

## 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 Nuclear Security Administration (“NNSA”) (collectively, the United States), PC Specialists, Inc. d/b/a/ Technology Integration Group (“TIG”), and Maverick Granger (“Granger” or “Relator”) (hereafter collectively referred to as the “Parties”), through their authorized representatives.

### RECITALS

A. Sandia Corporation (“Sandia”), a wholly-owned subsidiary of Lockheed Martin, has managed and operated Sandia National Laboratories (“SNL”) for the NNSA since 1993 pursuant to a management and operating (“M&O”) contract. Under its M&O contract, all costs incurred by Sandia to operate SNL are reimbursed by the NNSA, subject to the cost-accounting standards of the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR).

B. In April 2003, Sandia entered into a subcontract with TIG (Sandia TO34021) to supply computers and other information technology products manufactured by Dell Incorporated (“Dell”). TIG, a reseller of information technology products and provider of information technology services, purchased the products directly from Dell and resold them to Sandia for use at SNL. Pursuant to its M&O contract, Sandia was reimbursed for the cost of the computers by NNSA through drawdowns against an NNSA line of credit. In 2006, Sandia entered into a follow-on subcontract (Sandia CPA619228) with TIG through which TIG continued to provide Dell products to Sandia. Collectively, Sandia TO34021 and Sandia CPA 619228 are referred to herein as the “TIG Contracts.”

C. On or before May 15, 2013, the United States Attorney's Office, District of New Mexico, initiated an investigation of TIG's performance of its contracts with SNL, i.e., the TIG Contracts.

D. On July, 14, 2014, Maverick Granger, a former manager of TIG, filed a qui tam action in the United States District Court for the District of New Mexico captioned *United States ex rel. Granger v. PC Specialist, Inc. d/b/a Technology Integration Group*, Docket No. 1:14-cv-00633 KBM/SMV, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). Granger alleged that TIG had overbilled Sandia for Dell products on the TIG Contracts between 2003 and 2013 by failing to pass on various discounts and rebates that Dell had provided to TIG and by charging Sandia substantially more than its actual cost plus the specified markup. The United States intervened in the Civil Action on August 7, 2015.

E. The United States contends that it has certain civil claims against TIG for overbilling Sandia for Dell products under the TIG Contracts by failing to pass on various discounts and/or rebates that Dell had provided to TIG and by charging Sandia more than its actual cost plus the specified markup during the period from January 1, 2003 to February 22, 2013. That conduct is referred to below as the Covered Conduct.

F. This Settlement Agreement is neither an admission of liability by TIG nor a concession by the United States that its claims are not well founded. TIG denies the United States' allegation in Paragraph E and the Relator's allegations in the Civil Action.

G. 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. TIG shall pay to the United States Five Million Nine Hundred Thousand Dollars (\$5,900,000) and interest at a rate of 2.5 percent from the date of execution of this Agreement to the date of final payment (together, the Settlement Amount). Within 10 business days from the date of execution of this Agreement, TIG will make a payment to the United States in the amount of One Million Seven Hundred Thousand Dollars (\$1,700,000) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the District of New Mexico (Initial Payment).

2. Over a period of 4 years, TIG will pay the remaining Four Million Two Hundred Thousand Dollars (\$4,200,000), plus interest at 2.5 percent per annum ("Installment Payments"), pursuant to a promissory note ("Note") in the form of Exhibit A, that TIG agrees to execute contemporaneously with this Agreement, the terms of which are incorporated in, and made a part of, this Agreement. TIG may at any time pay this \$4,200,000, together with accrued interest, ahead of schedule without any pre-payment penalty.

