

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 Department of Education (collectively the “United States”) and Conduent Education Services, LLC, f/k/a Xerox Education Services, LLC, d/b/a ACS Education Services, LLC (collectively “CES”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. CES is a Delaware limited liability company with its principal place of business in Long Beach, California. At all times relevant, it was doing business as ACS Education Services, LLC, a California corporation with its principal place of business in Long Beach, California. CES was a contractor servicing Department of Education student loans for lenders under the Federal Family Education Loan Program (FFEL), 20 U.S.C. §§ 1071-1087-4. CES exited the student loan servicing business on September 1, 2019.

B. When it was acting as a loan servicer on FFEL loans, CES was required to reflect the impact of monthly student loan repayments, principal capitalization, and other changes to borrower accounts in the Department of Education’s Lender Reporting System (LaRS). The Department of Education used and relied on data that CES input into LaRS to make payments to and receive payments from FFEL lenders. CES certified on a quarterly basis that the LaRS billings were accurate.

C. The United States contends that it has certain civil claims against CES arising from CES’s servicing of Department of Education student loans under the FFEL

Program, for the following conduct: (1) during the period from January 2006 through December 2016, CES knowingly submitted, or caused to be submitted, false claims to the Department of Education resulting from CES's failure to make required financial adjustments to borrower accounts or packets of borrower accounts, following a request by a borrower to enter into a deferment or forbearance, participate in an income-based repayment plan, request reduced interest under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-596, or request certain other status changes; and (2) from August 13, 2008 through April 30, 2014, CES improperly treated some borrowers as eligible for military deferments, and then billed the Department for interest and/or special allowance payments for their lender clients based on that status. The United States contends that these errors caused incorrect billings to the Department of Education because a borrower's balance could be misstated, which would impact the amount of interest and special allowance payments paid by the Department of Education to CES and its lender clients over the life of the loans. The United States also contends that CES' errors in servicing loans and its submission of inaccurate data resulted in a loss to the United States. The conduct described in this paragraph is referred to below as the Covered Conduct.

D. Prior to this Agreement, the Department of Education and CES entered into a Remediation Plan and Addenda to partially resolve the LaRS billing errors described in Paragraph C(1) above. Pursuant to the Remediation Plan and Addenda, CES has paid \$1,442,000 to date.

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

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. CES shall pay to the United States a total of \$7,992,000 (Settlement Amount), of which \$4,675,000 is restitution, less a credit of \$1,442,000 previously paid to the United States pursuant to the Remediation Plan and Addenda described in Recital Paragraph D above. The remaining \$6,550,000 of the Settlement Amount (of which \$3,233,000 is restitution) shall be paid no later than ten (10) days after the Effective Date of this Agreement (as defined in Paragraph 17 below) by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases CES 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 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; 34 C.F.R. § 682.413 or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 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;
- f. Any liability of individuals.

4. CES waives and shall not assert any defenses CES 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.

5. CES 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 CES 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 and the United States' investigation and prosecution thereof.

6. 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 CES, 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) CES'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment CES makes to the United States pursuant to this Agreement,

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

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

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

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

11. This Agreement is governed by the laws of the United States. The exclusive 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.

12. This Agreement constitutes the complete agreement between the Parties.

This Agreement may not be amended except by written consent of the Parties.

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

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

15. This Agreement is binding on CES's successors, transferees, heirs, and assigns.

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

17. 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: 1/14/2022

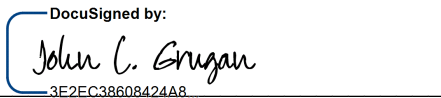
BY: 
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Mary Beth Hickcox-Howard
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

CONDUENT EDUCATION SERVICES, LLC f/k/a XEROX EDUCATION SERVICES, LLC d/b/a ACS EDUCATION SERVICES LLC

DATED: 1/13/2022

BY: 
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Stephen Wood
Chief Financial Officer
Conduent Education Services, LLC

DATED: 1/13/2022

BY: 
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John C. Grugan, Esq.
BALLARD SPAHR
Counsel for Conduent Education Services, LLC