

THIRD AMENDED SETTLEMENT AGREEMENT

This Second Amended Settlement Agreement (this “Agreement”) is entered into by and between Justin Lovelace (“Lovelace” or “Settlement Class Representative”), individually and as representative of the Settlement Class (defined below), on the one hand, and Educational Computer Systems, Inc. d/b/a Heartland ECSI, erroneously sued as Global Payments Inc. d/b/a Heartland ECSI (“Heartland”) (together with Lovelace, the “Parties”), on the other, in the action entitled *Lovelace v. Global Payments, Inc.*, pending in the Los Angeles County Superior Court, Case No. BC682608 (the “Action”).

I. RECITALS

This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. On or about November 6, 2017, Lovelace filed the Action, alleging, among other things, that Heartland wrongfully charges fees for certain methods of payment on student loans. Lovelace asserts claims for violations of California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, *et seq.*, on behalf of himself and a putative class.

B. Heartland vigorously denies the claims asserted against it by Lovelace in the Action, and it has denied all material allegations of the Complaint and asserted numerous defenses as to liability, class certification, and damages. Heartland nevertheless desires to settle the Action on the terms set forth herein solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing these proceedings.

C. The Settlement Class Representative and Class Counsel (defined below) believe that the claims asserted in the Action possess merit and have examined and considered the benefits to be obtained under the proposed settlement set forth in this Agreement, the risks associated with the continued prosecution of the complex and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, have engaged in informal discovery, conducted an

independent investigation, have obtained confirmatory discovery, engaged in settlement negotiations relating to the Action, and have concluded that the settlement set forth in this Agreement (the “Settlement”) is fair, adequate, reasonable, and in the best interests of the Settlement Class Representative and the Settlement Class (defined below). This Agreement resulted from and is the product of extensive arm’s-length negotiations and analyses by counsel knowledgeable and experienced in class action litigation, including a full-day mediation before the Hon. William J. Cahill, a former judge of the San Francisco County Superior Court.

D. The Settlement Class is comprised of approximately 106,812 persons.

E. The Parties have decided to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation.

F. The Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Settlement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the Parties’ desire and intention to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

G. The Settlement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions hereof.

II. DEFINITIONS

A. As used in this Agreement, capitalized terms have the meanings specified below:

1. “Attorneys’ Fees and Costs” means the attorneys’ fees and costs sought by Class Counsel in an amount not greater than \$135,000, subject to the Court’s approval. The Attorneys’ Fees and Costs shall be paid entirely from the Settlement Amount.

2. “Class Counsel” means Seyed Abbas Kazerounian of Kazerouni Law Group, APC and Josh B. Swigart of Hyde & Swigart, APC.

3. “Class Notice” means the notice of this Settlement that will be provided to

the Settlement Class pursuant to this Agreement, including Internet Notice, E-Mailed Notice, and Mailed Notice.

4. “Court” means the Los Angeles County Superior Court.

5. “Day” means a calendar day, but if any deadline or other date set forth in this Agreement is a weekend or holiday, such deadline or other date shall be on the next weekday that is not a holiday.

6. “Effective Date” means seven (7) Days after each and all of the following conditions have occurred: (a) this Agreement has been signed by Lovelace, Class Counsel, Heartland, and Heartland’s counsel; (b) the Court has entered, without material modification, the Preliminary Approval Order substantially in the form of Exhibit A, conditionally certifying the Settlement Class, granting preliminary approval of the Settlement, and approving the Class Notice; (c) the Settlement Amount has been paid to the Settlement Administrator as required by Section IV.A of this Agreement; (d) the Court-approved Class Notice has been duly provided as ordered by the Court; (e) Heartland has not elected to terminate the Settlement under Section III.E.2 of this Agreement by the deadline for it to do so; (f) the Court has entered, without material modification, the Final Approval Order approving the Settlement and that order has become Final (defined below); (g) the Court has entered the Fee Order and that order has become Final; and (h) the Court has entered a Judgment and that Judgment has become Final.

7. “E-Mailed Notice” means the short-form notice of this Settlement, the proposed form of which is attached hereto as Exhibit C, that will be provided to the Settlement Class via e-mail pursuant to Section III.D.2 of this Agreement.

