

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Northern District of Alabama, and on behalf of the United States Department of the Army ("Army") (collectively the "United States"), Dell Technologies, Inc., and Dell Federal Systems, L.P., (collectively "Dell"), and Brent A. Lillard ("Relator"), through their authorized representatives. The United States, Dell, and Relator are hereafter collectively referred to as "the Parties."

### RECITALS

A. Dell Technologies, Inc. ("Dell Technologies") is a corporation with headquarters in Austin, Texas, that through its subsidiaries manufactures and sells hardware (including Dell-branded computer and hardware products), software, and services.

B. Dell Federal Systems L.P. ("Dell Federal") is a subsidiary of Dell Technologies that sells computer hardware, software, and services to the United States directly and indirectly through resellers.

C. On or around October 14, 2020, Relator Brent A. Lillard filed an action in the United States District Court for the Northern District of Alabama captioned *United States ex rel. Lillard v. Dell Techs., Inc. et al.*, No. 5:20-CV-01613-HNJ (N.D. Ala.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). Concurrent with this Agreement, the United States is intervening in the Civil Action for purposes of settling the matter.

D. The United States contends that it has certain civil claims against Dell for causing the submission of false claims to the Army by Dell's authorized reseller Iron Bow Technologies,

LLC under the Army Desktop and Mobile Computing 3 ("ADMC-3") contract, during the period from May 2020 through April 2024. Specifically, the United States contends that pursuant to Dell's deal registration program, Dell and Iron Bow agreed for Iron Bow to have preferred pricing to sell Dell computer hardware products on specific solicitations issued under ADMC-3 and that Dell submitted bids to the Army that Dell and Iron Bow knew would be higher than the Iron Bow's bid, thereby creating the false appearance of competition. The United States contends that this influenced the Army's source selection process and caused Iron Bow to overcharge the Army under ADMC-3 for Dell products sold by Iron Bow under Dell's deal registration. That conduct is referred to below as the Covered Conduct.

E. Dell denies the allegations of the United States and Relator as set forth herein and in the Civil Action.

F. This Settlement Agreement is neither an admission of liability by Dell nor a concession by the United States that its claims are not well-founded.

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. Dell shall pay to the United States, by electronic funds transfer, two million, three hundred thousand dollars (\$2,300,000) (the "Settlement Amount"), of which one million, three hundred and fifty eight thousand, four hundred and seventy-five dollars (\$1,358,475) is restitution, and interest at a rate of 4% per annum from September 30, 2024. Dell shall pay the

Settlement Amount and accrued interest no later than ten (10) days after the Effective Date of this Agreement pursuant to written wire payment instructions to be provided by the United States Attorney's Office for the Northern District of Alabama.

2. Conditioned upon the United States receiving the Settlement Amount from Dell, the United States shall pay three hundred and forty-five thousand dollars (\$345,000) to Relator by electronic funds transfer to the Trust Account of Relator's lead counsel Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

3. Within ten (10) days after the Effective Date of this Agreement and conditioned upon timely receipt of written and accurate electronic funds transfer instructions from Relator's counsel, Dell agrees to pay Relator's counsel the sum of two hundred and twenty-five thousand dollars (\$225,000) (the "Fee Payment") pursuant to 31 U.S.C. 3730(d) in full and final satisfaction of any claim by Relator or any of Relator's attorneys for fees, costs, expenses, interest, or any other amount relating to the Civil Action. Dell shall pay the amount to the Trust Account of Relator's lead counsel Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. Relator's Counsel shall provide Dell counsel with the electronic funds transfer instructions on or before the Agreement Effective Date.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Dell, 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 claims 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; the

Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Upon the United States' receipt of the Settlement Amount, plus any interest due under Paragraph 1 and Relator's receipt of the attorneys' fees set forth in Paragraph 3, Relator, for himself and for his heirs, successors, companies, attorneys, agents, and assigns, fully and finally releases Dell, together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions; current or former corporate owners, employees, agents, and the corporate successors and assigns of any of them, from any and all claims or causes of action of any kind or nature whether based in contract, tort, statute, or other legal or equitable theory of recovery, whether known or unknown, that Relator has or may have (whether on Relator's behalf or on behalf of the United States) for: the Covered Conduct; any conduct Relator alleged or could have alleged in the Civil Action; any claim for legal fees or expenses related to the Civil Action or any associated investigation; and any Dell conduct related to defending the Civil Action or any related investigatory proceedings. Relator affirms that Relator has not assigned any claims covered by the foregoing release. Relator expressly acknowledges that by executing this Agreement, it is forever releasing and discharging Dell and the identified Dell related entities and individuals from any and all claims, liabilities, and damages arising out of or relating to any subject matter referenced in this paragraph.

6. Notwithstanding the releases given in Paragraph 4 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;
- 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.

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 Relator's Share, Relator and his heirs, successors, attorneys, agents, companies, 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. Dell waives and shall not assert any defenses Dell 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.

9. Dell 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 Dell 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, the Civil Action, or the United States' investigation or prosecution thereof.

10. Dell fully and finally releases Relator, his heirs, successors, companies, attorneys, agents, representatives, and assigns from any and all claims or causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated), whether based in contract, tort, statute, or other legal or equitable theory of recovery, whether known or unknown, that Dell has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct, Civil Action, Relator's disclosure of alleged fraud, waste, and/or abuse on the part of Dell, and the Relator's investigation and prosecution thereof. Dell expressly acknowledges that by executing this Agreement, it is forever releasing and discharging Relator from any and all claims, liabilities, and damages arising out of or relating to any subject matter referenced in this paragraph.

11. Unallowable Costs.

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

12. Dell agrees to cooperate fully and truthfully with the United States' investigation of the Covered Conduct as related to individuals and entities not released in this Agreement. Upon reasonable notice, Dell 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. Dell 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.

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

14. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action, with prejudice to Relator, with prejudice to the United States as to Covered Conduct, but otherwise without prejudice to the United States, pursuant to Rule 41(a)(1).



15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as described in Paragraph 3.

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

17. 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 Alabama. 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.

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

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

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

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

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

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

24. 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: \_\_\_\_\_

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

Samson Asiyambi  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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

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

Sarah Blutter  
Assistant United States Attorney  
United States Attorney's Office  
Northern District of Alabama

**DEFENDANTS**

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

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

Jennifer Morrison  
Dell Technologies, Inc.

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

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

Jennifer Morrison  
Dell Federal Systems, L.P.

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

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

Craig Holman  
Andre Geverola  
Arnold & Porter Kaye Scholer LLP

*Counsel for Dell*

**RELATOR**

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

BY: \_\_\_\_\_  
Brent A. Lillard

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

BY: \_\_\_\_\_  
C. Lance Gould  
Beasley, Allen, Crow, Methvin, Portis & Miles,  
P.C.

*Counsel for Lillard*