

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between Igloo Products Corp. (“Igloo”), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (“IER”) (collectively “the Parties”).

### I. BACKGROUND

WHEREAS, by letter dated November 21, 2019, IER notified Igloo in writing that it had initiated an independent investigation, DJ# 197-74-643 (“IER Investigation”), to determine whether Igloo had a preference for hiring temporary nonimmigrant visa holders over U.S. workers based upon their citizenship status in violation of the Immigration and Nationality Act’s anti-discrimination provision, 8 U.S.C. § 1324b (“Act”).

WHEREAS, IER concluded based on the IER Investigation that reasonable cause exists to believe that from at least July 1, 2019, to September 10, 2019, Igloo discriminated against U.S. workers based on their citizenship status because of a preference to hire H-2B visa workers for its production helper positions, in violation of 8 U.S.C. § 1324b(a)(1)(B).

WHEREAS, IER and Igloo wish to resolve IER’s reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the IER Investigation as of the date of this Agreement, IER and Igloo agree as follows:

### II. TERMS OF AGREEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the “Effective Date.” The term of this Agreement is three years following the Effective Date (the “Term”).
2. Igloo shall pay civil penalties to the United States Treasury in the amount of \$21,000.00. Igloo shall pay the monies discussed in this Paragraph via the FedWire electronic fund transfer system within 15 days of either the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Igloo shall confirm via email to Jenna Grambort at Jenna.Grambort@usdoj.gov (or any other individual IER designates) that payment was made.
3. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Igloo any additional civil penalty for the discriminatory hiring and recruiting based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1)(B) that is the subject of the IER Investigation through the Effective Date.
4. Igloo shall not discriminate in hiring or recruitment on the basis of citizenship or immigration status in violation of 8 U.S.C. § 1324b.

5. Igloo shall set aside \$40,000.00 to compensate Qualified Individuals, as described below:
- a. A “Qualified Individual,” as described in this Paragraph, shall include any protected individual, as defined in 8 U.S.C. § 1324b(a)(3), who: (i) applied for a production position with Igloo between July 1, 2019, and September 10, 2019; (ii) met the minimum qualifications for the production helper position; (iii) was not considered for and/or offered employment in the production helper role by Igloo; (iv) was willing and able to accept such employment with Igloo had s/he been offered the position; and (v) if hired in another production role with a lower rate of pay than \$14.05/hour, and stopped working for Igloo before October 1, 2019, would have been willing to continue to work for Igloo through the seasonal period advertised if the rate of pay had been \$14.05/hour.
  - b. Within 15 days from the Effective Date, Igloo shall provide IER with the name and contact information (including e-mail addresses), position title (if applicable), date of hire (if applicable), rate of pay (if applicable), and date of termination (if applicable) for all domestic individuals who applied for any production positions with Igloo between July 1, 2019 and September 10, 2019.
  - c. Within 60 days from the Effective Date, IER will send a written notification of this Agreement (“Notice Letter”) (Attachment A) and an Applicant Back Pay Claim Form (“Claim Form”) (Attachment B) to all applicants Igloo has identified pursuant to Paragraph 5(b) who may be Qualified Individuals, and to any other applicants of whom IER is or becomes aware, to determine if they are Qualified Individuals entitled to receive compensation for lost wages due to Igloo’s alleged unfair employment practices. IER may also attempt to contact all applicants Igloo has identified pursuant to Paragraph 5(b), and any other applicants of whom IER is or becomes aware, by telephone.
  - d. Applicants who wish to be considered for back pay relief will have 45 days from the date of the Notice Letter to return or postmark the Claim Form to IER, unless an Applicant can demonstrate good cause (as determined by IER) for the failure to return or postmark a Claim Form by the specified deadline.
  - e. No later than 105 days from the date of the Notice Letter, IER will calculate and notify Igloo of the amount of back pay owed to each claimant IER determines to be a Qualified Individual. IER will perform this initial calculation using a formula that multiplies the hourly rate specified in the relevant labor certification application by the number of work hours specified in the contract period, and subtracts the pay that the Qualified Individual earned during the contract period (i.e., mitigation earnings), plus accumulated interest. If IER determines that a Qualified

Individual would have ended their employment in a production helper position with Igloo before the end of the contract period, IER shall reduce the number of hours in the contract period accordingly when calculating such Qualified Individual's back pay. Interest is calculated at the IRS underpayment rate, through the Effective Date. If the total amount of back pay that would be owed to Qualified Individuals exceeds \$40,000, IER shall calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount. The Parties agree that Igloo's total liability to Qualified Individuals under this Paragraph shall not exceed \$40,000.