8. “Fee Order” means an order of the Court in substantially the form attached hereto as Exhibit G issued with respect to any application(s) for attorneys’ fees, expenses, and incentive awards under this Agreement.

9. “Final” shall mean, with respect to the Final Approval Order, the Judgment, and the Fee Order, the later of: (a) seven (7) Days after the expiration of the time to seek appeal, review, rehearing, reconsideration or any other action seeking to reverse or modify a judgment or order; or (b) if any such document is filed, then fourteen (14) Days after the date

upon which all appellate and/or other proceedings resulting from the document or any subsequent such documents have been finally terminated and the orders or judgments are affirmed in such a manner as to permit no further judicial action.

10. “Final Approval Hearing” means the hearing at or after which the Court will determine whether to finally approve the Settlement as fair, reasonable, and adequate to the Settlement Class.

11. “Final Approval Order” means an order of the Court in substantially the form attached hereto as Exhibit D which finally and unconditionally grants final approval of the Settlement, grants final certification of the Settlement Class for settlement purposes only, authorizes payments to Settlement Class Members, the Settlement Administrator, the Settlement Class Representative, and Class Counsel as provided herein, and fully and finally extinguishes the claims of Settlement Class Members as provided herein.

12. “Internet Notice” means the long-form notice of this Settlement, in substantially the form attached hereto as Exhibit B, which will be posted prominently on the Internet website created pursuant to Section III.D.4 of this Agreement.

13. “Judgment” means an order of the Court in substantially the form attached hereto as Exhibit E which shall constitute a judgment under California Code of Civil Procedure Section 577.

14. “Mailed Notice” means the short-form notice of this Settlement, the proposed form of which is attached hereto as Exhibit C, that will be provided to the Settlement Class via U.S. mail pursuant to Section III.D.3 of this Agreement.

15. “Notice and Administration Costs” means the costs for KCC to provide Class Notice and administer the settlement. These costs are projected to be \$164,224. The Notice and Administration Costs shall be paid entirely from the Settlement Amount.

16. “Parties” means Heartland and the Settlement Class Representative, on behalf of himself and the Settlement Class.

17. “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal

representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, and their spouses, heirs, predecessors, successors, agents, representatives or assigns.

18. “Preliminary Approval Order” means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as Exhibit A.

19. “Released Claims” means the claims and matters released in Section VI of this Agreement. As described in Section VI of this Agreement, only Lovelace is waiving his rights under California Civil Code Section 1542; other Settlement Class Members are not waiving their rights under California Civil Code Section 1542.

20. “Released Parties” means the Persons released in Section VI of this Agreement.

21. “Settlement Administrator” refers to KCC, which the Parties have agreed will be responsible for the administration of the Settlement, subject to Court approval. The Settlement Administrator shall be paid entirely from the Settlement Amount.

22. “Settlement Amount” means the total amount of five hundred and forty thousand dollars (\$540,000) to be paid pursuant to Section IV.A of this Agreement. Heartland shall not be required to pay anything in excess of the Settlement Amount. The Settlement Amount represents Heartland’s complete and entire contribution to this Settlement.

23. “Settlement Class” means all Persons who paid a fee to Educational Computer Systems, Inc. d/b/a Heartland ECSI for making an online payment between November 6, 2013 and December 31, 2018 and who provided a California billing address when making the payment. Excluded from the Settlement Class are the judges to whom the Action is assigned and the members of their staff or immediate family.

24. “Settlement Class List” means the list of Settlement Class Members to be provided to the Settlement Administrator pursuant to Section III.D.1 of this Agreement.

25. “Settlement Class Member” means a Person in the Settlement Class who does not timely submit a valid request for exclusion from the Settlement Class.

26. “Settlement Class Period” means the period of time between November 3, 2013 and the December 31, 2018, inclusive.

27. “Settlement Class Representative” or “Lovelace” means Justin Lovelace.

B. Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached Exhibits.

III. SETTLEMENT PROCEDURES

A. Conditional Certification of Settlement Class. Solely for the purposes of settlement, providing Class Notice, and implementing this Agreement, the Parties agree to conditional certification of the Settlement Class, as defined above, which shall be certified for settlement purposes only.

