

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOEL HOOD, ELIAS NEMIRI, GIDEON
BAUER, ELIZABETH GOLEC, and ALEXYS
TAYLOR, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

EDUCATIONAL COMPUTER SYSTEMS, INC.,

Defendant.

Master Docket No. 2:24-CV-00666-CCW

This Document Relates To: All Actions

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement,¹ dated as of the Signing Date, is made and entered into by and among the following Parties: Plaintiffs Joel Hood, Elias Nemiri, Gideon Bauer, Elizabeth Golec, and Alexys Taylor, individually and on behalf of the Settlement Class, and Defendant Educational Computer Systems, Inc., by and through their respective counsel of record. This Settlement Agreement is subject to Court approval and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On or around October 29, 2023, through on or about February 12, 2024, an unauthorized actor or actors perpetrated a criminal cyberattack on Defendant, targeting a feature known as the guest tax search functionality that was then available on Defendant's website. During the attack,

¹ Capitalized terms used throughout this Agreement are defined in Section IV.1.

the unauthorized actor(s) may have accessed certain Personal Information, including information contained on Plaintiffs' Form 1098-Es and 1098Ts, such as Plaintiffs' names, addresses, email addresses, school names, identifiers internal to Defendant, relevant dollar amounts (tuition paid, scholarships/grants received, or student loan interest paid), last four digits of Social Security number, and, in limited cases, full Social Security numbers. In or around March and April 2024, Defendant began sending notification letters to individuals potentially impacted by the Security Incident, including certain Plaintiffs and Settlement Class Members. Certain of Defendant's clients may also have sent notification letters regarding the Security Incident. Ultimately, according to Defendant's records, approximately 61,941 individuals may have had their full Social Security number accessed without authorization in the Security Incident. Defendant provided notice of the Security Incident directly to such individuals and also offered them two years of pre-paid credit-monitoring and identity-theft-restoration services. Defendant's records further indicate that an additional 2,516,053 individuals may have had some of their Personal Information accessed during the Security Incident, but not their full Social Security number.

On March 3, 2024, Plaintiff Joel Hood, individually and on behalf of all others similarly situated, filed a class action complaint in the United States District Court for the Western District of Pennsylvania (Case No. 2:24-cv-00666-CCW), asserting claims arising from the Security Incident. Two additional cases were filed against Defendant related to the Security Incident: (i) *Golec v. Educational Computer Systems, Inc.*, Case No. 2:24-cv-00699-CCW, and (ii) *Taylor v. Educational Computer Systems, Inc. d/b/a Heartland ECSI*, Case No. 2:24-cv-00903-CCW. On June 27, 2024, Plaintiffs moved to consolidate the related actions, and the Court granted that request and consolidated the cases on July 1, 2024 (ECF Nos. 16, 17).

On August 2, 2024, Plaintiffs, on behalf of the Settlement Class, filed a Consolidated Class Action Complaint (ECF No. 27). Defendant moved to dismiss that complaint on August 23, 2024, and Plaintiffs responded by filing their Consolidated Amended Class Action Complaint (ECF Nos.

28, 29, 30). In that Complaint, Plaintiffs asserted claims for: (i) negligence; (ii) breach of implied contract; (iii) unjust enrichment; (iv) invasion of privacy; and (v) declaratory relief. Defendant filed a motion to dismiss the Complaint under Rule 12(b)(1) and (b)(6) on September 27, 2024 (ECF Nos. 32, 33).

On May 2, 2025, the Court granted in part and denied in part Defendant's motion to dismiss, dismissing Plaintiffs' claims for breach of implied contract and invasion of privacy, but permitting the remainder of the claims to proceed (ECF Nos. 38, 39). Defendant answered the Complaint on May 23, 2025 (ECF No. 42). The Parties participated in the Rule 16 Conference with the Court on June 18, 2025 (ECF No. 46), and the Court issued a Case Management Order the same day, ordering that a mediation take place on or before October 8, 2025 (ECF No. 47). Following the Rule 16 Conference, the Parties engaged in formal and informal discovery. Plaintiffs served two separate sets of interrogatories and requests for production to Defendant, and Defendant served interrogatories and requests for production on Plaintiffs. In addition to formal discovery, the Parties engaged in informal discovery pursuant to Federal Rule of Evidence 408 to exchange pertinent information needed to fully evaluate the strengths and weaknesses of the claims and defenses.

On August 19, 2025, the Parties engaged in a full-day mediation session with Ms. Jill Sperber of Judicate West. Though the Parties did not reach a resolution during that mediation, the Parties continued to engage in settlement discussions. The Parties held two more mediation sessions with Ms. Sperber on September 22 and September 26. Though the Parties still did not reach an agreement during those mediation sessions, Ms. Sperber made a mediator's proposal on September 29, 2025, which was accepted by the Parties on October 1, 2025. The Parties memorialized the settlement in a term sheet executed on October 9, 2025.

The agreed-upon terms of the Parties' Settlement are memorialized in this Settlement Agreement, which was negotiated at arm's length, in good faith, and without collusion, by capable

and experienced counsel, with full knowledge of the facts, the law, and the inherent risks in the Litigation, and with the active involvement of the Parties and an experienced mediator.

II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLING

Plaintiffs believe the claims asserted in the Litigation have merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to litigate this action against Defendant through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Class Counsel, in consultation with Plaintiffs, have determined that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF ALLEGATIONS OF WRONGDOING AND LIABILITY

Defendant denies any and all allegations of wrongdoing, liability, or harm with respect to Plaintiffs, other Releasing Persons, or any other Person, and disclaims all liability relating to and arising out of the Litigation and the Security Incident. Defendant enters this Settlement Agreement solely to avoid further expense, inconvenience, and burden. Defendant denies that any Person has any right or claim whatsoever against Defendant arising from the Security Incident. Defendant also denies the suitability of the Litigation for litigation or certification as a class action, other than for purposes of settlement as set forth herein.

Nonetheless, without waiver and while reserving all rights, Defendant has considered the uncertainty and risks inherent in continued litigation and concluded that contesting the Litigation further could be protracted and expensive, so it is desirable and beneficial that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. This Settlement Agreement is for settlement purposes only. Neither this Settlement Agreement, nor any steps taken to carry out the terms herein, nor the fact of settlement or any settlement negotiations, are intended to be, nor may be deemed or construed to be, an admission

or concession of liability, of the validity or invalidity of any claim or defense, of any point of fact or law on the part of any Party, or of the suitability of the Litigation for litigation or certification as a class action. This Settlement Agreement may not be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing, fault, violation of law, or liability of any kind by Defendant, in any proceeding whatsoever.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and Defendant that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Parties and the Settlement Class Members, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

As used in this Settlement Agreement and in the attached exhibits, the following terms shall have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release.

