

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into by and between the United States of America, acting through the United States Department of Justice, Office of the United States Attorney for the District of New Jersey, (collectively "United States") and Educational Testing Service ("ETS"), a nonprofit corporation headquartered in Princeton, New Jersey, through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the United States and ETS ("the Parties") agree to the following:

A. The United States contends that it has civil causes of action against ETS for violations of the False Claims Act, 31 U.S.C. §§ 3729 et seq., and for common law remedies, arising from allegations, investigated by the United States Department of Education ("Department of Education"), Office of Inspector General, that ETS, during the period 1999 to 2008, improperly billed the Department of Education for unfunded post-retirement medical benefits on contracts ETS had with the Department of Education (hereinafter referred to as the "Covered Conduct").

B. ETS denies that it is liable to the United States on

such alleged causes of action.

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

D. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties have reached a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. ETS agrees to pay to the United States \$1.4 million (the "Settlement Amount") within ten (10) days of this Agreement. The payment of the Settlement Amount in full to the United States shall be made by electronic funds transfer pursuant to written instructions to be provided by the undersigned attorneys for the United States. In the event ETS fails to pay the Settlement Amount in the manner and within the time frame described above, the United States may, at its option: a) declare ETS to be in default and may take any action necessary to enforce the terms of this Agreement; or b) file a civil action alleging that ETS violated the False Claims Act, 31 U.S.C. §§ 3729 et seq., and/or is liable under common law theories for the Covered Conduct. If the United States is required to take legal action to collect the full Settlement Amount under this Agreement, ETS shall pay to the United States all reasonable costs and fees. Should the United

States choose to file a civil action alleging that ETS has violated the False Claims Act, 31 U.S.C. §§ 3729 et seq., and/or is liable under common law theories for the Covered Conduct, ETS agrees that the period of time between November 19, 2010, and May 20, 2011, or 20 days after the effective date of this Agreement, whichever period is longer, shall be excluded when determining whether any such claims are time-barred by statute of limitations, laches or any other time related defenses.

2. Subject to the exceptions in Paragraph 4 below and conditioned upon the full payment of the Settlement Amount, in the manner set forth in Paragraph 1, the United States releases ETS, and the present and former parents, subsidiaries, affiliates and successors of ETS, and their present and former officers, directors and employees, if acting within the scope of their employment, from any civil monetary claim based upon the Covered Conduct that the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729 et seq.; the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 et seq.; the anti-fraud section of the Contract Disputes Act, 41 U.S.C. § 604; any other statute creating causes of action for civil damages or civil penalties that the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, § 0.45(d) (1999); or common law remedies.

3. ETS fully and finally releases, compromises, acquits and

forever discharges the United States, its agencies, officers, agents, employees, and contractors (and their employees) from any and all claims, causes of action, adjustments, and set-offs of any kind which ETS could have asserted, or might assert in the future, against the United States, its agencies, officers, agents, employees, and contractors (and their employees) arising out of or pertaining to the Covered Conduct, including the United States' investigation, prosecution, or settlement thereof.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement, as to any entity or person, are the following:

a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Any administrative action or liability, including any debarment action;

d. Any liability to the United States for any conduct other than the Covered Conduct;

e. Any liability based upon such obligations as are created by the execution of this Agreement; and

f. Except as explicitly stated in this Agreement, any liability of any other individuals or entities.

5. All costs (as defined in the Federal Acquisition Regulations 31.205-47) incurred by or on behalf of ETS in

connection with a) the matters covered by this Agreement, b) the United States' audit(s) and investigation of the matters covered by this Agreement, c) ETS's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation in connection with the matters covered by this Agreement (including attorney's fees), (d) the negotiation and performance of this Agreement, and (e) the payment(s) made to the United States pursuant to this Agreement shall be "unallowable costs" for government contract accounting purposes. These unallowable costs shall be separately determined and accounted for by ETS, and ETS will not charge such unallowable costs directly or indirectly to any contracts with the United States or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by ETS or any of their subsidiaries to the United States. ETS further agrees that within 90 days of the effective date of this Agreement it will identify to the United States any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests, already submitted by ETS, or any of its subsidiaries or affiliates, and will request, and agree, that such costs reports, cost statements, information reports, or payment requests, even

if already settled, be adjusted to account for the effect of the inclusion of unallowable costs. ETS agrees that the United States, at a minimum, will be entitled to recoup from ETS any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, Office of the United States Attorney for the District of New Jersey. The United States reserves its rights to disagree with any calculations submitted by ETS or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on ETS's or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs in this Paragraph.

6. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other individual, employee, or entity, except to the extent provided for specifically herein.

7. Except as expressly provided in this Agreement, the Parties will bear their own legal and other costs incurred in

connection with this matter, including the preparation and performance of this Agreement.

8. The Parties agree that this Agreement is governed by the laws of the United States.

9. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between or among the Parties under this Agreement will be in the United States District Court for the District of New Jersey.

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

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

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

13. This Agreement is binding on the successors, transferees and heirs of ETS.

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

15. This Agreement is effective on the date of the signature of the last signatory to the Agreement ("Effective Date").

16. Facsimiles of signatures shall constitute acceptable,

binding signatures for purposes of this Agreement.

17. Neither the United States nor ETS shall be considered to be the drafter of this Agreement or any of its provisions for the purposes of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement or its provisions.

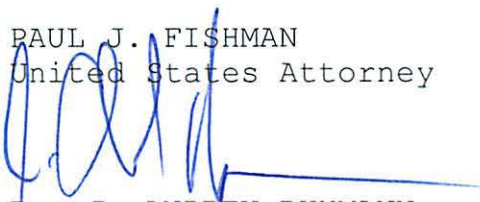
18. The individual signing this Agreement on behalf of ETS represents and warrants that he is authorized by ETS to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacity and that they are authorized to execute this Agreement.

19. The illegality or unenforceability of any non-dependent provision, or any part of any non-dependent provision, of this Agreement shall not affect or impair the validity, legality or enforceability of any other non-dependent provision or any part of any non-dependent provision.

20. ETS represents that it has entered into this Agreement freely and voluntarily.


For the United States of America:

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Dated: 5/17/11

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Dated: 5/16/2011