

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “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 Marine Corps (USMC) (collectively, the “United States”), Navistar Defense, LLC (“Navistar Defense”) and Navistar International Corporation (“NIC”) (collectively, “Navistar”), and Duquoin Burgess (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. NIC is a publicly traded corporation incorporated under the laws of Delaware, has its principal place of business in Lisle, Illinois. Its subsidiary, Navistar, Inc., produces commercial trucks and other vehicles.

B. Navistar Defense, formerly an indirect subsidiary of NIC, is a limited liability company incorporated under the laws of Delaware and has a principal place of business in Melrose Park, Illinois. Navistar Defense manufactures military vehicles for the United States and other countries out of its manufacturing center in West Point, Mississippi and a distribution center in Springfield, Ohio.

C. Relator Duquoin Burgess is a former government contracts manager for Navistar Defense.

D. In January 2007, the USMC awarded Navistar Defense Contract No. M67854-07-D-5032 (the “Contract”) to manufacturer Mine-Resistant Ambush Protected vehicles (“MRAPs”). Subsequently, the USMC and Navistar entered into negotiations to modify the Contract, including to install an upgraded independent suspension system

(“ISS”) on the MRAPs. In March 2010, the USMC awarded Contract Modification No. 2 (the “ISS Modification”) to Navistar Defense.

E. On September 25, 2013, Duquoin Burgess filed a *qui tam* action in the United States District Court for the District of Columbia captioned *United States ex rel. Duquoin Burgess v. Navistar International, LLC, et al.*, No. 13-cv-01463, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator filed his Amended Complaint on November 1, 2019. Relator’s original Complaint and his Amended Complaint shall be referred to collectively as the “Relator’s Complaints.”

F. The United States partially intervened in the Civil Action on September 11, 2019, and filed the United States’ Complaint in Partial Intervention on December 3, 2019 (“United States’ Complaint”). In the United States’ Complaint, the United States alleges that Navistar Defense, *inter alia*, provided false and misleading information and documentation of prior sales history in order to support an inflated price for specific ISS parts.

G. The United States contends that it has certain civil claims against Navistar Defense arising from the conduct described in the United States’ Complaint. That alleged conduct, along with the claims and theories in the United States’ Complaint, is referred to below as the “United States’ Covered Conduct.”

H. Relator contends that he has a right under the *qui tam* provision of the False Claims Act to pursue certain civil claims on behalf of the United States against Navistar arising from the alleged conduct, claims and theories described in Relator’s

Complaints. The conduct, claims and theories alleged in Relator's Complaints is referred to below as the "Relator's Covered Conduct."

I. Navistar expressly denies the allegations in the Civil Action, including the Relator's Complaints and the United States' Complaint, and related to the United States' Covered Conduct and the Relator's Covered Conduct. This Agreement is not an admission of any wrongdoing or liability by Navistar.

J. This Agreement is not a concession by the United States or Relator that their claims are not well founded.

K. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this 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. Navistar shall pay to the United States fifty million dollars (\$50,000,000) (the "Settlement Amount"), of which twenty-five million dollars (\$25,000,000) is restitution, and interest on the Settlement Amount of .125% per annum from November 5, 2020, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the District of Columbia no later than (15) business days after either the Effective Date (defined below) of this Agreement or the receipt of the written payment instructions, whichever is later.

2. Conditioned upon the United States receiving the Settlement Amount, and as soon as feasible after receipt, the United States shall pay \$11,600,000 million to Relator by electronic funds transfer (“Relator’s Share”).

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Navistar, 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 claim the United States has for the United States’ Covered Conduct and the conduct alleged in Relator’s Amended Complaint 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.

4. Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Navistar, together with its predecessors, successors, assigns, shareholders, subsidiaries, businesses, affiliates, divisions, sister companies, owners, directors, officers, agents, employees, and counsel, from any action, in law or in equity, suits, debts, liens, contracts, agreements, covenants, promises, liability, obligations, claims, demands, rights of subrogation, contribution and indemnity, damages, loss, cost or expenses, direct or indirect, of any kind or nature whatsoever (including without limitation any claim Relator has on behalf of the United States under the False Claims Act. 31 U.S.C. §§ 3729-3733), known or unknown, fixed or contingent, state or federal,