1.2 “Alternative Cash Payment” means the payment described in Section IV.3.2(b) of this Agreement.

1.3 “Approved Claim” means the timely submission of a Claim Form by a Settlement Class Member that has been approved by the Settlement Administrator.

1.4 “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request for payment of attorneys’ fees, costs, disbursements, and compensation in the Litigation.

1.5 “Business Day” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the U.S. federal government.

1.6 “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1711, *et seq.*, to be served upon the appropriate state or federal officials. The CAFA Notice shall be prepared and issued by the Settlement Administrator, and all costs related to preparation and issuance of the CAFA Notice will be considered Costs of Settlement Administration to be paid solely from the Settlement Fund.

1.7 “Claim Deadline” means the final day of the Claims Period, by which a Claim Form must be either submitted electronically on the Settlement Website or mailed to the Settlement Administrator (with the postmark date evidencing mailing by the Claim Deadline).

1.8 “Claim Form” means the form(s) Settlement Class Members must submit to be eligible to receive benefits under the terms of the Settlement. The Claim Form is attached hereto as **Exhibit 1**.

1.9 “Claims Period” means the ninety (90) day period following the Notice Commencement Date during which Settlement Class Members must submit claims online or by mail.

1.10 “Class Counsel” means Nicholas A. Colella of Lynch Carpenter LLP and Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP.

1.11 “Class Member Information” means the name, last known postal address, and email address (if known) of each member of the Settlement Class that Defendant has in its possession.

1.12 “Class Representatives” or “Plaintiffs” means Joel Hood, Elias Nemiri, Gideon Bauer, Elizabeth Golec, and Alexys Taylor.

1.13 “Complaint” means the Consolidated Amended Class Action Complaint filed at ECF No. 30 in the Litigation.

1.14 “Costs of Settlement Administration” means all actual costs associated with or arising from Settlement Administration, the Notice Program, and the administration of requests for exclusion. All Costs of Settlement Administration shall be paid solely from the Settlement Fund.

1.15 “Court” means the United States District Court for the Western District of Pennsylvania, the Honorable Christy Criswell Wiegand presiding.

1.16 “Day(s)” means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further, and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday, or a holiday observed by the U.S. federal government, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday observed by the U.S. federal government.

1.17 “Defendant” or “ECSI” means Educational Computer Systems, Inc., and its past, present, and future parents, subsidiaries, affiliates, shareholders, associated entities, foundations, divisions, partners, partnerships, joint ventures, and departments, of any nature whatsoever, whether direct or indirect; each such entity’s respective past, present, and future directors, officers, trustees, fiduciaries, board members, agents, advisors, representatives, attorneys, employees, contractors, subrogees, insurers, and reinsurers; and the predecessors, predecessors-in-interest, successors, successors-in-interest, heirs, executors, administrators, devisees, and assigns of each of the foregoing.

1.18 “Defendant’s Counsel” or “ECSI’s Counsel” means King & Spalding LLP, 1180 Peachtree Street NE, Suite 1800, Atlanta, GA 30309.

1.19 “Effective Date” shall have the meaning specified in Section IV.10.1.

1.20 “Final Approval Hearing” means the hearing described in Section IV.4.5.

1.21 “Final Judgment Order” means the order of the Court that finally approves this Settlement Agreement, provides for the release of the Released Claims, makes such other final rulings as are contemplated by this Settlement Agreement, and orders final judgment of all claims in the Litigation. The Final Judgment Order may or may not include a ruling regarding the payment of any Service Awards and Class Counsel’s Attorneys’ Fees and Expenses Award.

1.22 “Litigation” means the litigation first filed in the United States District Court for the Western District of Pennsylvania, as *Hood v. Educational Computer Systems, Inc.*, Case No. 2:24-cv-00666-CCW, and all actions consolidated into or with that action.

1.23 “Long Form Notice” means the long form notice providing notice of the terms of the proposed Settlement to be posted on the Settlement Website, substantially in the form of **Exhibit 2** to this Settlement Agreement.

1.24 “Net Settlement Fund” refers to the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for the payment from the Settlement Fund for (i) the Costs of Settlement Administration; (ii) Taxes and Tax-Related Expenses; (iii) any Service Awards approved by the Court; and (iv) any Attorneys’ Fees and Expenses Award approved by the Court.

1.25 “Notice Program” means the plan described in Section IV.4.3 for disseminating notice to Settlement Class Members of the terms of this Settlement Agreement, their rights regarding the same, Settlement related deadlines, and the Final Approval Hearing.

1.26 “Notices” means the Long Form Notice (**Exhibit 2**) and the Short Form Notice (**Exhibit 3**).

1.27 “Notice Commencement Date” means forty-five (45) Days after the entry of the Preliminary Approval Order.

1.28 “Objection Date” means the date by which a Settlement Class Member’s objection to the Settlement must be either (i) filed with the Court or (ii) postmarked by mailing to the Court

for filing. The Objection Date, to be set by the Court in the Preliminary Approval Order, shall be sixty (60) Days after the Notice Commencement Date, or as otherwise set by the Court.

1.29 “Opt-Out” means a Person who submits valid and timely notice of their intent to exclude themselves from the Settlement Class and not be a Settlement Class Member, as described in Section IV.5.1.

1.30 “Opt-Out Date” means the date by which requests by Settlement Class Members for exclusion from the Settlement Class must be postmarked by mailing to the Settlement Administrator for such requests to be timely. The Opt-Out Date, to be set by the Court in the Preliminary Approval Order, shall be sixty (60) Days after the Notice Commencement Date, or as otherwise set by the Court.

1.31 “Opt-Out List” means the list created by the Settlement Administrator including all timely and valid requests for exclusion, as described in Section IV.9.1.

1.32 “Out-Of-Pocket Losses” shall have the meaning specified in Section IV.3.2(a).

1.33 “Parties” means Plaintiffs and Defendant.

1.34 “Parties’ Counsel” means Class Counsel and Defendant’s Counsel.

1.35 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.36 “Personal Information” means name, address, email address, school name, internal identifier used to link a student record to the appropriate tax documents, relevant dollar amounts (tuition paid, scholarships/grants received, or student loan interest paid), and/or partial or full Social Security number.

1.37 “Preliminary Approval Order” means the Court’s order preliminarily approving this Settlement Agreement and ordering that notice be provided to the Settlement Class. The Parties’ proposed form of the Preliminary Approval Order is attached to this Settlement Agreement as **Exhibit 4**.

