

## 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 Office of the Inspector General of the United States Department of Veterans Affairs (collectively the “United States”), Caldwell University, and Adam Boyce (the “Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Caldwell University is a university located in Caldwell, New Jersey.

B. On October 12, 2010, the Relator filed a *qui tam* action in the United States District Court for the Middle District of Pennsylvania captioned *United States ex rel. Boyce v. Ed4Mil, LLC and Caldwell College, Inc.*, Civil Action No. 10cv2097, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), alleging that Defendants Ed4Mil, LLC, and Caldwell College, among other things, engaged in a fraudulent scheme to obtain tuition assistance and other education benefits under the Department of Defense Tuition Assistance program by making false representations to the United States about certain of then-Caldwell College’s online courses. The United States subsequently filed a notice of election to decline to intervene in the *qui tam* action on December 5, 2013. On February 6, 2014, the Relator filed an amended complaint. The *qui tam* action was subsequently transferred by consent of the parties to the United States District Court for the District of New Jersey and assigned Civil Action No. 17cv12597 (the “Civil Action”).

C. The United States contends that it has certain civil claims against Caldwell University arising from Caldwell University's submission of, and/or causing the submission of, false claims for payment to the Department of Veteran Affairs in order to receive education benefits and funds pursuant to the Post-9/11 Veterans Educational Assistance Act, 38 U.S.C. §§ 3301, *et seq.*, ("Post-9/11 GI Bill"), to which it was not entitled, during the period from January 1, 2011 through August 8, 2013. That conduct is referred to below as the "Covered Conduct."

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

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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. Caldwell University shall pay to the United States the sum of Four Million, Eight Hundred and Eighty-Three Thousand Dollars (\$4,883,000) (the "Settlement Amount"), of which \$2,441,500 is restitution. The Settlement Amount is to be paid to the United States as follows:

- (a) Within ten business days of the Effective Date of this Agreement, Caldwell University shall make an initial payment of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) to the United States; and

(b) Caldwell University shall pay the balance of the Settlement Amount in ten annual installment payments according to the payment schedule attached as Attachment A; and

(c) Caldwell University shall make all payments by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey.

2. In the event that Caldwell University fails to pay any amount as provided in Paragraph 1 and Attachment A within five (5) calendar days of the date on which such payment is due, Caldwell University shall be in default of its payment obligations ("Default") under this Agreement. The United States will provide, via regular mail, notice of Default ("Notice of Default") to Caldwell University and to counsel for the Relator, and Caldwell University shall have the opportunity to cure such Default within fifteen (15) business days from the date of receipt of the Notice of Default. Notice of Default shall be delivered to Caldwell University's undersigned counsel, or to such other representative as Caldwell University shall designate in advance in writing to the United States. If Caldwell University fails to cure such Default within fifteen (15) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become accelerated and immediately due and payable, and interest shall accrue at the rate of 8.0% per annum from the date of Default on the remaining unpaid balance. In the event of Default, Caldwell University shall consent to a judgment ("Consent Judgment") in the amount of the unpaid balance, and the United States, at its sole discretion, may: (a) offset the remaining unpaid balance from any amounts due and owing to Caldwell University by any department, agency, or agent of the United States, at the time of Default; (b) enforce

the Consent Judgment; (c) collect the entire unpaid balance of the Settlement Amount, plus interest, including 8% interest per annum compounded annually from the date of Default; (d) file a civil action for the Covered Conduct; and/or (e) exercise any other rights granted by law or in equity, including referral of this matter for private collection. In the event a Complaint is filed pursuant to subsection (d) of this paragraph, Caldwell University agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the civil or administrative claims that relate to the Covered Conduct, except to the extent such defenses were available to Caldwell University on the Effective Date of this Agreement. Caldwell University agrees not to contest any Consent Judgment, offset, or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court. Caldwell University shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

3. Conditioned upon the United States receiving the settlement payments set forth in Paragraph 1 above and Attachment A from Caldwell University, the United States shall pay to Relator by electronic funds transfer 15 percent of each such payment received under the Settlement Agreement as soon as feasible after receipt of the payment.

4. On or about the Effective Date of the Settlement Agreement, Caldwell University and Relator will enter into a confidential separate agreement with respect to the payment by Caldwell University of Relator's attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d).

5. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Caldwell University's full payment of the Settlement

Amount, and subject to Paragraph 17, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States releases Caldwell University 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, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 7 below, and conditioned upon Caldwell University's full payment of the Settlement Amount (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Caldwell University from any civil monetary claim the Relator has on behalf of the United States for Covered Conduct, or the conduct alleged in the Civil Action under the False Claims Act, 31 U.S.C. §§ 3729-3733.

7. Notwithstanding the releases given in paragraph 5 and 6 of this Agreement, or any other term of this Agreement, the following claims 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 the Agreement, any administrative liability, 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;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 3, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action, or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Caldwell University, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, except that Relator will release Caldwell University for any claims in connection with his entitlement to recover

expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d) in the agreement described in Paragraph 4 of this Agreement.

10. Caldwell University has provided financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Caldwell University warrants that to the best of its information, knowledge, and belief the Financial Statements are complete, accurate, and current as of the date they were provided to the government and there have been no material changes in the information provided since the last submitted financial statement on August 15, 2019 that would adversely affect the ability of the government to be paid the Settlement Amount. If the United States learns of asset(s) in which Caldwell University had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Caldwell University on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$250,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Caldwell University previously undisclosed. Caldwell University agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney's fees and expenses.

