistake, and unjust enrichment.

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, 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. By entering into this Agreement, the Parties acknowledge that they have reached an agreement on the Final Indirect Cost Rates for the Draper's FY 2016. This rate agreement is captured in a separate document dated November 18, 2021 (hereafter "Rate Agreement"). Subject to the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, and the execution of the Rate Agreement, DCMA agrees that this Agreement and the Rate Agreement resolve the disputes related to the audited Questioned Costs in Draper's FY 2016 indirect incurred cost rate proposal.

Notwithstanding this release, neither this Agreement nor the Rate Agreement constitute an agreement, admission, or acknowledgement by the United States concerning the allowability of costs claimed by Draper in any other FY, including the same or similar costs. The Government reserves the right to determine that any of the costs included in future years, including those that are same or similar to the Questioned Costs, are unallowable or expressly unallowable.

5. Draper waives and shall not assert any defenses Draper may have to any criminal prosecution 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.

6. Draper 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 Draper 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' civil investigation and prosecution thereof.

7. a. Unallowable Legal Costs Defined: All costs, as defined in the FAR, 48 C.F.R. § 31.205-47, incurred by or on behalf of Draper, 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) Draper'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 Draper 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 Draper, and Draper 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, Draper shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Draper or any of its subsidiaries or affiliates from the United States. Draper agrees that the United States, at a minimum, shall be entitled to recoup from Draper 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 Draper's books and records and to disagree with any calculations submitted by Draper or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Draper, or the effect of any such Unallowable Costs on the amount of such payments.

d. Notwithstanding the foregoing, this Paragraph 7 shall only apply to costs Draper incurred after April 9, 2018.

8. Draper agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Draper shall encourage, and agrees not to impair, the cooperation of its directors,

officers, and employees, and shall use its best reasonable 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. Draper 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.

9. This Agreement is intended to be for the benefit of the Parties, including DCMA, only.

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

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

12. 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 Massachusetts. 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.

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



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

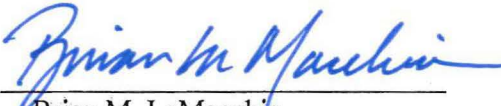
15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

16. This Agreement is binding on Draper'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.

THE UNITED STATES OF AMERICA

DATED: 11/18/21 BY:   
Brian M. LaMacchia  
Evan Panich  
Assistant United States Attorneys  
District of Massachusetts

DEFENSE CONTRACT MANAGEMENT AGENCY

DATED: \_\_\_\_\_ BY: LARSON.ERIK.J.1241  
428423  
Erik Larson  
Adminstrating Contracting Officer, DMCA Boston

Digitally signed by  
LARSON.ERIK.J.1241428423  
Date: 2021.11.18 13:28:35 -05'00'

THE CHARLES STARK DRAPER LABORATORY, INC.

DATED: 11/18/2021

BY: W LaPlante  
William LaPlante  
President and Chief Executive Officer  
The Charles Stark Draper Laboratory, Inc.

DATED: 11/18/2021

BY: Paul E. Pompeo  
Paul E. Pompeo  
David M. Hibey  
Arnold & Porter Kaye Scholer LLP  
Counsel for The Charles Stark Draper Laboratory, Inc.