1.38 “Post Loss Payment Net Settlement Fund” shall have the meaning specified in Section IV.3.3.1.

1.39 “Released Claim(s)” shall mean any and all past, present, and future claims (including Unknown Claims), actual and potential causes of action, demands, damages, debts, liabilities of any nature, remedies, proceedings, actions, suits, allegations, decrees, judgments, duties, obligations, losses, rights, matters, issues, assertions of wrongdoing, any demand for injunctive relief or any other type of equitable or legal relief, and controversies of any kind, whether class, individual, or otherwise in nature, including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, whether known or unknown, suspected or unsuspected, asserted or unasserted, discovered or undiscovered, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, concealed, or hidden, and any other form of legal or equitable relief that was asserted at any time before the Effective Date, could have been asserted at any point before the Effective Date, or could be asserted at any point on or after the Effective Date by any Releasing Person (including any Person acting or purporting to act on a Releasing Person’s behalf) with respect to any Released Person arising out of or relating to the Security Incident, including, without limitation, all such claims that arise out of or relate to any of the facts, acts, omissions, transactions, and occurrences that have been alleged or could have been alleged in the Complaint or Litigation in relation to any Released Person. Released Claims shall not include the right of any Releasing Person or any Released Person to enforce the terms of this Settlement Agreement, and shall not include the claims of individuals

who have timely and validly requested exclusion from the Settlement Class pursuant to Section IV.5.1.

1.40 “Released Person(s)” means Defendant and its past, present, and future parents, subsidiaries, affiliates, shareholders, associated entities, foundations, divisions, partners, partnerships, joint ventures, and departments, of any nature whatsoever, whether direct or indirect; each such entity’s past, present, and future directors, officers, trustees, fiduciaries, board members, agents, advisors, representatives, attorneys, employees, contractors, subrogees, insurers, and reinsurers; and the predecessors, predecessors-in-interest, successors, successors-in-interest, heirs, executors, administrators, devisees, and assigns of each of the foregoing.

1.41 “Releasing Person(s)” means each and every Settlement Class Member, including without limitation the Plaintiffs, as well as each and every Settlement Class Member’s respective heirs, beneficiaries, devisees, transferees, legatees, executors, administrators, trustees, conservators, guardians, administrators, estates, representatives, agents, predecessors, predecessors-in-interest, successors, successors-in-interest, and assigns.

1.42 “Security Incident” means the criminal cyberattack on Defendant that began on or around October 29, 2023 and continued through on or around February 12, 2024, and through which an unauthorized actor or actors may have accessed the Personal Information of Settlement Class Members.

1.43 “Service Awards” shall have the meaning specified in Section IV.8.2.

1.44 “Settlement” means the settlement set forth in this Settlement Agreement.

1.45 “Settlement Administration” means the distribution of notice processing of claims, distribution of payments to Settlement Class Members, and any other activities or tasks to be performed by the Settlement Administrator as set forth in this Agreement or as ordered by the Court.

1.46 “Settlement Administrator” means the class action settlement administrator retained by Class Counsel to carry out all Settlement Administration. Subject to Court approval, Class Counsel have selected Angeion Group, LLC as Settlement Administrator. Angeion Group, LLC is a company experienced in administering class action settlements generally and specifically those in data breach litigation.

1.47 “Settlement Class” means all Persons residing within the United States whose Personal Information was potentially accessed in the Security Incident. The Settlement Class shall not include the judge to whom the Litigation is assigned and any member of the judge’s staff or immediate family; any Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge; and any individual who timely and validly requests exclusion from the Settlement.

1.48 “Settlement Class Member(s)” means all Persons within the defined Settlement Class who do not timely and validly request exclusion from the Settlement Class pursuant to Section IV.5.1.

1.49 “Settlement Fund” means an amount equal to Six Million Five Hundred Thousand Dollars (\$6,500,000.00), which shall be used to pay for: (i) Approved Claims to Settlement Class Members as provided in Section IV.3.2; (ii) Costs of Settlement Administration; (iii) any Service Awards approved by the Court; and (iv) any Attorneys’ Fees and Expenses Award approved by the Court.

1.50 “Settlement Payment” means the payment made by Defendant to establish the Settlement Fund, as described in Section IV.2.1.

1.51 “Settlement Website” shall have the meaning specified in Section IV.4.3(b).

1.52 “Short Form Notice” means the short form notice providing notice of the terms of the proposed Settlement, substantially in the form of **Exhibit 3** to this Settlement Agreement, to

be sent via email and/or single postcard by USPS to Settlement Class Members. The Short Form Notice will direct recipients to the Settlement Website where recipients may view the Long Form Notice. The Short Form Notice will also inform the Settlement Class, *inter alia*, of the Claim Deadline, Opt-Out Date, and Objection Date.

1.53 “Signing Date” means the date of the last-in-time Party signature to this Agreement.

1.54 “Tax and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by any government authority (including any estimated taxes, interest, or penalties) arising in any jurisdiction with respect to the income or gains earned by or in respect to the Settlement Fund.

1.55 “United States” means all states and territories of the United States, including the District of Columbia.

1.56 “Unknown Claim(s)” means any Released Claim that any Releasing Person does not know or suspect to exist at the time of the release of the Released Persons that, if known by the Releasing Person, might have affected his or her decision whether or not to enter into this Settlement and to release any Released Claims as to any Released Persons, or might have affected the Releasing Person’s decision whether or not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, the Releasing Persons intend to and shall be deemed to have, and by operation of the Final Judgment Order shall have, released any and all Released Claims, including Unknown Claims, as set forth in Section IV.7.4.

1.57 “USPS” means the United States Postal Service.

2. Settlement Fund

2.1 In consideration for the releases contained in this Settlement Agreement, including without limitation as set forth in Section IV.7, without waiver and in complete reservation of all rights, within fifteen (15) Business Days after entry of the Preliminary Approval Order, Defendant

will make an initial payment of Three Hundred Thousand United States Dollars (\$300,000.00) into the Settlement Fund to cover initial Costs of Settlement Administration. Within fifteen (15) Days after the Effective Date, Defendant will pay the remaining Six Million Two Hundred Thousand United States Dollars (\$6,200,000.00) into the Settlement Fund. The Settlement Administrator shall provide wiring instructions and all information necessary to effectuate payment from Defendant within three (3) Days of the Preliminary Approval Order. Except as otherwise expressly set forth in this Settlement Agreement, the payments set forth in this paragraph shall be Defendant's sole payment obligations with respect to the Settlement. In no event shall Defendant have any obligation whatsoever to make any payment, distribution, or contribution, or incur any cost, expense, or liability, related to the Settlement, Settlement Administration, or any other aspect of this Settlement Agreement, or to Plaintiffs, the Settlement Class, Class Counsel, or the Settlement Administrator, in excess of the Settlement Payment.