- f. Within 30 days from the date on which IER notifies Igloo of its initial determinations regarding the amounts owed to each Qualified Individual pursuant to Paragraph 5(e), Igloo will notify IER in writing if Igloo disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documentation.
- g. If Igloo disagrees under Paragraph 5(f) with IER's back pay determination under Paragraph 5(e), IER will make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within 30 days of receiving Igloo's notice of disagreement under Paragraph 5(f), notify Igloo in writing of its final determinations. If necessary, IER's final determination will re-calculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid.
- h. If Igloo does not notify IER of any objections under Paragraph 5(f), IER's back pay determinations will become final 30 days from its initial back pay determinations under Paragraph 5(e). If Igloo notifies IER of any objections under Paragraph 5(f), IER's back pay determinations will become final 30 days from IER's final back pay determination under Paragraph 5(g). Igloo shall, within 14 days of the date that IER's back pay determination becomes final, send each Qualified Individual by first class mail and email a blank IRS Form W-4, applicable state tax forms, and a Back Pay Determination Letter (Attachment C) indicating the amount of back pay to be received. The Back Pay Determination Letter shall include a pre-paid self-addressed return envelope with sufficient postage and request that the Qualified Individuals return the completed IRS Form W-4 and applicable state tax forms to Igloo within 30 days. On the same day Igloo mails the Back Pay Determination Letters, Igloo shall email Jenna Grambort at Jenna.Grambort@usdoj.gov (or any other individual IER designates), copies of the letters and pre-paid self-addressed envelope it sends to each Qualified Individual.

- i. Within 14 days of Igloo's receipt of the signed IRS Form W-4 and any applicable state tax forms, Igloo shall send each individual, by certified mail or similarly reliable courier service, the back pay amount previously determined by IER, less any withholding required by law, accompanied by a payment transmittal notice. On the same day, Igloo shall send a copy of the check and payment transmittal notice to Jenna Grambort at Jenna.Grambort@usdoj.gov. Igloo shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. Igloo is responsible for paying any employer-side taxes or contributions due to the federal or state government based on the payments made to each Qualified Individuals pursuant to this Settlement Agreement. Igloo shall follow the applicable instructions contained in IRS Publication 957 and credit each Qualified Individual's back pay award to calendar quarters of the year when the back wages would have been earned.
  - j. All written communications from Igloo to Qualified Individuals relating to this Agreement shall be submitted to IER for prior review and approval.
  - k. Any remaining amount of the \$40,000 back pay fund that has not been distributed to Qualified Individuals pursuant to the process set forth in this Paragraph shall revert to Igloo.
6. For the Term, Igloo shall comply with all applicable H-visa recruiting obligations before employing H-2B visa workers for those positions, as well as supplemental recruiting requirements including, at a minimum, the following:
  - a. Igloo shall not close any of its H-2B related job orders until 21 days before the work start date and shall give all U.S. worker applicants who express interest through that date full consideration for both temporary and permanent production roles, unless the applicant expressly states that they are not interested in the temporary position;
  - b. Igloo shall respond within 5 days to all U.S. applicants who express interest in an advertised position directly, through a state workforce agency job bank, through an online job portal, or in any other manner, and give each job seeker full consideration for both temporary and permanent production roles, unless the job seeker expressly states that they are not interested in the temporary position;
  - c. Igloo shall post a job advertisement (or comparable notice of employment opportunity) on at least one online job portal no earlier than 45 days before the projected start date of work, and not remove such postings sooner than 21 days before the start date of work, or until all positions are filled by U.S. workers, whichever is earlier.

