

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 Health and Human Services, Office of Inspector General (“HHS-OIG”) (collectively the “United States”) and ASRC Federal Data Solutions, LLC (hereafter “AFDS”) (collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. AFDS is a federal contractor that supplies services and technical expertise to a variety of government agencies. AFDS provided certain Medicare support services to the Centers for Medicare and Medicaid Services (“CMS”) under contract no. 75FCMC18C0045 (the “Medicare Case Support Contract”) in part using a subcontractor (the “Subcontractor”). Prior to the Covid-19 pandemic, it performed this work in person using hardcopy records, and, during the pandemic, CMS, AFDS, and the Subcontractor transitioned to performing the work electronically on the Subcontractor’s server. The Subcontractor’s server employed disk-level encryption that protected files from unauthorized access but not from access using authorized credentials.

B. The United States contends that it has certain civil claims against AFDS arising from the following conduct:

From March 10, 2021 through October 8, 2022, AFDS and the Subcontractor stored screenshots from CMS systems containing personally identifiable information and potentially personal health information of Medicare beneficiaries on the Subcontractor’s server without individually encrypting the files to protect them against exposure in the

event of a breach using authorized credentials. The United States contends the storing of screenshots on the Subcontractor's server violated HHS cybersecurity requirements incorporated in the Medicare Case Support Contract, including its Rules of Behavior. The Subcontractor's server was breached by a third party in October 2022 and the unencrypted screenshots were compromised during that breach. The United States contends that AFDS knowingly billed CMS in violation of HHS's cybersecurity requirements, including for the time spent taking, storing, and managing the unencrypted screenshots. This conduct is referred to below as the Covered Conduct.

C. AFDS notified CMS of the breach within one hour of being notified by the Subcontractor. AFDS subsequently took steps to remediate the impact of the breach; the company immediately stopped taking and storing screenshots or otherwise storing protected health and other personally identifiable information outside of CMS systems, and it worked cooperatively with CMS to identify the relevant Medicare beneficiaries, notify them of the breach, and provide free credit monitoring and identity theft protection services. Additionally, AFDS provided its employees with cybersecurity and incident response training and hired a third-party consultant to review its revised practices relating to the Medicare Case Support Program to ensure they are consistent with CMS requirements. Finally, AFDS cooperated with the Department of Justice's investigation by promptly responding to requests for information, making employees available to be interviewed, and providing additional information about the breach. AFDS received credit under the Department of Justice's guidelines for taking disclosure, cooperation, and remediation into account in False Claims Act cases, Justice Manual §4-4.112.

D. This Settlement Agreement is neither an admission of liability by AFDS 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. AFDS shall make and waive payments to the United States as follows:

a) AFDS shall pay to the United States \$306,722, of which \$306,722 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice, no later than 10 days after the Effective Date of this Agreement; and

b) AFDS shall waive, and not seek payment, from the United States for any work performed or expenses incurred by AFDS and/or its subcontractors or other third-party contractors in remediation of the breach of its subcontractor's systems under the Medicare Case Support Contract, including for: a) any work performed or expenses incurred to notify Medicare beneficiaries of the breach, and provide credit monitoring, call center assistance, and other assistance to affected or potentially affected beneficiaries, including the \$877,578.04 incurred by AFDS for services of Equifax; and

b) any work performed or expenses incurred pursuant to modification P00015 (dated December 6, 2022) to the Medicare Case Support Contract.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the payment under Paragraph 1.a and AFDS's waiver of payments under Paragraph 1.b, the United States releases

AFDS 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 Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, 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; and

h. Any liability for personal injury or property damage arising from the Covered Conduct.

4. AFDS waives and shall not assert any defenses AFDS 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. AFDS 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 AFDS 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 AFDS, 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) AFDS's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and

civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement;
- (5) the payment AFDS 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 AFDS, and AFDS shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, AFDS shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by AFDS or any of its subsidiaries or affiliates from the United States. AFDS agrees that the United States, at a minimum, shall be entitled to recoup from AFDS 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 AFDS's books and records and to disagree with any calculations submitted by AFDS or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by AFDS, or the effect of any such Unallowable Costs on the amount of such payments.

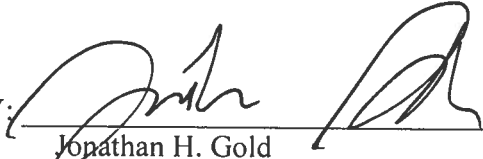
7. This Agreement is intended to be for the benefit of the Parties only.
8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
9. Each Party and signatory to this Agreement represents that it freely 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 District of Columbia. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.
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 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 AFDS'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: 10/15/2014

BY: _____


Jonathan H. Gold
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

Susan E. Gillin
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

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Jonathan H. Gold
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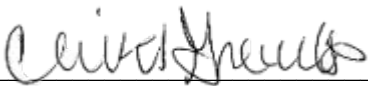
DATED: 10/07/24

BY: **SUSAN** Digitally signed by
GILLIN SUSAN GILLIN
Date: 2024.10.07
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Susan E. Gillin
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

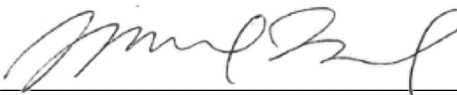
AFDS

DATED: 10/11/2024

BY: 

Clifford E. Greenblatt
Corporate Secretary of AFDS

DATED: 10/01/2024

BY: 

Alex Ward
Counsel for AFDS