2.2 The Settlement Fund shall be used for the purposes specified in Sections IV.3, IV.4, IV.8, and IV.9.

2.3 Following its payment of the Settlement Fund monies as described in Section IV.2.1 of this Agreement, Defendant shall have no responsibility, financial obligation, or liability whatsoever with respect to investment of Settlement Fund monies, payment of federal, state, and local income, employment, unemployment, excise, and any other Taxes and Tax-Related Expenses, penalties, interest, or other charges related to Taxes and Tax-Related Expenses imposed on the Settlement Fund or its disbursements, or the payment of any administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund.

3. Settlement Benefits

3.1 Only Settlement Class Members who submit Approved Claims during the Claims Period will receive a payment under the Settlement. The Claims Period will run for ninety (90) Days after the Notice Commencement Date. Settlement Class Members may submit a Claim Form

to the Settlement Administrator electronically through the Settlement Website or by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked before midnight on the Claim Deadline (*i.e.*, the final day of the Claims Period). All Claim Forms must be submitted during the Claims Period and in the manner set forth in this Agreement. In its discretion, to be reasonably exercised, the Settlement Administrator will review all Claim Forms submitted. Claim Forms will be reviewed for timeliness, completeness, plausibility, and reasonable traceability to the Security Incident. The Settlement Administrator may require supplementation of a completed Claim Form or additional information needed to validate or audit a claim. To the extent that a Settlement Class Member fails to provide any supplementation or additional information as requested by the Settlement Administrator, the Settlement Administrator may determine that the Settlement Class Member failed to submit a valid claim and therefore reject that claim. Decisions of the Settlement Administrator as to the validity of any claims are final and cannot be appealed.

3.2 The Settlement Administrator shall pay Approved Claims from the Net Settlement Fund in the following manner:

- a) Reimbursement of Out-Of-Pocket Losses. Settlement Class Members will be able to submit a claim for reimbursement of unreimbursed “Out-Of-Pocket Losses,” up to a total of Five Thousand United States Dollars (\$5,000.00) per Settlement Class Member. Settlement Class Members must submit reasonable documentation in support of their claims for Out-Of-Pocket Losses. Such documentation may not be “self-prepared.” Self-prepared documents, such as handwritten receipts, are, by themselves, insufficient to receive reimbursement, and claims based on such documents will be rejected by the Settlement Administrator. Out-Of-Pocket Losses recoverable under the Settlement include:

- i. Proven monetary losses that were more likely than not caused by the Security Incident and which occurred between October 29, 2023, and the Claim Deadline;
- ii. Out-of-pocket expenses incurred as a result of the Security Incident (to be determined by the Settlement Administrator with no right of appeal), including bank fees, long distance phone calls, cell phone charges (only if charged by the minute), data charges (only if based on the amount of data used), postage, or gasoline for local travel;
- iii. Fees for credit reports, credit monitoring, or other identity theft services or insurance purchased between October 29, 2023, and the Claim Deadline; or
- iv. Any other loss that is:
 - a. is an actual, documented, and unreimbursed monetary loss;
 - b. more likely than not caused by the Security Incident; and
 - c. occurred between October 29, 2023, and the Claim Deadline.

b) Alternative Cash Payment. In lieu of claiming compensation for Out-of-Pocket Losses under Section IV.3.2(a), Settlement Class Members may elect to receive a one-time payment of approximately One Hundred United States Dollars (\$100.00) (subject to a *pro rata* reduction or increase depending on the total number of Approved Claims submitted) without the need to document losses incurred as a result of the Security Incident.

3.3 Payments to Settlement Class Members who submit Approved Claims for Settlement benefits under Section IV.3.2 will be paid as follows:

3.3.1 The Settlement Administrator will first apply the Net Settlement Fund to pay for all Approved Claims for Out-of-Pocket Losses. The amount of the

Net Settlement Fund remaining after all Approved Claims for Out-of-Pocket Losses are applied and the payments for the same are made shall be referred to as the “Post Loss Payment Net Settlement Fund.”

3.3.2 The Settlement Administrator shall utilize the Post Loss Payment Net Settlement Fund to pay all Approved Claims for the Alternative Cash Payment. The amount of each Alternative Cash Payment shall be calculated by dividing the Post Loss Payment Net Settlement Fund by the total number of Approved Claims for Alternative Cash Payment.

3.4 Dispute Resolution.

3.4.1 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has timely provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Out-Of-Pocket Losses described above; and (3) with respect to claims for Out-Of-Pocket Losses, the information submitted could lead a reasonable person to conclude that more likely than not the claimant suffered the claimed losses as a result of the Security Incident.

3.4.2 The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflect valid Out-of-Pocket Losses actually incurred that were more likely than not caused by the Security Incident but may consult with the Parties’ Counsel in making individual determinations. Out-of-Pocket Losses will be presumed to have been more likely than not caused by the Security Incident if: (1) the timing of the losses occurred on or after October

29, 2023; and (2) the information used to commit identity theft or fraud consisted of the same type of Personal Information that was potentially accessed in the Security Incident.

3.4.3 The Settlement Administrator is authorized to contact any Settlement Class Member to seek clarification regarding a submitted claim prior to making a determination as to its validity. Out-of-Pocket Losses are not eligible for reimbursement to the extent a Settlement Class Member has already been reimbursed for the same expense by any other source, including any compensation provided in connection with the credit monitoring product previously offered by ECSI to certain Settlement Class Members.

3.4.4 To the extent the Settlement Administrator determines a claim for Out-of-Losses is deficient in whole or in part, within a reasonable time of making such a determination, but no later than fourteen (14) Days after the Claim Deadline, the Settlement Administrator is authorized to (but not required to) contact the Settlement Class Member via telephone or email in an attempt to informally resolve the deficiency prior to sending a formal deficiency notice. If the deficiency is not resolved in this manner, the Settlement Administrator shall formally notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) Days to cure the deficiencies. Such notifications shall be sent via email, unless the claimant did not provide an email address with their Claim Form, in which case such notifications shall be sent via USPS.

3.4.5 If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of

that determination within ten (10) Days of making it. The Settlement Administrator may consult with the Parties' Counsel prior to making such determinations. The Settlement Administrator's decision will be final.

3.5 Settlement Class Members will be provided the option to receive a payment due to them pursuant to terms of this Agreement via various digital methods, *e.g.*, PayPal or Venmo. In the event Settlement Class Members do not exercise this option, they will receive their payment via physical check sent by USPS.