- d. Igloo shall continue to update its recruitment report after submitting it to DOL (as required by 20 C.F.R. §655.48(b)), and send a copy of each report to IER 14 days after the actual start date of the work described in each job order. No U.S. worker who applies or expresses interest at least 21 days prior to the work start date shall be rejected for hire unless there is a lawful job-related reason.
  - e. Igloo shall assess the results of its efforts to recruit U.S. workers within 14 days after the start date of the work associated with each job posting, and, during the next recruiting period, shall document and undertake any additional appropriate recruitment efforts it determines are likely to be effective to increase applications from qualified U.S. workers. If requested by IER, Igloo shall make its assessment and any additional recruitment efforts available to IER within 14 days.
7. Within 60 days of the Effective Date, Igloo shall review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship status and national origin in the recruitment, hiring, and firing processes. Igloo shall implement such policies with 75 days of the Effective Date.
8. During the Term, Igloo shall provide all draft revisions to its immigration-related and discrimination-related employment policies made pursuant to Paragraph 7, for IER review and approval under 8 U.S.C. 1324b, at least 15 days prior to the implementation date of such revisions.
9. During the Term, Igloo shall retain a copy of every job application submitted to Igloo, including but not limited to those accessible through a state workforce agency job bank that relate to a job advertised in an Igloo job order.
10. During the Term, if Igloo applies for H-2B labor certification or visas, Igloo shall keep a written record of the action(s) it took with respect to each application received, including whether or not the individual was successfully contacted, the dates and times of attempted contacts with the individual, as well as whether the individual was interviewed, offered a job, hired, or not selected, and the reason(s) for the non-selection. Igloo shall make at least three (3) telephonic attempts and one (1) written attempt (via email, U.S. mail or a combination of both, assuming a valid email or physical address is available) to contact any applicant who does not respond to Igloo's prior contact. Igloo shall continue to make the attempts described in this Paragraph until every position the applicants applied for has been filled by a qualified applicant selected consistent with 8 U.S.C. § 1324b, or 10 days before the position's start date, whichever occurs first.
11. During the Term, Igloo shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it provides to and/or receives from the U.S. Department of Labor and U.S. Citizenship and Immigration Services.

12. Within 90 days from the Effective Date, all of Igloo's employees, contractors, and agents with any responsibility for recruiting and/or hiring workers employed by Igloo, shall receive IER-provided training on their obligation to comply with 8 U.S.C. § 1324b.
  - a. The trainings shall consist of viewing a free remote IER employer webinar presentation, which IER shall provide on a date mutually agreeable to the Parties.
  - b. All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Igloo shall bear all costs associated with these training sessions.
  - c. During the term of this Agreement, all new staff hired or promoted by Igloo into positions with any responsibility for the activities listed above, after the training described in this Paragraph has been conducted, shall review a recorded version of the webinar within 60 days of hire or promotion.
  - d. Igloo shall confirm that the initial webinar participation required in Paragraph 11(a), and subsequent viewings of the webinar training required by Paragraph 11(c), have been completed by sending an email to Jenna.Grambort@usdoj.gov within 10 days of completion of each training session.
13. During the Term, IER reserves the right to make reasonable inquiries to Igloo as necessary to determine Igloo's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Igloo's premises, examine witnesses, and examine and copy Igloo's documents.
14. Nothing in this Agreement limits IER's right to inspect Igloo's Forms I-9 within 3 business days pursuant to 8 C.F.R. § 274a.2(b)(2)(ii).
15. If IER has reason to believe that Igloo is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Igloo of the potential violation without opening an investigation. Igloo will then have 30 days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems Igloo to be in violation of this Agreement.
16. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Igloo, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Igloo's employment practices.
17. This Agreement resolves any and all differences between the Parties with respect to Igloo relating to the IER Investigation, DJ # 197-74-643, through the Effective Date.

18. This Agreement may be enforced in the United States District Court for the Southern District of Texas. This Paragraph, or the initiation of a lawsuit to enforce the Agreement under this Paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement. For the purposes of an action to enforce this Agreement, the Parties agree that the obligations set forth in each and every provision of Part II of this Agreement are material.

### **III. OTHER TERMS**

19. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. Igloo and IER shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both Parties shall be deemed to have drafted it.
20. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that are the subject of the IER Investigation is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Agreement.
21. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
22. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter herein. Any modifications to the Agreement must be in writing and signed or affirmed by both parties.
23. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties shall be bound by facsimile signatures.

**Igloo Products Corp.**

By:

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*Robert Peak*  
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\_\_\_\_\_  
Robert Peak  
Chief Financial Officer

11/10/2021  
Dated: \_\_\_\_\_

**Immigrant and Employee Rights Section**

By:

\_\_\_\_\_  
Alberto Ruisanchez  
Deputy Special Counsel  
  
C. Sebastian Aloom  
Special Litigation Counsel  
  
Julia Heming Segal  
Jenna Grambort  
Trial Attorneys

Dated: \_\_\_\_\_