

## **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 Departments of the Army and Air Force (collectively, the “United States”), MORSECORP, Inc. (“MORSE”), and relator Kevin Berich (“Relator”), through their authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

### **RECITALS**

A. MORSE is a privately held Massachusetts company with its principal place of business in Cambridge, Massachusetts. MORSE has entered into contracts with the Departments of the Army and Air Force.

B. On January 19, 2023, Relator filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned *United States ex rel. Berich v. MORSECORP, Inc., et al.*, No. 23-cv-10130-GAO (D. Mass.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“Civil Action”). On March 9, 2023, the United States served MORSE with a subpoena concerning its cybersecurity practices.

C. Defense Federal Acquisition Regulation Supplement (“DFARS”) clauses 252.204-7008 and 252.204-7012 require Department of Defense (“DoD”) contractors and subcontractors to provide adequate security on all covered contractor information systems by, at a minimum, implementing the security requirements specified by National Institute of Standards and Technology (“NIST”) Special Publication (“SP”) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” by not later than December 31, 2017. In addition, DFARS 252.204-7012 was amended, effective October 21, 2016, to mandate that any DoD contractor or subcontractor that “intends to use an external cloud service provider to

store, process, or transmit any covered defense information” in performance of the contract “shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline . . . and that the cloud service provider complies with requirements in paragraphs (c) through (g) of [DFARS 252.204-7012] for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.” DFARS 252.204-7012(b)(2)(ii)(D).

D. Effective November 30, 2020, DFARS clauses 252.204-7019 and 252.204-7020 required DoD contractors and subcontractors to post summary level scores of a current NIST SP 800-171 DoD assessment to the Supplier Performance Risk System (“SPRS”). Possible assessment scores range from a low of -203 to a high of 110.

E. MORSE admits, acknowledges, and accepts responsibility for the following facts:

(1) From January 1, 2018, to September 30, 2022, MORSE used a third-party company to provide software-as-a-service (“SaaS”) hosting of MORSE’s emails without requiring and ensuring that the third party met security requirements equivalent to the FedRAMP Moderate baseline and complied with the requirements in DFARS 252.204-7012(c)–(g).

(2) During the period of January 1, 2018, to February 28, 2023, MORSE had not fully implemented all cybersecurity controls in NIST SP 800-171, including controls that, if not implemented, could lead to significant exploitation of the network or exfiltration of controlled defense information and controls that, if not implemented, could have a specific and confined effect on the security of the network and its data.

(3) During the period of January 1, 2018, to January 21, 2021, MORSE did not have a consolidated written plan for each of its covered information systems describing system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems.

(4) On January 21, 2021, MORSE submitted to DoD in SPRS a summary level basic assessment score of 104 for its implementation of NIST SP 800-171 security controls. On May 2, 2022, MORSE engaged a third-party cybersecurity consultant to perform a gap analysis regarding its cybersecurity implementation. On July 27, 2022, the third-party cybersecurity consultant notified MORSE of its summary level score of -142 for its implementation of NIST SP 800-171 security controls. The cybersecurity consultant informed MORSE that approximately 22% of the NIST SP 800-171 controls were implemented and 78% not implemented or partially implemented, and proposed 13 technical plans of action and milestones (POAMs), 28 documentation POAMs, and 31 documentation and technical POAMs. After receiving the July 2022 third-party score, MORSE did not update its score in SPRS until June 15, 2023, when it submitted in SPRS a third-party score of 57, followed by third-party scores of 82 in October 2023 and 110 in May 2024.

F. The United States contends that it has certain civil claims against MORSE for submitting claims for payment to the Departments of the Army and Air Force between January 1, 2018 and February 28, 2023. The United States contends that those claims for payment were false or fraudulent because of the conduct described in Recital E above, in violation of DFARS 252.204-7008, 252.204-7012, 252.204-7019, and 252.204-7020 (referred to below as the “Covered Conduct”).

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.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

**TERMS AND CONDITIONS**

1. MORSE shall pay to the United States Four Million Six Hundred Thousand Dollars (\$4,600,000.00) plus interest accruing at a rate of four and one-eighth percent (4.125%) per annum from December 16, 2024, and continuing until and including the date of payment (collectively, "Settlement Amount"), of which Two Million Three Hundred Thousand Dollars (\$2,300,000.00) is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice, according to the following payment schedule: (a) Morse shall pay to the United States One Million Dollars (\$1,000,000.00) no later than fourteen (14) days after the Effective Date; and (b) Morse shall pay to the United States Three Million Six Hundred Thousand Dollars (\$3,600,000.00) plus accrued interest no later than sixty (60) days after the Effective Date.

2. Conditioned upon the United States receiving from MORSE each Settlement Amount payment in Paragraph 1 above, the United States shall pay to Relator by electronic funds transfer eighteen and a half percent (18.5%) of each such payment received under the Agreement (Relator's Share) as soon as feasible after receipt.

3. No later than 60 days after the Effective Date of this Agreement, MORSE shall pay \$198,616.00 to Relator's counsel, by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel, for expenses, attorneys' fees, and costs related to the Civil Action.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases MORSE 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.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relator, for himself/herself and for his/her heirs, successors, attorneys, agents, and assigns, releases MORSE from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733.

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, 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. Except as provided in Paragraph 3 above, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases MORSE, and its officers, agents, and employees, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Relator has asserted, or could have asserted, on or at any time prior to the Effective Date of this Agreement.

9. MORSE waives and shall not assert any defenses MORSE 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. MORSE 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 MORSE 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 Civil Action, the Covered Conduct, or the United States' investigation or prosecution thereof.

11. MORSE, its officers, agents, and employees, releases Relator, and his heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that MORSE has asserted, or could have asserted, on or at any time prior to the Effective Date of this Agreement.

12. 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 MORSE, 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) MORSE'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 MORSE makes to the United States pursuant to this Agreement and any payments that MORSE 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 MORSE, and MORSE 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 ninety (90) days of the Effective Date, MORSE shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by MORSE or any of its subsidiaries or affiliates from the United States. MORSE agrees that the United States, at a minimum, shall be entitled to recoup from MORSE 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 MORSE's books and records and to disagree with any calculations submitted by MORSE or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by MORSE, or the effect of any such Unallowable Costs on the amount of such payments.

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

14. Upon receipt of the Settlement Amount, 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).



15. Except as provided in Paragraph 3 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.

16. 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.

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 District of Massachusetts. 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 counsel 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 MORSE'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"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[SIGNATURE PAGE(S) FOLLOW]

**THE UNITED STATES OF AMERICA**

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

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

CHRISTOPHER TERRANOVA  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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

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

BRIAN LAMACCHIA  
JULIEN MUNDELE  
Assistant United States Attorneys  
District of Massachusetts

**MORSECORP, INC.**

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

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

ANDREAS KELLAS  
President

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

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

ANDY LIU  
LYNNE HALBROOKS  
Nichols Liu LLP  
Counsel for MORSECORP, Inc.

**RELATOR KEVIN BERICH**

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

BY: \_\_\_\_\_  
KEVIN BERICH

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

BY: \_\_\_\_\_  
BRUCE JUDGE  
DAVID LIEBERMAN  
Whistleblower Law Collaborative LLC  
Attorneys for Kevin Berich