3.6 All payments for Approved Claims shall be made within forty-five (45) Days after the Effective Date. If such payments are distributed via mailed checks, all such checks shall be void one hundred eighty (180) Days after issuance and shall bear the language: "This check must be cashed within one hundred eighty (180) Days, after which time it is void." If a check becomes void, requests for re-issuance need not be honored by the Settlement Administrator. If any amount remains in the Settlement Fund after all issued checks have become void, the Parties will instruct the Settlement Administrator to make a second distribution of those funds in equal amounts to all Settlement Class Members who redeemed or cashed their initial payments. If, however, the residual amount in the Settlement Fund is insufficient to permit a second payment amount of at least Five United States Dollars (\$5.00) to all such Settlement Class Members, then the Parties shall instruct the Settlement Administrator to make a *cy pres* payment by donating all remaining funds to an entity mutually agreed upon by the Parties and approved by the Court.

4. Order of Preliminary Approval and Providing of Notice

4.1 As soon as practicable after the Signing Date, and no later than 10 days following the Signing Date, Class Counsel shall submit this Settlement Agreement to the Court as part of a motion for preliminary approval of the Settlement requesting entry of a Preliminary Approval Order in the form substantially similar to **Exhibit 4** and seeking, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to Section IV.4.6;
- b) preliminary approval of this Settlement Agreement as set forth herein;
- c) appointment of Class Counsel as Settlement Class counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of the Short Form Notice to be emailed or mailed to Settlement Class Members in a form substantially similar to the one attached as **Exhibit 3** to this Settlement Agreement;
- f) approval of the Long Form Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit 2** to this Settlement Agreement, which, together with the Short Form Notice, shall include a fair summary of the Parties' respective litigation positions; statements that the Settlement and notice of Settlement are legitimate and that the Settlement Class are entitled to benefits under the Settlement; the general terms of the Settlement; instructions for how to object to or request exclusion from the Settlement; the process and instructions for making claims to the extent contemplated herein; Settlement related deadlines; and the date, time, and place of the Final Approval Hearing;
- g) appointment of Angeion Group, LLC as the Settlement Administrator.

4.2 The Claim Form and Notices may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to these documents may also be made by agreement of the Parties prior to dissemination of notice.

4.3 The Settlement Fund shall be used to pay for notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with all other Costs of Settlement Administration. Notice shall be provided to the Settlement Class by the Settlement Administrator as follows:

- a) Class Member Information: No later than twenty (20) Days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Member Information. The Class Member Information shall be deemed confidential and used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. The Class Member Information will be stored securely at all times by the Settlement Administrator. Except to administer the Settlement as provided in this Settlement Agreement or upon written approval provided by the Parties, the Settlement Administrator shall not reproduce, copy, store, share, or distribute in any form, electronic or otherwise, the Class Member Information, including without limitation to Class Counsel. The Settlement Administrator shall delete all information associated with the Litigation, including the Class Member Information, when it no longer has a legal requirement to retain such data.
- b) Settlement Website: Prior to the dissemination of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website, at a URL agreed to by the Parties, that will inform Settlement Class Members of the terms of this Agreement; their rights, dates, and deadlines; and related Settlement information. The Settlement Website shall include, in PDF format and available for download, the following: (i) the Claim Form; (ii) the Long Form Notice; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the Complaint; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall be activated by the Notice Commencement Date and shall remain active, maintained, and updated by the Settlement Administrator until one hundred eighty (180) Days after the Effective Date.

- c) Short Form Notice: By the Notice Commencement Date, the Settlement Administrator will begin providing the Short Form Notice to the Settlement Class. Subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator will provide the Short Form Notice to the Settlement Class as follows:
- i) Via email to those Settlement Class Members for whom the Settlement Administrator has an email address;
 - ii) If no email address is available, via USPS mail to the Settlement Class Member's last known postal address. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Settlement Class Members through the USPS National Change of Address database to update any change of address on file with the USPS;
 - iii) In the event that a Short Form Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall resend the Short Form Notice to the forwarding address within seven (7) Days of receiving the returned Short Form Notice;
 - iv) In the event that subsequent to the first mailing of a Short Form Notice, and at least fourteen (14) Days prior to the Opt-Out Date and Objection Date, a Short Form Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender" and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular

member of the Settlement Class in question and, if such an address is ascertained, the Settlement Administrator will resend the Short Form Notice within seven (7) Days of receiving such information. This shall be the final requirement for mailing.

- d) On or before the Notice Commencement Date, the Settlement Administrator shall establish a toll-free help line with a live operator to provide Settlement Class Members with additional information about the Settlement, including copies of the Long Form Notice, as well as this Settlement Agreement, upon request; and
- e) Contemporaneously with seeking final approval of the Settlement, Class Counsel and the Settlement Administrator shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

4.4 The Claim Form, the Notices, and other applicable communications to the Settlement Class may be adjusted by the Settlement Administrator so long as (i) the Parties agree to any such adjustments and (ii) such adjustments are not inconsistent with the Preliminary Approval Order.

4.5 Consistent with Federal Rule of Civil Procedure 23(e)(2), Class Counsel shall request that the Court hold a hearing no fewer than one hundred sixty (160) Days after the Preliminary Approval Order is issued at which the Court will consider whether to grant final approval of the Settlement. Class Counsel shall file a motion for final approval at least ten (10) Days before the Final Approval Hearing (or at such other time as ordered by the Court).

4.6 The Parties agree, for purposes of this Settlement only, to the certification of the Settlement Class. If the Settlement is not approved by the Court, or if this Settlement Agreement is terminated or canceled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and

the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Party's position on the issue of class certification or any other issue. The Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved.

5. Opt-Out Procedures

5.1 Each Person wishing to request exclusion from the Settlement Class shall personally sign (with a physical signature) and timely submit a written notice to the Settlement Administrator of such intent by mailing it with a postmark by the Opt-Out Date to a designated post office box established by the Settlement Administrator. To be effective, the written request for exclusion must include the following: (i) the requestor's full name, postal address, and email address; (ii) the requestor's personal, physical signature; (iii) the case name and number of this Litigation, *Hood v. Educational Computer Systems, Inc.*, Case No. 2:24-cv-00666-CCW; and (iv) a statement that clearly manifests the requestor's intent to be excluded from the Settlement Class for purposes of this Settlement. To be effective, written notice must be postmarked no later than the Opt-Out Date. Requests for exclusion must be on an individual basis, and no Person may request exclusion on behalf of any other individual. Requests seeking exclusion on behalf of more than one Settlement Class Member shall be deemed invalid by the Settlement Administrator.