11. In the event the United States, pursuant to Paragraph 10 (concerning disclosure of assets), above, opts to rescind this Agreement, Caldwell University agrees

not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Caldwell University that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available to Caldwell University on the Effective Date of this Agreement. Caldwell University agrees not to contest the Consent Judgment or any offset or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, provided that the amount of the offset does not exceed the Settlement Amount. Caldwell University shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses.

12. Caldwell University waives and shall not assert any defenses Caldwell University 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.

13. Caldwell University fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Caldwell University 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.

14. Caldwell University fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Caldwell University has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

15. 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 Caldwell University, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Caldwell University's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Caldwell University makes to the United States pursuant to this Agreement and any payments that Caldwell University may make to Relator, including costs and attorneys' fees,

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

16. Caldwell University agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Caldwell University shall encourage, and agrees not to impair,

the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Caldwell University further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

17. Caldwell University warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and that the entry into this Agreement and the payments set forth in Attachment A shall not render it insolvent within the meaning of such provisions. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Caldwell University, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Caldwell University was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

18. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Caldwell University commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Caldwell University's debts, or seeking to adjudicate Caldwell University as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Caldwell University or for all or any substantial part of Caldwell University's assets, Caldwell University agrees as follows:

a. Caldwell University's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Caldwell University shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Caldwell University's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Caldwell University was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Caldwell University.

b. If Caldwell University's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Caldwell University for the claims that would otherwise be covered by the releases provided in Paragraphs 5 and 6 above. Caldwell University agrees that (i) any such claims, actions, or proceedings brought by the United States are

not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Caldwell University shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; and (ii) Caldwell University shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 120 calendar days of written notification to Caldwell University that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement.

c. Caldwell University acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

20. Following the receipt: (a) by the United States of the first Settlement Amount payment described in Paragraph 1(a), due no later than ten business days after the Effective Date of this Agreement; and (b) by the Relator of the first payment to the Relator from the United States described in Paragraph 3, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Fed. R. Civ. P. 41(a)(1) as to the claims asserted in that action against Caldwell University. Such dismissal shall be without prejudice to the Relator and the United States. As set forth above, in Paragraphs 5, 6, and 9, upon Caldwell University’s complete payment of all the Settlement Amount, the United States and the Relator will

release their respective claims against Caldwell University in accordance with Paragraphs 5, 6, and 9.

21. Except as otherwise provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

22. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

23. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. 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.

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

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

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

27. This Agreement is binding on Caldwell University's successors, transferees, heirs, and assigns.

28. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

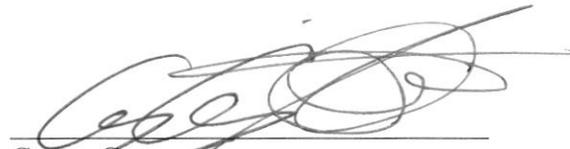
29. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

DATED: 1/2/20

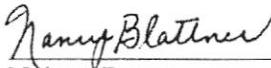
BY:

A handwritten signature in black ink, appearing to read 'Craig Carpenito', written over a horizontal line.

CRAIG CARPENITO  
United States Attorney  
District of New Jersey

CALDWELL UNIVERSITY

DATED: 12/03/19

BY:   
\_\_\_\_\_  
NANCY BLATTNER  
President  
Caldwell University  
Caldwell, New Jersey

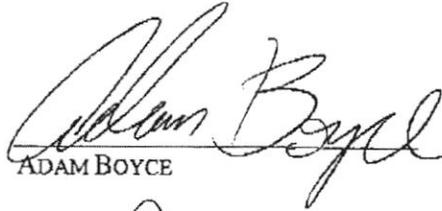
DATED: 12/03/19

BY:   
\_\_\_\_\_  
HENRY KLINGEMAN, ESQ.  
Krovatin Klingeman LLC  
60 Park Place, Suite 1100  
Newark, New Jersey 07102  
*Counsel for Caldwell University*

ADAM BOYCE - RELATOR

DATED: 12/23/19

BY:

  
ADAM BOYCE

DATED: 12/24/19

BY:

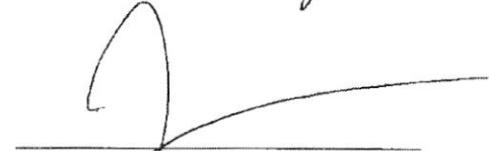
  
JESSE HOYER, ESQ.  
Hoyer Law Group, PLLC  
2801 West Busch Blvd., Ste. 200  
Tampa, Florida 33618  
*Counsel for Relator Adam Boyce*

Exhibit A

<b>Payment</b>	<b>Payment Date</b>	<b>Beginning Balance</b>	<b>Payment</b>	<b>Ending Balance</b>
1	10/1/2020	\$3,633,000	\$321,000	\$3,312,000
2	10/1/2021	\$3,312,000	\$368,000	\$2,944,000
3	10/1/2022	\$2,944,000	\$368,000	\$2,576,000
4	10/1/2023	\$2,576,000	\$368,000	\$2,208,000
5	10/1/2024	\$2,208,000	\$368,000	\$1,840,000
6	10/1/2025	\$1,840,000	\$368,000	\$1,472,000
7	10/1/2026	\$1,472,000	\$368,000	\$1,104,000
8	10/1/2027	\$1,104,000	\$368,000	\$736,000
9	10/1/2028	\$736,000	\$368,000	\$368,000
10	10/1/2029	\$368,000	\$368,000	\$0