

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into by and among the United States of America, acting through the United States Department of Justice and on behalf of the Defense Information Systems Agency (“DISA”) (collectively the "United States"), John Kingsley (“Relator”), and NetCracker Technology Corp. (“NetCracker”) (hereafter collectively referred to as the “Parties”), through their authorized representatives.

### RECITALS

A. NetCracker is a telecom software and services company with headquarters in Waltham, Massachusetts.

B. In 2011, John Kingsley filed a *qui tam* action in the United States District Court for the District of Columbia captioned *United States ex rel. John C. Kingsley v. NetCracker Technology Corp.*, Civil Action No. 1:11-cv-00629, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). On April 10, 2015, Relator filed a First Amended Complaint in the Civil Action, and on October 22, 2015, Relator filed a Second Amended Complaint in the Civil Action.

C. The United States contends that it has certain civil claims against NetCracker arising from claims submitted from 2008 through 2013 under DISA Contract No. HC-1028-08-D-2000, Task Orders 30 and 42 (“DISA Contract”) for (1) work done by individuals without security clearances when the DISA Contract required the individuals to have security clearances and (2) work performed at locations other than the places of performance identified in the DISA Contract. That conduct is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by NetCracker or its parent corporation, nor a concession by the United States that its claims are not well founded.

E. NetCracker denies the United States' allegations in Paragraph C and the Relator's allegations in the Civil Action.

F. 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. NetCracker shall pay to the United States \$11.4 million (the "Settlement Amount"), together with interest at the rate of one percent per year starting on October 9, 2015, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice. NetCracker shall make the required payment no later than ten (10) business days after the Effective Date of this Agreement as set forth below in Paragraph 23.

2. Conditioned upon the United States receiving the Settlement Amount from NetCracker and as soon as feasible after receipt, the United States shall pay \$2,109,000 to Relator by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel.

3. NetCracker agrees to pay Relator as follows:

a. NetCracker agrees to pay Relator the sum of \$140,000 in settlement of any tort claims the Relator brought for himself or believes he could have brought for himself in the Civil Action. This payment is made solely to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation. NetCracker specifically denies any wrongdoing with respect to the Relator's claims referenced in this subparagraph 3(a) and this payment to Relator shall not be deemed to be anything more than a business decision by NetCracker to end the Relator's personal claims as efficiently and economically as possible.

b. NetCracker agrees to pay Relator the sum of \$210,000 for Relator's expenses and attorneys' fees and costs, pursuant to 31 U.S.C. § 3730(d). This payment does not affect any claim Relator has against defendant Computer Sciences Corp. for expenses, attorneys' fees and costs under 31 U.S.C. § 3730(d).

c. NetCracker agrees to pay the amounts set forth in subparagraph 3.a and 3.b to the Relator pursuant to written instructions to be provided by Relator's counsel no later than ten (10) business days following the Effective Date of this Agreement.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon NetCracker's full payment of the Settlement Amount, the United States releases NetCracker, together with its parent corporation, as well as its current and former subsidiaries and affiliates, and any current or former officer, director, and/or employee 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; any statutory provision creating a cause of action for civil damages or civil penalties

which the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, § 0.45(d); or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon NetCracker's full payment of the Settlement Amount and the amounts set forth in Paragraph 3 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases and forever discharges NetCracker, together with its parent corporation, as well as its current and former subsidiaries and affiliates, and any current or former officer, director, and/or employee of any of them, from any and all past or present claims, actions, causes of action, demands, rights, damages, debts, costs, torts, frauds, negligence, contracts, defamation, loss of service, expenses, and compensation of any nature, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, or under any federal or state statute or regulation or otherwise, that the Relator has asserted, could have asserted, or may assert in the future, from the beginning of time to the date of this Agreement including, but not limited to (a) the Covered Conduct, including civil monetary claims the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, (b) the Civil Action, and (c) the Relator's employment with NetCracker and/or NetCracker Government Services, Inc., including, but not limited to, any claims under 31 U.S.C. §§ 3730(h) and (d), 2720(h), and/or 3730(d) for expenses, attorneys' fees, and/or costs related to the Civil Action.

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 the 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 personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- 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; or
- h. Any liability for failure to deliver goods or services due.

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 described in Paragraph 2, Relator and his 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 against NetCracker or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the claims against NetCracker in the Civil Action.

8. NetCracker and its agents, administrators, successors, affiliates, subsidiaries, assigns, agents, and shareholders do hereby release, acquit and forever discharge Relator and his heirs, successors, attorneys, agents, and assigns from any and all past or present claims, actions, causes of action, demands, rights, damages, debts, costs, torts, frauds, negligence, contracts, defamation, loss of service, expenses and compensation whatsoever, whether such claims are known or unknown, discovered or undiscovered, from the beginning of time through the date of this Agreement, including, but not limited to, the Covered Conduct, Relator's and the United States' investigation and prosecution of the Civil Action, and Relator's employment with NetCracker and NetCracker Government Services, Inc.

9. NetCracker waives and shall not assert any defenses NetCracker 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.

10. NetCracker 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 NetCracker 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.

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

12. This Agreement is intended to be for the benefit of only the parties and the persons identified in Paragraphs 4, 5, 7, 8, and 10.

13. Upon receipt of the payments described in Paragraphs 1 and 3 above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of



the Civil Action pursuant to Rule 41(a)(1). The claims asserted against NetCracker in the Civil Action shall be dismissed with prejudice to Relator, and with prejudice to the United States with respect to the Covered Conduct, but otherwise without prejudice to the United States.

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

15. 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.

16. 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 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.

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

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

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

20. This Agreement is binding on NetCracker's successors, transferees, heirs, and assigns.

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

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

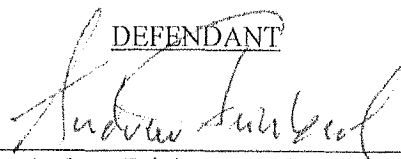
23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

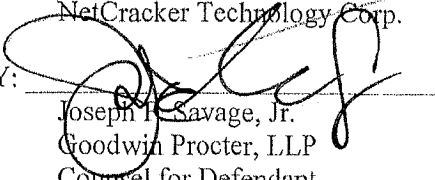
THE UNITED STATES OF AMERICA

DATED: 10/27/15 BY: Gregory Pearson  
Gregory Pearson  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: \_\_\_\_\_ BY: Darrell C. Valdez  
Darrell C. Valdez  
Assistant U.S. Attorney  
United States Attorney's Office  
District of California

DEFENDANT

DATED: 10/26/15 BY:   
Andrew Feinberg, President  
NetCracker Technology Corp.

DATED: 10/26/15 BY:   
Joseph P. Savage, Jr.  
Goodwin Procter, LLP  
Counsel for Defendant

RELATOR

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
John C. Kingsley

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Paul S. Schleifman  
Schleifman Law, PLC  
Counsel for Relator

DEFENDANT

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Andrew Feinberg, President  
NetCracker Technology Corp.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Joseph F. Savage, Jr.  
Goodwin Procter, LLP  
Counsel for Defendant

RELATOR

DATED: Oct 26, 2015 BY: John C. Kingsley  
John C. Kingsley

DATED: 10/27/15 BY: Paul S. Schleifman  
Paul S. Schleifman  
Schleifman Law, PLC  
Counsel for Relator