5.2 Opt-Outs shall not (i) be entitled to, nor shall they receive, any benefits provided to Settlement Class Members as set forth herein; (ii) be bound by the terms of this Settlement Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to or appeal from any aspect of the Settlement.

5.3 All Persons otherwise falling within the definition of the Settlement Class who do not request exclusion from the Settlement Class in the manner set forth in Section IV.5.1 shall be

bound by the terms of this Settlement Agreement, the Final Judgment Order entered thereon, and any other related orders of the Court.

6. Objection Procedures

6.1 Each Settlement Class Member desiring to object to this Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall contain: (i) the objector's full name, postal address, and email address; (ii) the case name and number of this Litigation, *Hood v. Educational Computer Systems, Inc.*, Case No. 2:24-cv-00666-CCW; (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (*e.g.*, a copy of the objector's settlement notice, a copy of an original notice of the Security Incident, or a statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a statement of whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) a written statement of all grounds for the objection, accompanied by any legal or factual support for the objection the objector believes applicable; (vi) the identity and contact information (including name, phone number, and email address) of any and all counsel representing the objector in connection with the objection; (vii) a statement whether the objector will appear at the Final Approval Hearing (and if so, whether personally or through counsel); and (ix) the objector's signature or the signature of the objector's duly authorized attorney. To be timely, written notice of an objection in the appropriate form must be (i) submitted to the Court either by filing it electronically or in person by the Objection Date or (ii) mailed, with a postmark date no later than the Objection Date, to each of (a) the Clerk's Office of the United States District Court for the Western District of Pennsylvania, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Pittsburgh, PA 15219; (b) Class Counsel; and (c) Defendant's Counsel.

6.2 In addition to the foregoing requirements, if an objecting Settlement Class Member or his or her counsel intends to speak at the Final Approval Hearing, the written objection must

include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

6.3 Any Settlement Class Member who fails to comply with the requirements for objecting in Section IV.6.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to this Settlement Agreement, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to this Settlement Agreement shall be through the provisions of Section IV.6.1. Without limiting the foregoing, any challenge to this Settlement Agreement or the Final Judgment Order approving this Settlement Agreement shall be pursuant to appeal under the Federal Rules of Appellate and Civil Procedure and not through a collateral attack.

7. Releases

7.1 Upon the Effective Date, and in consideration of the good and valuable consideration set forth in this Agreement, each Releasing Person shall be deemed to have, and by operation of the Final Judgment Order shall have, fully, finally, and forever waived, acquitted, released, relinquished, and discharged all Released Persons from all Released Claims, including, without limitation, Unknown Claims, to the fullest extent permitted by law. Further, upon the Effective Date, and to the fullest extent permitted by law, each Releasing Person shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any other capacity whatsoever, be permanently barred and forever enjoined from commencing, prosecuting, or participating in any recovery or in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the Released Claims is asserted.

7.2 Upon the Effective Date, and in consideration of the good and valuable consideration set forth in this Agreement, each Releasing Person shall be deemed to have, and by

operation of the Final Judgment Order shall have, covenanted and agreed that they shall not, at any point on or after the Effective Date, sue or otherwise seek to assert or establish any claim or liability of any kind whatsoever against any of the Released Persons based, in whole or in part, upon any of the Released Claims.

7.3 Upon the Effective Date, and in consideration of the good and valuable consideration set forth in this Agreement, each Releasing Person shall be deemed to have, and by operation of the Final Judgment Order shall have expressly acknowledged and agreed (i) it is possible that other injuries, damages, losses, consequences, or results arising from or relating to the Security Incident are not currently known by Releasing Persons and may arise, develop, exist, or be discovered in the future; and (ii) the Released Claims are expressly intended to and do cover and include without limitation all such future injuries, damages, losses, consequences, and results.

7.4 Upon the Effective Date, and in consideration of the good and valuable consideration set forth in this Agreement, each and every Releasing Person shall be deemed to have, and by operation of the Final Judgment Order shall have, expressly, knowingly, and intentionally waived, released, relinquished, and discharged, to the fullest extent permitted by law, any and all provisions, rights, benefits, and protections conferred by Cal. Civ. Code § 1542 and any statute, principle of common law, or enactment in any jurisdiction that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Releasing Persons acknowledge that they may discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true, and Releasing Persons further acknowledge the possibility that they will later discover Unknown Claims arising out of or related

to the Security Incident. Nevertheless, Releasing Persons intend for the releases set forth in this Agreement to be binding and extend to all Released Claims, including without limitation Unknown Claims. The Parties acknowledge, and Releasing Persons shall be deemed by operation of the Final Judgment Order to have acknowledged, that the provisions of this Section and the inclusion of “Unknown Claims” in the definition of Released Claims were separately bargained for and are material elements of the Settlement and this Settlement Agreement.

7.5 The Class Representatives covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any Released Claim, or the facts and circumstances relating thereto, against any of the Released Persons; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action based on or relating to any Released Claim or the facts and circumstances relating thereto, against any of the Released Persons; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any Released Claim against any of the Released Persons.

7.6 The Parties agree that the Released Persons will suffer irreparable harm if any Settlement Class Member takes action inconsistent with this Section IV.7, and that in that event, the Released Persons may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

8. Class Counsel’s Attorneys’ Fees and Expenses; Service Awards to Class Representatives

8.1 Within forty-five (45) Days after the Notice Commencement Date, Class Counsel will move the Court for an award of their reasonable attorneys’ fees incurred in the Litigation in an amount not to exceed one third (1/3) of the Settlement Fund, and reimbursement of documented

costs and expenses. The amount of the Attorneys' Fees and Expenses Award shall ultimately be determined by the Court. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel.

8.2 Subject to Court approval, Class Counsel will move the Court for Service Awards to the Class Representatives of up to Two Thousand Five Hundred (\$2,500.00) each. The amount of the Service Awards shall ultimately be determined by the Court.

8.3 It is not a condition of this Settlement Agreement that any particular amount of attorneys' fees, costs, or expenses or Service Awards be approved by the Court, or that such fees, costs, expenses, or awards be approved at all. Any order or proceeding relating to the amount of any award of attorneys' fees, costs, or expenses or Service Awards, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Settlement Agreement, in whole or in part, or affect or delay the finality of the Final Judgment Order and final judgment of and release of all claims in the Litigation.

8.4 If awarded by the Court, the Settlement Administrator shall pay from the Settlement Fund any Attorneys' Fees and Expenses Award and any Service Awards for the Class Representatives, as set forth in Sections IV.8.1 and IV.8.2 in the amounts awarded by the Court within thirty (30) Days after the Effective Date.