B. Preliminary Approval. No later than March 5, 2019, or such later date as may be set by the Court, and after the execution and delivery of this Agreement by all Parties, the Settlement Class Representative will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement reflected herein as fair, adequate, and reasonable to the Settlement Class, and within the range of possible final approval; (b) conditionally certify the Settlement Class for settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (c) approve the forms of Class Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process, California Code of Civil Procedure Section 382, and California Civil Code Section 1781; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, within forty (40) Days following entry of the Preliminary Approval Order (the “Notice Deadline”); (e) establish a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class, and set a date seventy-five (75) Days following entry of the Preliminary Approval Order, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene in the Action (the “Opt-Out and Objection Deadline”); (f) pending final determination of whether the Settlement should be

approved, bar all Settlement Class Members, directly, on a representative basis, or in any other capacity from commencing or prosecuting against any of the Released Parties any action, arbitration or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (g) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to the effectuation of the Settlement; (h) direct that any application for Attorneys' Fees and Costs and incentive awards be filed within thirty (30) days of the entry of the Preliminary Approval Order; and (i) set a date for a hearing on final approval of the Settlement, which shall be no earlier than forty-five (45) Days after the Opt-Out and Objection Deadline.

C. Settlement Administrator.

1. The Settlement Administrator will be responsible for administering the Settlement in accordance with this Agreement and applicable orders of the Court. The Settlement Administrator may disburse money from the Settlement Amount only in accordance with this Agreement and applicable orders of the Court, upon receiving written consent (which may be provided via e-mail) from counsel for both Parties.

2. The actions of the Settlement Administrator shall be governed by the terms of this Agreement. The Parties shall provide information reasonably requested by the Settlement Administrator pursuant to this Agreement.

D. Notice to the Class. The Settlement Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, by the Notice Deadline.

1. Settlement Class List: Heartland shall provide the Settlement Administrator with the Settlement Class List in a format reasonably requested by the Settlement Administrator within fourteen (14) Days following entry of the Preliminary Approval Order. The Settlement Class List shall, for each class member, specify (a) name; (b) the most current mailing address(es) on file for the account; (c) the mailing address provided with the payment; (d) the most current e-mail address(es) on file for the account; (e) the e-mail address provided with the payment; and (f) the total amount of processing fees paid for online payments during the Settlement Class Period. The Settlement Class List and its contents are to be used by the

Settlement Administrator solely for the purpose of performing its obligations under this Agreement, and shall not be used for any other purpose at any time. Neither the Settlement Class List, nor the information contained in it, shall be reproduced, copied, stored, or distributed in any form, electronic or otherwise, to anyone by the Settlement Administrator. The Settlement Class List shall be subject to return or destruction pursuant to Section VI.E of this Agreement.

2. E-mailed Notice: No later than ten (10) Days prior to the Notice Deadline, the Settlement Administrator shall e-mail the E-Mailed Notice substantially in the form appended hereto as Exhibit C to all Settlement Class Members at the e-mail address(es) provided by Heartland. A reminder e-mail of the E-Mailed Notice shall be sent at least seven (7) Days after the Notice Deadline. In providing the foregoing e-mail notice, the Settlement Administrator shall seek to maximize the chances of messages being received and opened by sending e-mails on dates the Settlement Administrator believes are optimal, by using sending methods likely to avoid spam filters (such as sending e-mails in small batches), and by updating addresses on the Settlement Class List using methods customary in the settlement administration industry, provided that such methods are cost-effective and reasonable under the circumstances.

3. Mailed Notice: No later than the Notice Deadline, the Settlement Administrator shall mail the Mailed Notice substantially in the form appended hereto as Exhibit C to any and all Settlement Class Members for whom no e-mail address was provided, and to all Settlement Class Members for whom the Settlement Administrator received a bounce back for the E-mailed Notice. The Settlement Administrator shall seek to maximize the effectiveness of the mailing by updating mailing addresses before mailing, using the United States Postal Service's National Change of Address database (which may be accessed through a third-party vendor and the costs of which shall be considered Notice and Administration Costs). The Settlement Administrator promptly shall send Mailed Notices to any forwarding addresses provided on mail returned to sender.

