

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 General Services Administration (collectively the “United States”), VMware, Inc. (“VMware”), Carahsoft Technology Corporation (“Carahsoft”) (collectively the “Defendants”), and Relator Dane Smith (hereafter collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Carahsoft is a privately held Maryland corporation that distributes information technology products to federal, state, and local governments and has its principal place of business in Reston, Virginia. VMware is a Delaware corporation that specializes in computer virtualization software and has its principal place of business in Palo Alto, California. In 2004, the General Services Administration (“GSA”) awarded Carahsoft Multiple Award Schedule contract No. GS-35F-0131R (the “Contract”) to sell software licenses, services and related support to federal government customers (the “Government”). In 2007, the Contract was amended to add VMware products and services. VMware products and services continued to be sold under the Contract through May 13, 2013.

B. On July 9, 2010, Dane Smith filed a *qui tam* action in the United States District Court for the Eastern District of Virginia captioned *United States ex rel. Dane Smith v. VMware, Inc., et al.*, (E.D. Va. 10-CV-769), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Relator amended his complaint on three occasions, alleging, *inter alia*, that VMware and Carahsoft

submitted false claims to the United States by (i) charging the Government higher prices for VMware computer software licenses and associated services and support than they charged commercial customers, (ii) not offering certain discounts and rebates to Government customers, (iii) providing inaccurate and incomplete commercial sales practice data to the GSA contracting officer, and (iv) quoting inaccurate consolidation ratios to entice the Government to purchase more software licenses than needed.

C. The United States contends that it has certain civil claims against VMware and Carahsoft arising from the following alleged conduct (hereinafter referred to as the “Covered Conduct”):

1. VMware and Carahsoft made alleged false statements to GSA regarding VMware’s commercial pricing practices with the purpose and effect of inducing GSA to award modification PO-0114 to the Contract, adding VMware products and services to the Contract. These alleged false statements included false Commercial Sales Practice Format (“CSP-1”) forms prepared by VMware on or about December 12, 2006 and submitted by Carahsoft to GSA on or about January 4, 2007, and alleged false statements by Carahsoft in 2006 concerning the magnitude of the proposed modification.

2. During the period January 4, 2007 to May 13, 2013, VMware and Carahsoft continued to make alleged false statements to GSA regarding VMware’s commercial pricing practices. These alleged false statements included additional false CSP-1 forms prepared by VMware and submitted to GSA on or about February 4, 2009, October 14, 2010, September 6, 2012, and November 17, 2012, and statements by VMware and Carahsoft to GSA regarding the purpose of assigning unique Stock Keeping Units to items sold to the Government.

3. During the period January 4, 2007 to May 13, 2013, Carahsoft, in connection with performance of the Contract, allegedly failed to adhere to the Price Reductions Clause in the Contract by failing to notify GSA that VMware was providing higher discounts to Carahsoft than disclosed by VMware on its CSP-1 forms.

4. As a result of the conduct set forth above in paragraphs C.1 through C.3, VMware and Carahsoft allegedly presented or caused to be presented false claims for payment for VMware's software licenses and associated services and support to the Government under the Contract, including its delivery orders, task orders, purchase orders, and blanket purchase agreements.

D. This Agreement is neither an admission of liability by VMware or Carahsoft nor a concession by the United States that its claims are not well founded. VMware and Carahsoft deny the United States' allegations in Paragraph C and the Relator's allegations in the Civil Action.

E. 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. VMware and Carahsoft have reached agreement with Relator's counsel regarding the amount of reasonable attorneys' fees and costs to be paid pursuant to 31 U.S.C. § 3730(d), which shall be the subject of a separate agreement between those parties.

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. Pursuant to an agreement between VMware and Carahsoft, the Defendants shall pay to the United States, via wire transfer from VMware, the sum of Seventy-five Million Five Hundred Thousand Dollars (\$75,500,000) (the “Settlement Amount”), plus interest on the Settlement Amount at the Current Value of Funds Rate (31 U.S.C. § 3717) of 1 percent simple interest to accrue from June 5, 2015 through the day of payment by electronic funds transfer no later than seven (7) business days after the Effective Date of this Agreement, or the receipt of wiring instructions by the Civil Division of the Department of Justice for payment of the Settlement Amount, whichever occurs last.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon full payment of the Settlement Amount, the United States releases VMware and Carahsoft, together with their current and former parents, subsidiaries, divisions and affiliates, and each of their past and present employees, officers, directors, agents, shareholders, insurers, attorneys, predecessors, successors, and assigns 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; 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, including fraud in the inducement.

3. Subject to the exceptions in Paragraph 4 below, and conditioned upon payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases VMware and Carahsoft, together with their current and former parents, subsidiaries, divisions and affiliates, and each of their past,

present and future employees, officers, directors, agents, shareholders, insurers, attorneys, predecessors, successors, and assigns from any civil monetary claim the relator asserted or could have asserted in the Civil Action on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733. Relator does not release claims asserted in the Civil Action against VMware under 31 U.S.C. § 3730(h). The release by Relator expressly excludes any and all employment claims asserted by Relator against VMware in the Civil Action. VMware agrees not to oppose a motion to transfer venue of the Relator's employment claims to the United States District Court for the Northern District of California. In addition, the release from Relator expressly does not include any and all claims Relator has or may assert against Defendants under California Government Code 12650, *et seq.*

4. Notwithstanding the releases given in paragraphs 2 and 3 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; or
- g. Any liability for failure to deliver goods or services due.

5. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and 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). In connection with this Agreement and this Civil Action, Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his claim(s), and that no agreements concerning Relator share have been reached to date. Should the United States successfully challenge Relator's standing to serve as a relator or to share in the proceeds of this Agreement, VMware and Carahsoft reserve their right to challenge the Relator's right to recover reasonable attorneys' fees, expenses, or costs under 31 U.S.C. § 3730(d)(1).

6. VMware and Carahsoft waive and shall not assert any defenses they 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.

7. VMware and Carahsoft fully and finally release 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 VMware and Carahsoft, or either of them, 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 and the United States' investigation and prosecution thereof.

8. 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 VMware and Carahsoft, and their 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 of the matters covered by this Agreement;
- (3) VMware's and Carahsoft's investigation, defense, and corrective actions undertaken in response to the United

States' audit(s) and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);

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

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

10. Upon receipt of the Settlement Amount, the United States and the Relator shall promptly file a Joint Stipulation of Dismissal of claims asserted on behalf of the United States in the Civil Action pursuant to Rule 41(a)(1) with prejudice to the Relator, with prejudice to the United States as to the Covered Conduct, and without prejudice to the United States as to any other claims.

11. 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 to the extent Relator has a claim against VMware and Carahsoft under 31 U.S.C. § 3730(d).

12. 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.

13. 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 Eastern District of Virginia. 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.

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

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

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

17. This Agreement is binding on VMware's and Carahsoft's successors, transferees, heirs, and assigns.

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

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

20. Relator and Relator's counsel shall, within thirty days after dismissal of the Civil Action, certify to Defendants' counsel the destruction of documents and tangible materials of any type or nature produced by the Defendants, in paper and electronic form, that were received from the United States in connection with its investigation of the allegations advanced in the Civil Action. This includes any documents produced by the Defendants which Relator or Relator's counsel provided to any expert witnesses, consultants, or any other third party. This destruction requirement shall not apply to work product of Relator's counsel which summarizes or describes destroyed documents.

21. This Agreement is effective on the date of the last signatory affixes his or her signature to the Agreement (the "Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 6/23/15 BY: Benjamin C. Wei
Benjamin C. Wei
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____
Steven Gordon
Assistant United States Attorney
Eastern District of Virginia

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THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

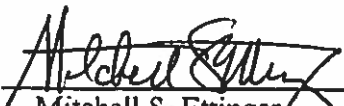
Benjamin C. Wei
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 6/22/15 BY: 

Steven Gordon
Assistant United States Attorney
Eastern District of Virginia

VMWARE, INC.

DATED: _____ BY: 
Dawn Smith
Senior Vice President, General Counsel

DATED: 22 June 2016 BY: 
Mitchell S. Ettinger
Counsel for VMware, Inc.

CARASOFT TECHNOLOGY CORP.

DATED: _____ BY: _____
Craig P. Abod
President
Carahsoft Technology Corp.


DATED: _____ BY: _____
Richard J. Conway
Counsel for Carahsoft Technology Corp.

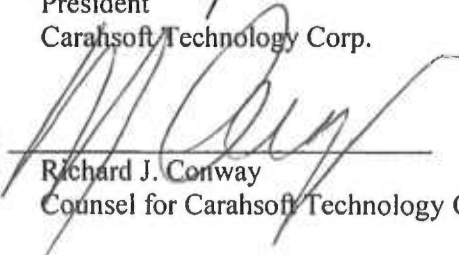
VMWARE, INC.

DATED: _____ BY: _____
Dawn Smith
Senior Vice President, General Counsel

DATED: _____ BY: _____
Mitchell S. Ettinger
Counsel for VMware, Inc.

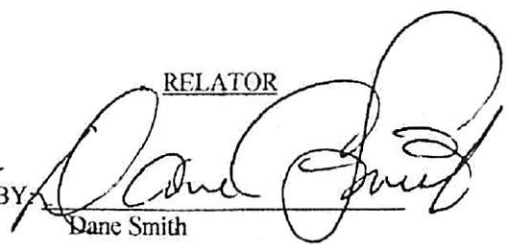
CARASOFT TECHNOLOGY CORP.

DATED: 6/22/15 BY: 
Craig P. Abod
President
Carahsoft Technology Corp.

DATED: 6/22/15 BY: 
Richard J. Conway
Counsel for Carahsoft Technology Corp.

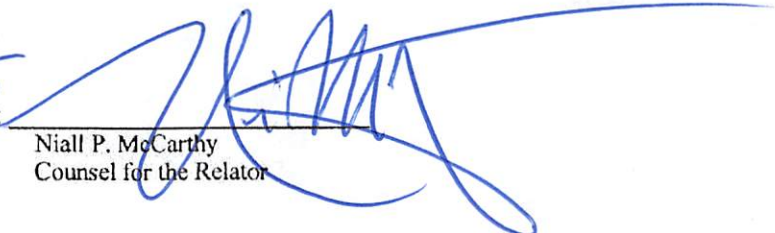
RELATOR

DATED: 6/18/15 BY:



Dane Smith

DATED: 6/19/15 BY:



Niall P. McCarthy
Counsel for the Relator

DATED: _____ BY: _____

Jeffrey F. Ryan
Counsel for the Relator

RELATOR

DATED: _____ BY: _____
Dane Smith

DATED: _____ BY: _____
Niall P. McCarthy
Counsel for the Relator

DATED: June 18, '15 BY: Jeffrey F Ryan
Jeffrey F. Ryan
Counsel for the Relator