9. Administration of Settlement

9.1 The Settlement Administrator shall perform the functions specified in this Agreement and any other functions approved by the Court. In addition to other responsibilities that are described elsewhere in this Agreement the duties of the Settlement Administrator shall include: (i) reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members; (ii) establishing a reasonably practical procedure, using information obtained from ECSI pursuant to Section IV.4.3(a) to verify that claimants are Settlement Class Members; (iii) establishing and maintaining a post office box for receiving requests for exclusion from the

Settlement Class; (iv) establishing and maintaining a Settlement Website; (v) responding to Settlement Class Member inquiries via USPS, email, and telephone; (vi) establishing a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries and answering the questions of Settlement Class members who call with or otherwise communicate such inquiries; (vii) paying Taxes and Tax-Related Expenses; (viii) receiving and processing all written requests for exclusion from the Settlement Class and providing copies thereof to the Parties' Counsel; (ix) within five (5) Business Days after the Opt-Out Date, providing a final report to the Parties' Counsel summarizing the number of written requests for exclusion and any other information requested by the Parties' Counsel; (x) after the Effective Date, processing and transmitting distributions to Settlement Class Members; (xi) prior to the Final Approval Hearing, preparing and executing an affidavit or declaration to submit to the Court that identifies each Settlement Class Member who timely and validly requested exclusion from the Settlement Class; and (xii) performing any other functions that the Parties jointly agree are necessary to accomplish Settlement Administration.

9.2 As specified in Section IV.1.14, all Costs of Settlement Administration incurred by the Settlement Administrator or otherwise in connection with administering the Settlement shall be paid from the Settlement Fund. For the avoidance of doubt, Defendant shall not under any circumstances be responsible for any Costs of Settlement Administration (aside from funding the Settlement Fund as provided for herein).

9.3 The Settlement Administrator shall provide the Parties' Counsel with weekly reports of all claims, distributions, and payments from the Settlement Fund. The Parties' Counsel shall have the right to obtain and review further supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate.

9.4 No Person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, the Class Representatives, or Defendant's Counsel based on any distribution or payment from the Settlement Fund.

9.5 Neither the Parties nor the Parties' Counsel shall have any liability whatsoever with respect to any alleged act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement.

9.6 The Settlement Administrator shall indemnify and hold harmless the Parties and the Parties' Counsel for any liability arising from any alleged act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement.

9.7 Within ten (10) Days following Plaintiffs' filing of this Agreement with the Court, the Settlement Administrator, on behalf of the Defendant, shall cause the CAFA Notice to be served upon the appropriate state or federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice shall be Costs of Settlement Administration and paid from the Settlement Fund.

9.8 The Settlement Payment provided by Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved "qualified settlement fund" pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account insured by the Federal Deposit Insurance Corporation at a financial institution approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process.

9.9 All Settlement Fund monies shall be deemed to be in the custody of the Court until such time as the monies shall be disbursed pursuant to this Agreement or further order of the Court.

9.10 No amounts may be withdrawn from the Settlement Fund unless (i) authorized by this Agreement or (iii) otherwise approved by the Court.

9.11 Upon or before establishment of the interest-bearing account described in Section IV.9.8, the Settlement Administrator shall apply for an employer identification number for the account utilizing IRS Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide Defendant with that employer identification number on a properly completed and signed IRS Form W-9.

9.12 The Settlement Administrator shall file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(l) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement, or understanding with the Settlement Administrator relating to the Settlement Fund shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the Settlement Fund, all required federal, state, and local tax returns, information returns, including, but not limited to any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

9.13 All Taxes and Tax-Related Expenses relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Cost of Settlement Administration, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and the Parties' Counsel.

10. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

10.1 The Effective Date shall mean one (1) Business Day after all of the following events occur: (i) the Parties execute this Agreement; (ii) the Court enters a Preliminary Approval Order; (iii) the Notice Program is completed; (iv) the Settlement is finally approved by the Court; and (v) the time to appeal or seek permission to appeal from the Final Judgment Order has expired or, if appealed, any appeal has been dismissed in its entirety, or the Final Judgment Order has been affirmed in its entirety by the court of last resort to which such appeal may be taken and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any Attorneys' Fees and Expenses Award or Service Awards made in this case shall not affect the occurrence or calculation of the Effective Date.

10.2 If the Court does not approve this Settlement Agreement or the Effective Date does not occur for any reason, this Settlement Agreement shall be canceled and terminated unless the Parties' Counsel mutually agree in writing to proceed with this Settlement Agreement or an amended settlement.

10.3 ECSI may, in its sole discretion, terminate this Agreement upon five (5) Business Days' written notice to Class Counsel if (i) the Parties fail to obtain and maintain Preliminary Approval consistent with the material provisions of this Settlement Agreement, and after negotiating in good faith, the Parties are unable to modify the Settlement in a manner to obtain and maintain Preliminary Approval; (ii) if one percent (1%) or more of the Settlement Class Members submit timely and valid requests for exclusion by the Opt-Out Date; (iii) the Court fails to enter a Final Judgment Order under the provisions of this Settlement Agreement; (iv) the Settlement of the Settlement Class claims, or the Final Judgment Order, is not upheld on appeal; or (v) the Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement.

10.4 In the event that this Settlement Agreement or the releases set forth herein are not approved by the Court, the Effective Date does not occur for any reason, or the Agreement is terminated under Section IV.10.3 above: (i) within ten (10) Business Days of receiving notice of a termination event from Class Counsel or ECSI's Counsel, the Settlement Administrator shall pay to ECSI an amount equal to the Settlement Fund, together with any interest or other income earned thereon, less (a) any Taxes or Tax-Related Expenses paid or due with respect to such income and (b) any reasonable and necessary Costs of Settlement Administration already incurred and paid or payable from the Settlement Fund pursuant to the terms of this Agreement; (ii) the Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any of the Parties or the Parties' Counsel; (iii) the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose; and (iv) any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as null, void, and vacated, *nunc pro tunc*, and shall not be used in or cited by any Person in support of claims or defenses or in support or in opposition to a future class certification motion in connection with any further proceedings in the Litigation or in any other action, lawsuit, arbitration, or other proceeding involving a Released Claim. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of the Attorneys' Fees and Expenses Award and/or the Service Awards shall constitute grounds for cancellation or termination of this Settlement Agreement.