4. Internet Notice: The Settlement Administrator shall establish an Internet website to provide detailed information to Settlement Class Members, using a domain name and content approved in writing by Class Counsel and Heartland. The website prominently shall

display a long-form notice substantially in the form appended hereto as Exhibit B. The website shall also make available this Agreement, the toll-free number for the Settlement Administrator, contact information for Class Counsel, and any other materials the Parties agree in writing to include. The settlement website shall be made accessible by the date the E-Mailed Notice is e-mailed, and shall remain accessible until the Judgment becomes Final and the Net Settlement Amount has been fully distributed. The settlement website shall make available a form that allows Settlement Class Members to update their mailing addresses substantially in the form appended hereto as Exhibit F.

5. Toll-Free Number: The Settlement Administrator shall establish a toll-free telephone number Settlement Class Members may call to obtain additional information such as answers to frequently asked questions. The toll-free number may utilize interactive voice response technology and recorded messages rather than live operators, but the Settlement Administrator shall ensure that Settlement Class Members who call the toll-free number may request (and receive) copies of any of the materials on the Internet website. The toll-free number shall be operational by the date the E-Mailed Notice is e-mailed, and shall remain operational until the Judgment becomes Final and the Settlement Amount has been fully distributed.

E. Opt-Out Right/ Termination.

1. Settlement Class Members may opt out of the Settlement by sending a written request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out and Objection Deadline, which is seventy-five (75) Days following entry of the Preliminary Approval Order. Exclusion requests must: (i) be signed by the class member; (ii) include the full name, address, and (if known) Heartland account number(s) of the Person(s) requesting exclusion; and (iii) include a statement that he or she requests to be excluded from the Settlement Class in *Lovelace v. Global Payments Inc.* No request for exclusion will be valid unless all of the information described above is included, except for the Heartland account number. The Settlement Administrator will retain a copy of all requests for exclusion and will, upon written request, provide copies of any such requests to counsel for the Parties. Class

Counsel will keep any such opt-out information confidential and use it only for purposes of determining whether a Person has properly opted out.

2. All Settlement Class Members who do not opt out in accordance with the terms set forth herein will be bound by all determinations and judgments in the Action. If the number of Settlement Class Members who opt out exceeds five percent (5%) of the total number of Settlement Class Members as reflected by the Settlement Class List, then Heartland in its sole discretion will have the right to terminate the Settlement by giving written notice to Class Counsel within twenty-one (21) Days after the Opt-Out and Objection Deadline. In the event that the Settlement is terminated pursuant to this provision, the Parties will be returned to the *status quo ante* as if no settlement had been negotiated or entered into; provided, however, that all costs of Class Notice and all costs of administering the Settlement paid or incurred shall be paid out of the Settlement Amount and shall not be recoupable from Lovelace or Class Counsel.

F. Objections To The Settlement.

1. Any Settlement Class Member who has not previously opted out in accordance with the terms of this Agreement may appear at the Final Approval Hearing to object to the proposed Settlement and/or to the application of Class Counsel for an award of attorneys' fees and costs and/or the incentive awards.

2. Settlement Class Members should make any objection in writing and mail it to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out and Objection Deadline. Within one (1) Day of receipt, the Settlement Administrator shall e-mail copies of any objections to Class Counsel and counsel for Heartland. Class Counsel shall collect and file the objections with the Court concurrently with the motion for final approval of the Settlement. If any objection is rejected or overruled, the objecting Settlement Class Member will be bound by the Judgment as if he or she had not objected. Any person who requests exclusion from the Settlement Class may not object. If any person submits a request for exclusion and also an objection, the request for exclusion shall take precedence and that person shall not be a Settlement Class Member. If any Settlement Class Member appears at the Final Approval Hearing without having provided a written objection to the Settlement Administrator,

such Settlement Class Member shall provide his or her full name, address, and Heartland account number, if known, to the Parties during the hearing. The Court shall continue the Final Approval Hearing to allow the Parties to determine whether the objector is a Settlement Class Member and respond in writing to the objection.

