

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 United States Small Business Administration (collectively, the “United States”), Zen Solutions, Inc. (“Zen”), and Bryan Quesenberry (“Quesenberry” or “Relator”) (collectively referred to as “the Parties”) through their authorized representatives.

RECITALS

- A. Zen is a corporation organized under the laws of Virginia and located at 3100 Clarendon Blvd. No. 200, Arlington, VA 22201.
- B. Zen provides staffing services in the fields of IT architecture, data analytics, cyber security, and the electronic discovery field.
- C. On April 13, 2020, Zen received an SBA-guaranteed Paycheck Protection Program (“PPP”) loan through Florida Capital Bank N.A. in the amount of \$181,055 (the “Florida Capital PPP Loan”). On April 28, 2020, Zen received an SBA-guaranteed PPP loan through Wells Fargo Bank, N.A. in the amount of \$192,727 (“Wells Fargo SBA PPP Loan”).
- D. SBA paid a total of \$9,636.35 in processing fees to Wells Fargo SBA Lending in connection with the Wells Fargo SBA PPP Loan disbursed to Zen.
- E. On September 7, 2020, Bryan Quesenberry filed a *qui tam* action in the United States District Court for the Eastern District of Virginia captioned *United States ex rel. Quesenberry v. Acorn Financial Advisory Services, Inc.*, Case No. 1:20-cv-1088, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that Zen unlawfully applied for and received two PPP

loans prior to December 31, 2020 and falsely certified, in the submitted applications for the PPP loans, that it would receive only one PPP loan prior to December 31, 2020.

F. The United States contends that it has certain civil claims against Zen arising from Zen's false certification in connection with the SBA-guaranteed Wells Fargo SBA PPP Loan. Specifically, when Zen applied for the Wells Fargo SBA PPP Loan, Zen certified that it would not receive more than one PPP loan prior to December 31, 2020. Zen, however, received both the Florida Capital PPP Loan and Wells Fargo SBA PPP Loan prior to December 31, 2020, and did not repay the duplicate Wells Fargo SBA PPP Loan back to the lender. That conduct is referred to below as the "Covered Conduct."

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

H. Relator claims entitlement to a share of the proceeds of this Settlement Agreement under 31 U.S.C. § 3730(d).

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. Zen shall pay to the United States \$31,226.53 ("Settlement Amount"), of which \$9,636.35 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Virginia no later than 10 days after the date of this Agreement.

2. Zen agrees to refrain from requesting loan forgiveness from SBA for the Wells Fargo SBA PPP Loan and shall extinguish the SBA guarantee on the loan by

repaying the Wells Fargo SBA PPP Loan in keeping with the terms of its promissory note, except that Zen shall fully repay the loan no later than 12 months after the date of this Agreement. Zen cannot modify the dates by which the payments set forth in Paragraph 1 and this Paragraph are due through any existing or future agreement with Wells Fargo.

3. In the event that Zen fails to complete the payments set forth in Paragraphs 1 or 2 by the dates upon which they are due, Zen shall be in Default of its payment obligations (“Default”). Upon Default, the United States will provide Zen, through its legal counsel or other representative previously designated by Zen, by electronic mail a written Notice of Default, and Zen shall have an opportunity to cure such Default within three business days from the date the Notice of Default is sent by counsel for the United States. If Zen fails to cure the Default within three business days from the date the Notice of Default is sent by the United States, the difference between the amount paid by Zen under Paragraph 1 and \$31,226.53 shall become immediately due and payable, and interest on such amount shall accrue at the rate of 10 percent per annum, compounded daily from the date of Default. In addition, the amount of any SBA guarantee paid in connection with the Wells Fargo PPP Loan shall be trebled and become immediately due and payable to the United States, and interest on such amount shall accrue at the rate of 10 percent per annum, compounded daily from the date the guarantee is paid by the United States.

4. Upon execution of this Settlement Agreement, Zen shall enter into a Consent Judgment with the United States in the form attached as Attachment A. The United States shall not file the Consent Judgment unless Zen is in uncured Default as

defined above. Zen agrees not to contest any offset imposed and not to contest any Consent Judgment and/or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States. At its sole option, in the event of uncured Default as defined above, the United States alternatively may rescind this Agreement as to Zen and bring any civil and/or administrative claim, action, or proceeding against Zen for the claims that would otherwise be covered by the releases provided herein. If the United States opts to rescind this Agreement in the event of uncured Default as defined above, Zen agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (a) filed by the United States against Zen within 180 days of written notification to Zen that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the particular date when the Civil Action referenced in Recital Paragraph E was filed.

5. Conditioned upon the United States receiving the payment set forth in Paragraph 1, the United States shall pay to Relator, by electronic funds transfer, fifteen percent of each payment made by Zen pursuant to Paragraph 1 (“Relator’s Share”). No other relator share payments shall be made under this Agreement.

6. Subject to the exceptions in Paragraph 9 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Zen 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 payment by mistake, unjust enrichment, and fraud.

7. Upon execution of this Agreement and the United States' receipt of the Settlement Amount, the Small Business Association ("SBA") shall make the necessary correction to the federal tax identification number ("EIN") on file in the SBA's electronic loan servicing portal, E-Tran, for Zen on the Florida Capital PPP Loan, in order to allow Zen to apply for forgiveness of the Florida Capital PPP Loan. Whether or not Zen is eligible for forgiveness of the Florida Capital PPP Loan will be determined by the SBA pursuant to the relevant PPP requirements for loan forgiveness, and the United States takes no position in this Agreement as to whether the Florida Capital PPP Loan is eligible for forgiveness.

8. Subject to the exceptions in Paragraph 9 below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Zen 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.

9. Notwithstanding the releases given in Paragraph 6 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 this Agreement, any administrative liability or enforcement right, 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; and
- f. Any liability of individuals.

10. 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.

11. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Zen, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

12. Zen waives and shall not assert any defenses Zen 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.

13. Zen 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 Zen 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 or the United States' investigation or prosecution thereof.

14. Zen fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Zen 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.

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

16. This Agreement is intended to be for the benefit of the Parties only.
17. 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 against Zen in the Civil Action pursuant to Rule 41(a)(1).
18. 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 into 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 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.
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 Zen'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: this 3rd day of February, 2022

By: Jared S. Wiesner
Jared Wiesner
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: this 2nd day of February, 2022

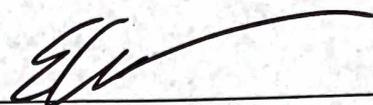
By: Kristin S. Starr
Kristin S. Starr
William Hochul III
Assistant United States Attorneys
U.S. Attorney's Office, Eastern District
of Virginia

ZEN SOLUTIONS, INC.

Dated: this 31 day of January, 2022

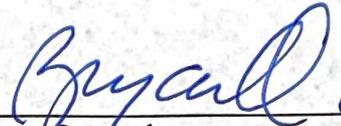
By: Sokha Kim
Sokha Kim
CEO and Founder, Zen Solutions, Inc.

Dated: this 31 day of January, 2022

By: 
Eugene Gorokhov
Counsel for Zen Solutions, Inc.

RELATOR – BRYAN QUESENBERRY

Dated: this 3 day of Feb., 2022

By: 
Bryan Quesenberry
Pro Se Relator