

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Veterans Affairs (collectively the “United States”) and Five Point Enterprises, LLC (5PE) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Until 2021, 5PE was a for-profit company based in Austin, Texas that operated vocational schools offering non-college degree programs under a series of franchise agreements with New Horizons Franchising Group, Inc. and/or other affiliates of New Horizons, Inc. 5PE sought and received approval from the Department of Veterans Affairs (“VA”) to enroll veteran students in its non-college degree programs under the Post-9/11 Veterans Educational Assistance Act of 2008, 38 U.S.C. §§ 3301–27 (“Post-9/11 GI Bill”). The Post-9/11 GI Bill provides educational assistance benefits for eligible veterans and members of the armed services who enroll in qualified education or training programs. The VA remits tuition and fees directly to schools and provides veteran students a monthly housing allowance and stipend for books and supplies.

B. The United States contends that it has certain civil claims against 5PE arising from 5PE submitting, or causing to be submitted, reimbursement claims to the VA for Post-9/11 GI Bill educational assistance benefits for courses offered at the following locations listed below during the applicable relevant time period:

<i>Facility Code</i>	<i>School Name</i>	<i>Time Period</i>
25019006	New Horizons CLC of Colorado (Denver)	January 1, 2015 – December 31, 2020
25021742	New Horizons CLC Memphis	January 1, 2018 – December 31, 2020
25038106	New Horizons CLC of Colorado Springs	January 1, 2015 – December 31, 2020
25056618	New Horizons Computer Learning Center - Metairie (New Orleans)	January 1, 2015 – December 31, 2020
25058136	New Horizons Consumer Learning Center, LLC-Tulsa	January 1, 2015 – December 31, 2020
25060236	New Horizons Consumer Learning Center LLC-OKC	January 1, 2015 – December 31, 2020
25075943	New Horizons CLC of Fort Worth LLC	January 1, 2015 – December 31, 2020
25082943	New Horizons CLC Austin	January 1, 2015 – December 31, 2020
25102131	Central New Mexico Horizons	January 1, 2015 – December 31, 2020
25133843	New Horizons CLC DFW LLC	January 1, 2015 – December 31, 2020
25133943	New Horizons CLC of Houston LLC	January 1, 2015 – December 31, 2020
25134043	New Horizons CLC of San Antonio LLC	January 1, 2015 – December 31, 2020
25142943	New Horizons CLC of Central Texas LLC	January 1, 2015 – December 31, 2020
25143043	New Horizons CLC El Paso LLC	January 1, 2015 – December 31, 2020
25523814	New Horizons Computer Learning Center - Carmel (Indianapolis)	January 1, 2018 – December 31, 2020
25525717	New Horizons CLC Louisville	January 1, 2015 – December 31, 2020
25529817	New Horizons Computer Learning Center (Lexington)	January 1, 2015 – December 31, 2020
25558835	New Horizons CLC Blue Ash (Cincinnati)	January 1, 2015 – December 31, 2020
25804435	New Horizons CLC Fairborn (Dayton)	January 1, 2015 – December 31, 2020
25835238	New Horizons Computer Learning Center of Harrisburg	January 1, 2018 – December 31, 2020

Specifically, the government contends that 5PE knowingly and improperly enrolled veterans receiving Post 9/11 GI Bill funding in 5PE courses where more than 85 percent of the students enrolled in the course had all or part of their tuition, fees, or other charges

paid for them by 5PE, through a scholarship known as the Success Through Learning or “STL” Scholarship, or by the VA, in violation of 38 U.S.C. § 3680A(d) and 38 C.F.R. § 21.4201(a) (the 85/15 Rule). The government further contends that 5PE failed to report to the VA all scholarships, discounts, tuition waivers, and reductions in tuition 5PE provided to veterans, in violation of 38 U.S.C. § 3313(g)(3)(A)(i) (the Last Payer Rule). That conduct is referred to below as the Covered Conduct.

C. 5PE denies the United States’ allegations in Paragraph B.

D. This Settlement Agreement is neither an admission of liability by 5PE nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. 5PE shall pay to the United States \$2,049,159.00 (Settlement Amount), of which \$1,024,331.00 is restitution, and interest on the Settlement Amount at a rate of 3.4 percent per annum from June 27, 2024, by electronic funds transfer no later than ten (10) days after the Effective Date of this Agreement pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States’ receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases 5PE, together with its current and former parent corporate entities and limited liability companies; direct and indirect subsidiaries and affiliates; brother or sister corporate entities; divisions; current or former

corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, and unjust enrichment. For the avoidance of doubt, nothing in this Paragraph shall be read to release NH Learning Solutions Corp. for the Covered Conduct or for the United States' claims in *United States v. New Horizons Learning Solutions Corp.*, No. 2:22-cv-13045 (E.D. Mich.).

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. 5PE waives and shall not assert any defenses 5PE may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. 5PE fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that 5PE has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of 5PE, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;

- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) 5PE's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment that 5PE makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by 5PE, and 5PE shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within ninety (90) days of the Effective Date of this Agreement, 5PE shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by 5PE or any of its subsidiaries or affiliates from the United States. 5PE agrees that the United States, at a minimum, shall be entitled to recoup from 5PE any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine 5PE's

books and records and to disagree with any calculations submitted by SPE or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by SPE, or the effect of any such Unallowable Costs on the amount of such payments.

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

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

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

10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Western District of Texas, Austin Division. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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


14. This Agreement is binding on 5PE's successors, transferees, heirs, and assigns.

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

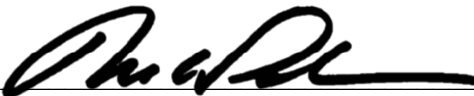
16. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 8/8/2024

BY: 
Christopher G. Wilson
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 8/8/2024

BY: 
Thomas A. Parnham Jr.
Assistant United States Attorney
Western District of Texas

FIVE POINT ENTERPRISES LLC

DATED: 8/7/2024

BY: 5P NH HOLDING COMPANY, LLC,
ITS SOLE MEMBER,

BY: 5P NH MANAGEMENT, LLC,
its Manager,

By: Derek K. Wright
DEREK K. WRIGHT, its Manager

8/7/24
DATED: _____

BY: Gregory S. Saikin
Gregory S. Saikin
Matthew W. Caligur
Patrick T. Lewis
Matt Caligur
BAKERHOSTETLER LLP

Counsel for Five Point Enterprises, LLC