G. Final Approval. Following the provision of Class Notice and expiration of the Opt-Out and Objection Period, the Settlement Class Representative shall promptly request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class; (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process, California Code of Civil Procedure Section 382, and California Civil Code Section 1781; (c) approve the plan of distribution of the Settlement Amount; (d) finally certify the Settlement Class; (e) confirm that the Settlement Class Representative and the Settlement Class Members (except those who have timely and validly requested exclusion from the Settlement Class) have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims against the Released Parties; and (f) reserve the Court's retaining continuing jurisdiction over the Parties and the Settlement Amount for the purpose of enforcement of the terms of this Agreement. The Final Approval Order and Judgment shall not address any award of attorneys' fees and costs or incentive awards, which shall be addressed in the Fee Order.

H. Stay and Bar of Other Proceedings: All proceedings in the Action will be stayed following preliminary approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Settlement should be granted final approval, the Parties agree not to pursue in the Action any claims or defenses otherwise available to them in the Action, and no Settlement Class Member, either directly, on a representative basis or in any other capacity, will commence or prosecute against any of the Released Persons any action or proceeding asserting any of the Released Claims.

IV. THE SETTLEMENT AMOUNT

A. In full settlement of the Released Claims, and in consideration for the releases specified in Section VI of this Agreement, Heartland agrees to pay the total Settlement Amount of five hundred and forty thousand dollars (\$540,000). After entry of the Preliminary Approval Order by the Court in this Action, Heartland shall pay Notice and Administration Costs as they are incurred, with all such payments credited against the Settlement Amount. Within ten (10) Days after Final Approval, Heartland shall pay the balance of the Settlement Amount to the Settlement Administrator for distribution pursuant to this Agreement.

B. Termination. In the event that the Settlement is not approved, or is terminated, canceled, or fails to become effective for any reason, the remaining Settlement Amount, less any Notice and Administration Costs incurred but not yet paid, shall be refunded to Heartland as provided in Section VII.B below. In no circumstances shall any costs or expenses paid or incurred in connection with Class Notice or administering the Settlement, including but not limited to any taxes, be recoupable from Lovelace or Class Counsel.

V. PAYMENTS FROM THE SETTLEMENT AMOUNT

A. No Reversion. Provided that the Settlement receives final approval and becomes Final, the Settlement Amount shall be distributed in its entirety for the benefit of the Settlement Class, and no portion of the Settlement Amount shall revert to Heartland.

B. Attorneys' Fees And Costs. Class Counsel may apply to the Court for an award of attorneys' fees and costs to be paid solely from the Settlement Amount. The Settlement is not conditioned upon the Court's approval of the fees or costs sought by Class Counsel, and any appellate proceedings relating solely to the award of attorneys' fees and costs and/or incentive awards shall not delay the date on which the Judgment becomes Final. The amount of attorneys' fees and costs awarded by the Court shall be paid to Class Counsel from the Settlement Amount no earlier than the Effective Date and no later than ten (10) Days after the Effective Date. Class Counsel will not request Attorneys' Fees and Costs in an amount greater than \$135,000 of the Settlement Amount.

C. Incentive Award. Lovelace may apply to the Court for an incentive award to be

paid to Lovelace solely from the Settlement Amount. The Settlement is not conditioned upon the Court's approval of the incentive award sought by Lovelace, and any appellate proceedings relating solely to the award of attorneys' fees and costs and/or incentive awards shall not delay the date on which the Judgment becomes Final. The incentive award, if any, shall be paid to Lovelace from the Settlement Amount no earlier than the Effective Date and no later than ten (10) Days after the Effective Date. Lovelace will not request more than Two Thousand Five Hundred Dollars (\$2,500.00) from the Settlement Amount as an award for his service as Class Representative, which amount shall include the compensation for instituting, prosecuting, and bearing the laboring risk of this litigation as Settlement Class Representative.

D. Distributions to Settlement Class. The Net Settlement Amount shall be calculated and distributed to the Settlement Class as follows:

1. Administrative Costs Reserve: Before making the pro rata calculation below, subject to approval by the Parties, the Settlement Administrator shall provide an estimate of all costs expected to be reasonably incurred by the Settlement Administrator through the completion of the Settlement (the "Administrative Costs Reserve").