under common law, statute or regulation, liquidated or unliquidated, claimed or concealed, and without regard to the date of occurrence, which Relator ever had, now has, may assert, or may in the future claim to have, against Navistar by reason of any act, cause, matter, or thing whatsoever from the beginning of time to the date hereof. Relator represents and warrants that he and his counsel are the exclusive owner of the rights, claims, and causes of action herein released and none of them have previously assigned, reassigned, or transferred or purported to assign, reassign or transfer, through bankruptcy or by any other means, any or any portion of any claim, demand, action, cause of action, or other right released or discharged under this Agreement except between themselves and their counsel. Notwithstanding the foregoing, this Agreement does not resolve Relator's right pursuant to 31 U.S.C. § 3730(d) to reasonable expenses necessarily incurred, plus reasonable attorneys' fees and costs relating to Relator's and the United States' Covered Conduct, the amount of which will be addressed separately by Relator, Relator's counsel, and Navistar.

5. Notwithstanding the releases given in Paragraph 3 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, 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 United States' Covered Conduct and the conduct alleged in Relator's Amended Complaint;

- 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 United States' Covered Conduct and the conduct alleged in Relator's Amended Complaint.

6. 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.

7. Navistar waives and shall not assert any defenses Navistar may have to any criminal prosecution or administrative action relating to the United States' Covered Conduct and the Relator's 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.

8. Navistar 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 Navistar 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 United States' Covered Conduct and the Relator's Covered Conduct, and the United States' investigation or prosecution thereof.

9. 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 Navistar, 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 criminal investigation(s) of the matters covered by this Agreement;
- (3) Navistar's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal 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 Navistar makes to the United States pursuant to this Agreement and any payments that Navistar 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 Navistar, and Navistar 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, Navistar shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Navistar or any of its subsidiaries or affiliates from the United States. Navistar agrees that the United States, at a minimum, shall be entitled to recoup from Navistar 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 Navistar's books and records and to disagree with any calculations submitted by Navistar or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Navistar, or the effect of any such Unallowable Costs on the amount of such payments.

10. Navistar agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Navistar 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. Navistar 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 United States' Covered Conduct and the Relator's Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

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

12. 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 the Civil Action pursuant to Rule 41(a)(1), in the form of Attachment A.

13. 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 provided in Paragraph 4 of this Agreement.

14. 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.

15. 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.

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

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

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

19. This Agreement is binding on Navistar's successors, transferees, heirs, and assigns.

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

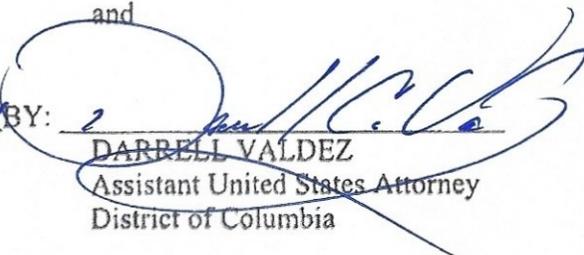
21. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

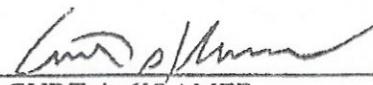
THE UNITED STATES OF AMERICA

DATED: May 27, 2021 BY:   
GARY NEWKIRK  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

and

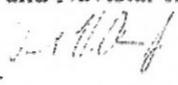
DATED: May 27, 2021 BY:   
DARBELL VALDEZ  
Assistant United States Attorney  
District of Columbia

NAVISTAR - DEFENDANT

DATED: May 27, 2021 BY:   
CURT A. KRAMER  
Senior Vice President and General Counsel  
Navistar International Corporation

DATED: May 27, 2021 BY: Ted Wright  
THEODORE WRIGHT  
Chief Executive Officer  
Navistar Defense, LLC

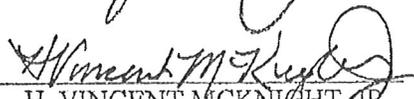
DATED: May 27, 2021 BY:   
DAVID R. HAZELTON  
ANNE W. ROBINSON  
Latham & Watkins LLP  
Counsel for Navistar Defense, LLC  
and Navistar International Corporation

DATED: May 27, 2021 BY:  \_\_\_\_\_

VINCENT COHEN  
Dechert LLP  
Counsel for Navistar Defense, LLC

DUQUOIN BURGESS - RELATOR

DATED: 26 May 2021 BY:   
DUQUOIN BURGESS

DATED: 27 May 2021 BY:   
H. VINCENT MCKNIGHT, JR.  
Sanford Heisler Sharp, LLP  
Counsel for Relator