11. Representations and Warranties

11.1 Each Party represents that: (i) such Party has the full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval; (ii) such Party is voluntarily entering into the Agreement as a result of arm's-length negotiations conducted by its

counsel; (iii) such Party is relying solely upon its own judgment, belief, and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; (iv) such Party has been represented by, and has consulted with, the counsel of its choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and has been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein; (v) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party; (vi) except as provided herein, such Party has not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Agreement; (vii) each of the Parties assumes the risk of mistake as to facts or law; (viii) this Agreement constitutes a valid, binding, and enforceable agreement; and (ix) no consent or approval of any Person is necessary for such Party to enter into this Agreement.

11.2 The Settlement Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Persons, and further covenant that they will not assign or otherwise transfer any interest in any of the Released Claims against any of the Released Persons.

11.3 The Settlement Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

12. Notices

12.1 All notices to Class Counsel provided for in this Agreement shall be sent by email or First Class mail to the following

Nicholas Colella
LYNCH CARPENTER LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
nickc@lcllp.com

Nickolas J. Hagman
CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP
135 S. LaSalle Street, Ste. 3210
Chicago, IL 60603
nhagman@caffertyclobes.com

12.2 All notices to Defendant or Defendants' Counsel provided for in this Agreement shall be sent by email or First Class mail to the following:

David Balser
Robert Griest
KING & SPALDING LLP
1180 Peachtree Street, N.E., Ste. 1600
Atlanta, GA 30309
dbalser@kslaw.com
rgriest@kslaw.com

12.3 The notice recipients and addresses designated in this Section may be changed by written notice posted to the Settlement Website.

13. Miscellaneous Provisions

13.1 The Parties (i) acknowledge that it is their intent to consummate this Agreement and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement, as permitted and in accordance with applicable law.

13.2 The Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. Each Party agrees that the Settlement was negotiated in good faith by the Parties and

reflects a Settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such Party determines to be appropriate, any contention made in any public forum (other than in the Litigation itself) that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

13.3 Neither this Settlement Agreement, nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Persons may file this Settlement Agreement and/or the Final Judgment Order in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13.4 This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

13.5 The recitals in Sections I, II, and III, and all exhibits to this Settlement Agreement are a material part of the Settlement and are incorporated and made a part of this Agreement.

13.6 Except as otherwise expressly set forth herein, this Settlement Agreement, including all exhibits hereto, contains the entire understanding between the Parties regarding settlement of the Litigation and supersedes all previous negotiations, agreements, commitments, understandings, and writings between the Parties related to settlement of the Litigation. Aside from the express provisions of this Agreement, the Parties each acknowledge that they have not relied

upon any representation or statement made by any other Party or Person with respect to the subject matter, basis, and effect of this Agreement.

13.7 The Parties agree that this is a compromise of disputed claims and neither party is a prevailing party. The Parties agree that they will not assert or claim to be a prevailing party in the Litigation. The Parties shall each be responsible for their own attorney's fees and costs, except as specified in this Agreement.

13.8 Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

13.9 The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

13.10 The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and the Parties' Counsel. Each Party and its counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any Party and any canon of contract interpretation to the contrary shall not be applied.

13.11 The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

13.12 Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such

provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

13.13 Class Counsel, on behalf of the Settlement Class, are expressly authorized by the Class Representatives to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to this Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

13.14 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

13.15 Scanned signatures, electronic signatures, or signatures sent by email or facsimile shall be as effective as original signatures.

13.16 Transmission of a signed Agreement by electronic mail shall constitute receipt of an original signed Agreement by mail.

13.17 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties to it.

13.18 The Parties and the Parties' Counsel believe this Agreement is a fair and reasonable compromise of the disputed claims and in the best interest of the Parties. The Parties have arrived at this Agreement as a result of extensive arm's-length negotiations.

13.19 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Settlement

Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of this Agreement and shall retain jurisdiction for the purpose of enforcing all terms of this Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

13.20 As used herein, “he” means “he, she, they, or it;” “his” means “his, hers, theirs, or its,” and “him” means “him, her, them, or it.”

13.21 This Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the Commonwealth of Pennsylvania, and the rights and obligations of the Parties to this Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the Commonwealth of Pennsylvania without reference to its choice of law principles.

13.22 All dollar amounts are in United States Dollars (USD).

13.23 The Parties agree and acknowledge that this Agreement carries no precedential value.

13.24 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement, including but not limited to those relating to all information exchanged for purposes of mediation or under the auspices of Federal Rule of Evidence 408. The Parties and their counsel further agree that they shall not use any of the documents and information provided to them during the course of the Litigation for any purpose other than accomplishing the terms and conditions of this Settlement Agreement.

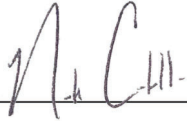
13.25 Except as expressly provided for herein, no government agency or official can claim any rights or credit under this Agreement or Settlement, whether with respect to the alleged conduct that is the subject of the releases in Section IV.7 or the funds (or remainder of funds) paid or used in the Settlement.

13.26 The attached Appendix A compiles the material dates and deadlines established by this Agreement. Appendix A is provided for convenience and should not be interpreted to alter the substance of this Agreement in any way.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed
this Settlement Agreement and Release by the duly authorized representatives set forth below.

Class Counsel

By: 

Nicholas A. Colella
LYNCH CARPENTER LLP

By: _____

Nickolas J. Hagman
**CAFFERTY CLOBES MERIWETHER &
SPRENGEL LLP**

Plaintiffs/Class Representatives

By: _____

Joel Hood

By: _____

Elias Nemiri

By: _____

Gideon Bauer

By: 

Elizabeth Golec

By: _____

Alexys Taylor

Defendant's Counsel

By: _____

Robert D. Griest
KING & SPALDING LLP

Defendant Educational Computer Systems, Inc.

By: _____

Printed Name: _____

Title: _____

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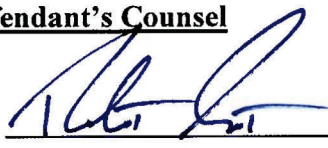
By: _____

Elizabeth Golec

By: _____

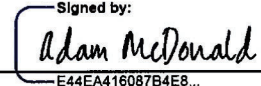
Alexys Taylor

Defendant's Counsel

By:  _____

Robert D. Griest
KING & SPALDING LLP

Defendant Educational Computer Systems, Inc.

By:  _____
PL E44EA416087B4E8...

Printed Name: Adam McDonald

Title: President

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Class Counsel

By: _____

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LYNCH CARPENTER LLP

By:  _____

Nickolas J. Hagman
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Defendant's Counsel

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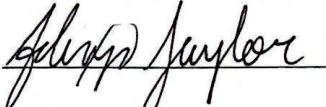
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