2. Pro Rata Calculation: The Net Settlement Amount shall be equal to \$540,000 minus all amounts previously paid by Heartland for Notice and Administration Costs, minus the Administrative Costs Reserve, minus any amounts awarded by the Court to Class Counsel for Attorneys' Fees and Costs, and minus the amount of any incentive award to Lovelace. Each Settlement Class Member who has not opted out of the Settlement shall be entitled to a payment (each, a "Distribution Amount") from the Settlement Amount equal to the Net Settlement Amount multiplied by a fraction, the numerator of which shall be the amount of online payment fees paid during the Settlement Class Period by the Settlement Class Member, and the denominator of which shall be the amount of online payment fees paid during the Settlement Class Period by all Settlement Class Members who have not opted out of the Settlement. After calculation, all fractional Distribution Amounts shall be rounded down to the nearest cent; provided, however, that the minimum Distribution Amount shall equal one cent.

3. **Review Process:** Before distributing payments to Settlement Class Members, the Settlement Administrator shall provide Class Counsel and Heartland's counsel with its calculations of the Net Settlement Amount and all Distribution Amounts, in native electronic form, so that counsel may confirm that the calculations are correct. After receiving the foregoing information, Class Counsel and Heartland's counsel shall either notify the Settlement Administrator and each other in writing that it approves the distribution of payments, or informally attempt to resolve any concerns with opposing counsel and the Settlement Administrator. The Parties may (but are not required to) seek the Court's assistance in resolving any disputes by filing a Joint Statement regarding the dispute and requesting the scheduling of a telephonic hearing. The same procedure may be used for any other disputes that may arise during administration of the Settlement.

4. **Payments to Settlement Class Members:** After receiving approval from counsel to the Parties and no earlier than the Effective Date, the Settlement Administrator shall mail to each Settlement Class Member who has not opted out of the Settlement a check in the amount of such Settlement Class Member's Distribution Amount. Settlement Class Members shall be advised that the checks must be deposited or cashed within one hundred and eighty (180) Days. On the 30th, 90th, and 150th Day following mailing of all Settlement Payments, the Settlement Administrator shall e-mail to Settlement Class Members with a valid e-mail address a reminder to cash the check.

E. **Remaining Funds.** After the 180-Day period for check cashing has run, the Parties and the Settlement Administrator shall confer regarding the disposition of uncashed settlement payments, any funds created by rounding down the Distribution Amounts, and any unused portion of the Administrative Costs Reserve. Specifically, the Parties and the Settlement Administrator shall determine whether there are any cost-effective methods to deliver more settlement proceeds to Settlement Class Members, such as making a second distribution to Settlement Class Members who already cashed their checks, or using e-mail, regular mail, or telephone calls to encourage Settlement Class Members to negotiate uncashed checks. If it is determined by the Parties and the Settlement Administrator to be reasonable and feasible, the

Settlement Administrator shall take such further actions. Once the remainder of the Settlement Amount is determined to be too small for additional distribution efforts to be reasonable and feasible, the Settlement Administrator shall stop payment on all outstanding checks and prepare a declaration regarding the total amount that was actually paid to the Settlement Class Members and the remaining amount of uncashed checks and any other remaining balance of the Settlement Amount pursuant to California Code of Civil Procedure Section 384(b). Pursuant to the Court's instructions, the Settlement Administrator shall pay the amount of uncashed checks, any other remaining balance of the Settlement Amount to JumpStart Coalition for Personal Financial Literacy and the National College Access Network such that each nonprofit organization receives half (50%) of the sum. Neither the Parties nor their counsel may propose a nonprofit organization with which they have a direct or indirect pre-existing relationship, and neither the Parties nor their counsel may claim credit with the selected non-profit for playing a role in causing the donation to be made. The Court shall select a nonprofit engaged in work that complies with the requirements of California Code of Civil Procedure Section 384 and does not fund or support public interest litigation or lobbying efforts.