3. The Note shall be secured pursuant to two personal guarantees executed by Bruce Geier and Tom Janecek, in the form of Exhibit B, that TIG and Messrs. Geier and Janecek agree to cause to be issued contemporaneously with this Settlement Agreement. Interest shall accrue on the unpaid settlement amount as indicated in the Note. Collectively the settlement amount and interest received by the United States shall



be referred to as the Settlement Proceeds. Upon request from TIG, the Parties agree to negotiate in good faith to agree to use real estate or other assets as security for the Note in lieu of the two personal guarantees referenced above, and upon further agreement, to rescind the two personal guarantees referenced herein and to replace them with other security for the Note. The United States, however, is under no obligation to enter into such agreements if such agreements are not deemed by the United States to be within its best interests.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon TIG's full payment of the Settlement Amount, the United States releases TIG, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners, officers, directors, and affiliates; and the successors and assigns of any of them from any civil or administrative monetary claims the United States has or may have 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 Contract Disputes Act, 41 U.S.C. §§ 7101-7109; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; any other statute creating a cause of action for civil damages or civil penalties which the Civil Division of the United States Department of Justice has actual or present authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, § 0.45(d); or the common law theories of breach of contract, payment by mistake, unjust enrichment, disgorgement, misrepresentation, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon TIG's payment of any legally required or court-ordered Relator's Attorney's Fees,

Relator, for himself/herself and for his/her heirs, successors, attorneys, agents, and assigns, hereby releases TIG from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct, including, without limitations, all claims under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims 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, 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 for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due; and
- h. 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 payment of his relator's share, Relator and his/her 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. TIG waives and shall not assert any defenses TIG 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. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. TIG fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that TIG 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.

10. TIG and Relator are parties to a separate arbitration regarding a dispute arising out of the termination of Relator's employment with TIG that is currently pending before the American Arbitration Association ("Employment Dispute").

10(a). Subject to the exceptions in Paragraph 10(b), TIG fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that TIG has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

10(b). Notwithstanding the releases given in Paragraph 10(a) of this Agreement, or any other term of this Agreement, the following claims or defenses of TIG against the Relator are specifically reserved and are not released:

- (i) Any claim, cause of action, or affirmative defense related to the termination of Relator's employment with TIG;
- (ii) Any claim, cause of action, or affirmative defense related to Relator's employment with TIG that does not concern the Covered Conduct;
- (iii) Any claim, cause of action, or affirmative defense that TIG might raise in the Employment Dispute or in any related judicial, appellate, or administrative proceedings;
- (iv) Any claim or cause of action that TIG might assert in an independent action that is related to or based upon the Employment

Dispute, including, without limitation, any claim for malicious prosecution.

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 TIG, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and the Non-Prosecution Agreement executed with the United States Attorney's Office for the District of New Mexico on April 15, 2015;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) TIG'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 attorney's fees);
- (4) the negotiation and performance of this Agreement and the Non-Prosecution Agreement executed with the United States Attorney's Office for the District of New Mexico on April 15, 2015;



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

12. TIG warrants that it has reviewed its financial situation and that it currently 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. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to TIG, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which TIG was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, TIG commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of TIG's debts, or seeking to adjudicate TIG as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for TIG or for all or any substantial part of TIG's assets, TIG agrees as follows:

a. TIG's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and TIG shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) TIG's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) TIG was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or

(iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to TIG.

b. If TIG'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, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against TIG for the claims that would otherwise be covered by the release provided in Paragraph 4, above. TIG agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and TIG shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) TIG 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 claims, actions, or proceeding that are brought by the United States within **90** calendar days of written notification to TIG that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on July 14, 2014, and (iii) the United States has a valid claim against TIG in the amount of \$9,200,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. TIG acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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 Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of all claims asserted in the Civil Action with Prejudice to the Relator, and to the United States with prejudice to the extent of the Covered Conduct. The Civil Action shall be dismissed completely after the issues of Relator's attorney fee claim and the relator's share of the proceeds of the action are resolved, whether by Order of the Court or agreement of the parties. (Relator's attorney fee claim has been resolved by way of agreement.) Upon resolution of issues regarding the Relator's share of the proceeds, all parties shall promptly sign and file a Joint Stipulation of Dismissal of the Civil Action with Prejudice to the Relator, and to the United States with prejudice to the extent of the Covered Conduct, pursuant to Rule 41(a)(1).

