

## 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 National Aeronautics and Space Administration (“NASA”), the United States Army, and the United States Air Force (collectively the “United States”); Margarita Howard (“Howard”), HX5, LLC (“HX5”), and HX5-Sierra, LLC (“HX5-Sierra”) (collectively the “Defendants”); and Vantage Systems, Inc. (“Vantage”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Howard is the Chief Executive Officer, President, and sole owner of HX5 and the managing venturer representative for HX5-Sierra, LLC. HX5 was a participant in the U.S. Small Business Administration’s (“SBA”) 8(a) Business Development (BD) Program from 2008 to 2017. As a result of HX5’s participation in the SBA 8(a) BD Program, HX5 and HX5-Sierra, a joint venture between HX5 and another company, were awarded 8(a) set-aside contracts by various government agencies, including NASA, the United States Army, and the United States Air Force.

B. On February 19, 2020, Vantage filed a *qui tam* action in the United States District Court for the Northern District of Florida captioned *United States ex rel. Vantage Systems, Inc. v. HX5, LLC; HX5 Sierra, LLC; Margarita Howard*, Case No. 20-cv-3649, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that it has certain civil claims against Defendants arising from Defendants allegedly fraudulently obtaining six 8(a) BD Program set-aside contracts during the period January 1, 2015 to December 31, 2021.

After it was admitted to the 8(a) BD Program, Defendants allegedly made materially false statements, or failed to report information they were required to report, to the SBA during mandatory annual reviews. The United States contends that the Defendants did this because providing accurate information would have resulted in HX5's termination from the SBA 8(a) BD Program. During the reviews, Defendants allegedly failed to report distributions and payments to Ms. Howard's family members and allegedly provided false information to SBA regarding Ms. Howard's assets.

The United States contends that as a result of these allegedly materially false statements and fraudulent omissions, HX5 improperly maintained its status as an 8(a) BD Program participant. Defendants also allegedly falsely certified to NASA that HX5 and HX5-Sierra were eligible for 8(a) set-aside contracts, and HX5 and Howard allegedly falsely certified to the Army and the Air Force that HX5 was eligible for 8(a) set-aside contracts. From January 1, 2015 to December 31, 2021, HX5 and/or HX5-Sierra were awarded 6 set-aside contracts by these agencies as a result of the allegedly false certifications. Specifically, HX5 and/or HX5-Sierra were awarded the following set-aside contracts: W912HZ-15-C-0006, 80GRC020D0003, FA8622-15-F-8111, FA9651-15-D-0138, FA8622-15-F-8116, and NNC15BA02B. The United States contends that the Defendants' allegedly false statements to the SBA and to the procuring agencies ultimately caused the government to pay amounts to HX5 and HX5-Sierra throughout the

period of their performance under the above-mentioned set-aside contracts which would not have been paid if Defendants had not provided materially false information.

The alleged conduct discussed in this Recital C is referred to below as the Covered Conduct.

D. This Agreement is neither an admission of liability or wrongdoing by Defendants 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 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 Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Defendants shall pay to the United States seven million seven hundred fifty-nine thousand six hundred ninety-three dollars and ninety-two cents (\$7,759,693.92), plus interest on the Settlement Amount at a rate of 4.65% per annum from June 20, 2023, and continuing until and including the final date of payment (the "Settlement Amount") under the terms and conditions set forth in this Agreement. The Settlement Amount does not include payment of Relator's reasonable attorneys' fees pursuant to 31 U.S.C. § 3730(d)(1), which amount is addressed in Paragraph 15 hereof. Howard, HX5, and HX5-Sierra agree that they are jointly and severally liable for the Settlement Amount. Of the Settlement Amount, \$3,879,846.96 is restitution. Defendants shall pay the Settlement Amount by electronic funds transfer pursuant to written

instructions to be provided by the Civil Division of the United States Department of Justice, in accordance with the following schedule:

a. Defendants shall pay \$3,879,846.96, plus accrued interest as set forth above, within 30 days of the Effective Date of this Agreement, and

b. Defendants shall pay \$3,879,846.96, plus accrued interest as set forth above, on or before four (4) months after the Effective Date of this Agreement.

2. Upon the United States receiving the portion of the Settlement Amount set forth in Paragraph 1(a), the United States shall, as soon as feasible after receipt, pay \$678,982 plus pro rata share of interest accrued from June 20, 2023 to Relator by electronic funds transfer. Upon the United States receiving the portion of the Settlement Amount set forth in Paragraph 1(b), the United States shall, as soon as feasible after receipt, pay \$678,982 plus pro rata share of interest accrued from June 20, 2023 to Relator by electronic funds transfer (collectively, these payments to Relator are referred to as “Relator’s Share”).