VI. RELEASES

A. Upon the Effective Date, the Settlement Class Representative and the Settlement Class Members, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully released and forever discharged Heartland and each and all of its present, former and future direct and indirect parent companies, affiliates, subsidiaries, agents, successors, predecessors-in-interest, or any financial institutions, corporations, trusts, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of Heartland, and all of the aforementioned's respective officers, directors, employees, attorneys, shareholders, agents, vendors, and assigns, from any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or

federal law (including, without limitation, under any state consumer-protection or unfair and deceptive practices acts), whether by constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the Effective Date, including, without limitation: (1) that arise out of or relate in any way to any or all of the claims, causes of action, acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged, asserted, described, set forth or referred to in the Action; or (2) that arise out of or relate in any way to the administration of the Settlement.

B. Without limiting the foregoing, the Released Claims specifically include claims that Lovelace does not know or suspect to exist in his favor at the time that the Settlement, and the releases contained therein, becomes effective. Lovelace acknowledges that he has read, understands, and waives on behalf of himself, but not as to other Settlement Class Members, all rights and benefits of Section 1542 of the California Civil Code, 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.

C. Lovelace understands and acknowledges the significance of this waiver of California Civil Code Section 1542 and any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment, Lovelace acknowledges that he is aware that he may hereafter discover facts in addition to, or different from, those facts which he now knows or believes to be true with respect to the subject matter of the Settlement, but that it is his intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. This waiver of Section 1542 of the California Civil Code does not extend to or apply to Settlement Class Members.

D. Publicity. Neither Class Counsel nor Lovelace will issue press releases or make other public statements regarding the Settlement other than “the case has been settled and we

have no further comment.” Neither Class Counsel nor Lovelace will make a statement of any kind to any third party regarding the Settlement prior to applying for preliminary approval. However, after Effective Date, Class Counsel may put the following case description on Class Counsel’s website, kazlg.com: *Lovelace v. Educational Computer Systems, Inc.*, No. BC682608 (Los Angeles County Superior Court) (finally approved for \$540,000). This section shall not prohibit Class Counsel from communicating with any Settlement Class Member regarding the Action or the Settlement; provided, however, that Class Counsel must comply with all confidentiality agreements and any Protective Order in the Action in communicating with such Persons.

E. Confidentiality. It is agreed that, within thirty (30) Days after the Effective Date, the originals and all copies of all confidential or highly confidential documents and/or information subject to all confidentiality agreements and any protective orders in the Action shall be returned to the producing party or destroyed. Nothing in this Agreement shall require attorney work product or pleading files to be returned or destroyed.

VII. GENERAL MATTERS

A. No Admission of Liability. It is expressly declared that Heartland denies any wrongdoing and any liability whatsoever in the Action and is settling solely to avoid the cost and inconvenience of litigation.

B. Settlement Conditioned Upon Approval. The Settlement reflected by this Agreement is expressly conditioned on obtaining the Preliminary Approval Order and Final Approval Order without material modification by the Court. In the event of failure to obtain any of the required provisions of such orders, including, without limitation, the denial of any motion seeking preliminary or final approval, this Agreement, except for Sections IV.B, VII.D, and this paragraph, will become null and void and all Parties will return, without prejudice, to the *status quo ante* as of the date of this Agreement as if this Agreement had not been entered into. In such event, certification of the Settlement Class will be void; no doctrine of waiver, estoppel, or preclusion shall be asserted in any litigated certification proceedings in the Action; and this Agreement and its existence shall be inadmissible to establish any fact relevant to class

certification or any alleged liability of Heartland for the matters alleged in the Action or for any other purpose. In the event this Agreement shall terminate, be canceled, or not become effective for any reason, within seven (7) Days after written notification of such event is sent by counsel for Heartland or Class Counsel to the Settlement Administrator, the Settlement Administrator shall refund to Heartland the balance of the Settlement Amount. If the Effective Date does not occur, or if this Agreement is terminated pursuant to its terms, neither the Settlement Class Representative nor Class Counsel shall have any obligation to repay any amounts actually and properly disbursed to pay for costs of Class Notice or administration of the Settlement. In addition, any expenses already incurred and properly charged to the Settlement Amount at the time of such termination or cancellation, but which have not been paid, shall be paid by the Settlement Administrator in accordance with the terms of this Agreement prior to the balance being refunded in accordance with this paragraph.