16. In the event that TIG fails to pay any Initial Payment or Installment Payment due pursuant to the Payment Schedule set forth in the Note on or prior to the dates indicated therein, TIG shall be in Default of its payment obligations (hereinafter "Default"). In the event of Default, the remaining unpaid balance of the Settlement Amount, including accrued interest, (Remaining Settlement Amount) shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily (Remaining Settlement Amount and Default Interest Balance) from the date of Default until all amounts due have been paid in full. TIG shall consent to a Consent Judgment in the amount of the Remaining Settlement Amount and Default Interest Balance (TIG Consent Judgment), and the United States, at its sole option, may: (a) offset the TIG Consent Judgment against any amounts due and owing to TIG by any department, agency, or agent of the United States; (b) collect the entire Remaining

Settlement Amount, plus interest including 12% interest from the Date of Default, and all other amounts due upon the event of Default as specified in this paragraph; or (c) exercise any other rights granted by law or in equity, including but not limited to referring such matters for private collection. TIG agrees not to contest any consent judgment or offset imposed and TIG agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States or its agents or contractors pursuant to this Paragraph, either administratively or in any state or federal court. TIG shall pay the United States all reasonable costs of collection and enforcement under this Paragraph applicable to them, respectively, including attorney's fees and expenses ("Collection Costs").

17. In the event of Default, the United States may also, at its sole option, rescind this Settlement Agreement (Rescindment) and bring any civil and/or administrative claim, action, or proceeding against TIG for the Covered Conduct. Rescindment shall be automatically effective upon the United States' bringing of the same. In the event of Rescindment, TIG shall not plead, argue, or otherwise raise, and hereby waives and discharges, any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within one hundred-twenty (120) calendar days of Default, except to the extent such defenses were available as of the date of execution of this Agreement. TIG agrees that in the event of Rescindment it shall not plead, argue, or otherwise raise any defenses that any amounts paid to the United States pursuant to this Settlement Agreement should be used to reduce the determination of single damages for purposes of calculating treble damages or penalties under the False



Claims Act. The option for Rescindment identified in this Paragraph is in addition to, and not in lieu of, other options identified in this Agreement or otherwise available. In the event of Rescindment, whatever rights Relator could have asserted in connection with the Civil Action prior to its dismissal will be restored to Relator in connection with whatever claim, action, or proceeding the United States chooses to pursue.

18. Except for Relator's attorneys' fees, which has been resolved by agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

20. 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 District of New Mexico. 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.

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

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

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



24. This Agreement is binding on TIG's successors, transferees, heirs, and assigns.

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

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

27. 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: _____ Damon P. Martinez United States Attorney District of New Mexico BY: _____ Howard R. Thomas Assistant United States Attorney	DATED: _____ BY: _____ Donald Williamson Senior Trial Attorney Commercial Litigation Branch Civil Division United States Department of Justice
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THE UNITED STATES OF AMERICA

<p>DATED: <u>08-07-2015</u> Damon P. Martinez United States Attorney District of New Mexico BY: <u>[Signature]</u> Howard R. Thomas Assistant United States Attorney</p>	<p>DATED: <u>8/7/2015</u> BY: <u>[Signature]</u> Donald Williamson Senior Trial Attorney Commercial Litigation Branch Civil Division United States Department of Justice</p>
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PC SPECIALISTS, INC.

DATED: 08/07/15 BY:   
Bruce Geier  
Chief Executive Officer  
PC Specialists, Inc.  
10240 Flanders Court  
San Diego, CA 92121

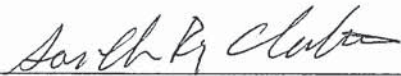
DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Somnath Raj Chatterjee  
Morrison & Foerster LLP  
425 Market St.  
San Francisco, CA 94105



PC SPECIALISTS, INC.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_

Bruce Geier  
Chief Executive Officer  
PC Specialists, Inc.  
10240 Flanders Court  
San Diego, CA 92121

DATED: 8/7/15 BY: 

Somnath Raj Chatterjee  
Morrison & Foerster LLP  
425 Market St.  
San Francisco, CA 94105

Maverick Granger

DATED: 8/7/2015

BY: 

[Relator]

DATED: 5/7/15

BY: 

Christopher M. Moody  
Moody & Warner, P.C.  
4169 Montgomery Blvd., NE  
Albuquerque, NM 87109