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Defendants 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; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. Upon (a) the United States' receipt of the Settlement Amount plus interest due under Paragraph 1; and (b) Relator's receipt of the Relator Attorneys' Fees Payment as set forth in Paragraph 15 hereof, Relator, for itself and for its successors, attorneys, agents, and assigns, releases Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct and any and all claims raised in the Civil Action under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraph 3 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 Howard;
- 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relator, for itself, and for its heirs, shareholders, directors, officers, predecessors, 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 and Relator's receipt of Relator Attorneys' Fees Payment as set forth in Paragraph 15 hereof, Relator and its 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.

7. Upon receipt of the Relator Attorneys' Fees Payment as set forth in Paragraph 15 hereof, Relator, for itself, and for its heirs, shareholders, directors, officers, predecessors, successors, attorneys, agents, and assigns, releases Defendants, and their officers, members, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, including any claim for reasonable attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

8. Defendants hereby irrevocably and unconditionally release, acquit and forever discharge the Relator, its owners, partners, heirs, shareholders, directors, officers, predecessors, successors, attorneys, agents, employees and assigns ("Relator Releasees") from any and all charges, complaints, claims, liabilities, obligations, promises,

agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including claims for attorney's fees and costs), known or unknown, that directly or indirectly arise out of, relate to, or concern the Civil Action or Attorney's Fees Claims, which Defendants have, own, or hold, or at any time heretofore had, owned, or held against the Relator Releasees up to the date on which it executes this Agreement.

9. Defendants waive and shall not assert any defenses that Defendants 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. Defendants 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 Defendants 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.

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 Defendants and their present or former officers, directors, employees, shareholders, members, 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) Defendants' investigations, defenses, 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 payments Defendants make to the United States pursuant to this Agreement and any payments that Defendants 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 Defendants, and Defendants 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, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendants or any of its subsidiaries or affiliates from the United States. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants' books and records and to disagree with any calculations submitted by Defendants or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

12. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants 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. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged, non-attorney work product 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.

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

14. Upon receipt of the payments described in Paragraphs 1 and 15 hereof, the United States and Relator shall promptly sign and file in the Civil Action a Notice of Dismissal pursuant to Rule 41(a)(1). The Notice of Dismissal shall state that: (1) claims for the allegations described in the Covered Conduct are dismissed with prejudice as to

the United States and Relator; (2) all other claims in the Civil Action shall be dismissed without prejudice as to the United States and with prejudice as to the Relator.

15. Defendants shall pay Relator the sum of Three hundred thirty-nine thousand dollars and zero cents (\$339,000.00) as full compensation of any and all amounts that Relator may claim to be due for reasonable attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d)(1) ("Relator Attorneys' Fees Payment"). The Relator Attorneys' Fees Payment shall be made via wire transfer to Murphy Anderson PLLC within thirty (30) days following the execution of this Agreement by all parties. Interest shall not accrue on the Relator Attorneys' Fees Payment if made in accordance with this deadline.

16. Except as expressly provided in this Agreement at Paragraph 15, above, 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 Northern District of Florida. 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 successors, transferees, heirs, and assigns of Defendants.


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 shall constitute acceptable, binding signatures for purposes of this Agreement.

[Signature Pages Follow]

THE UNITED STATES OF AMERICA

DATED: 6-23-23 BY:   
Laura Hill  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 6/21/2023 BY:   
Mary Ann Couch  
Assistant United States Attorney  
Northern District of Florida

DEFENDANTS

DATED: 6/21/23 BY: Margarita Howard  
Margarita Howard  
In her personal capacity; as CEO & President, HX5, LLC;  
and as the managing venturer representative for HX5-  
Sierra, LLC

DATED: 6/21/23 BY: Jonathan T. Williams  
Jonathan T. Williams  
Matthew Feinberg  
Counsel for HX5, LLC, HX5-Sierra, LLC, and  
Margarita Howard

VANTAGE SYSTEMS, INC.

DATED: 6/16/23 BY: Joseph Polk  
Joseph Polk  
Chairman and CEO  
Vantage Systems, Inc.

DATED: 6/16/23 BY: Mark Hanna  
Mark Hanna  
Counsel for Vantage Systems Inc.