C. Effect of Settlement. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties, or of the propriety of certifying a class in the Action; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be a waiver of any defense or Heartland's right to seek to enforce any arbitration provision in other cases or against Settlement Class Members who opt out of the Settlement. The Released Parties may file this Agreement and/or the Judgment in any action or proceeding that may be brought against 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.

D. Evidentiary Preclusion. In the event that the Settlement is not approved as presented, or Heartland terminates the Settlement as permitted herein, the Parties agree that neither the terms of this Agreement nor any publicly disseminated information regarding the

Settlement, including, without limitation, the Class Notice, court filings, orders, or public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents relating to, Heartland's termination of the Settlement, any failure of the Court to approve the Settlement or any objections or interventions may be used as evidence for any purpose whatsoever.

E. Parties Authorized to Enter into Amended Settlement Agreement. The individuals executing this Agreement on behalf of a party represent and warrant that he, she, or it is fully authorized to execute this Agreement on such party's behalf and to carry out the obligations provided for therein. Each Person executing this Agreement on behalf of a party covenants, warrants, and represents that he or she is and has been fully authorized to do so by such party. Each party represents and warrants that he, she, or it intends to be bound fully by the terms of this Agreement.

F. Execution. The Parties and their counsel may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

G. Best Efforts. The Parties agree to cooperate in preparing and reviewing the documents and performing all other acts contemplated herein in a timely manner. Class Counsel and Heartland consider the Settlement described herein to be fair, reasonable and adequate will use their best efforts to seek approval of the Settlement by the Court and respond to any objectors, intervenors, or other persons or entities seeking to preclude entry of the Final Judgment, and, if the Settlement is granted final approval, to effectuate its terms. Notwithstanding the foregoing, Heartland shall have no obligation to join in any motions for preliminary or final approval.

H. Time Periods. The time periods and dates described in this Agreement with respect to the giving of Class Notice and hearings will be subject to Court approval and modification by the Court with the consent of the Parties.

I. Governing Law. This Agreement is governed by the laws of the State of California without reference to choice of law principles.

J. No Construction Against Drafter. This Agreement is deemed to have been drafted by all Parties, and any rule that a document shall be interpreted against the drafter will not apply to this Agreement.

K. Agreement Binding on Successors in Interest. This Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

L. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

VIII. MISCELLANEOUS PROVISIONS

A. Notices. Any notice sent in connection with this Agreement shall be transmitted by e-mail and U.S. Mail as follows:

To Plaintiff and Class Counsel:
Joshua B. Swigart
Hyde & Swigart
2221 Camino Del Rio South, Suite 101
San Diego, CA 92108
josh@westcoastlitigation.com

To Heartland:
Christopher Willis
Ballard Spahr LLP
999 Peachtree St, Suite 1000
Atlanta, GA 30309
willisc@ballardspahr.com

B. Each and every exhibit to this Agreement is incorporated herein by this reference as though fully set forth herein.

C. The provisions of this Agreement may be waived only in a writing executed by the waiving party. The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver, by that party or by any other party, of any other prior or subsequent breach of this Agreement.

D. Each party to this Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

E. This Agreement has been carefully read by each of the Parties, or their responsible officers thereof, and its contents are known and understood by each of the Parties. This Agreement is signed freely by each party executing it.

F. No party to this Agreement has heretofore assigned, transferred, or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by this Agreement.

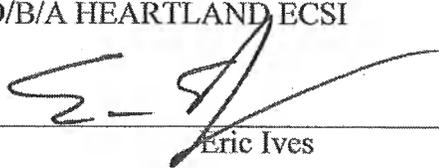
G. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall be ineffective but shall not in any way invalidate or otherwise affect any other provision.

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

DATED: _____, 2019

BY: _____
Justin Lovelace
Plaintiff

DATED: 5-28, 2019

EDUCATIONAL COMPUTER SYSTEMS,
INC. D/B/A HEARTLAND ECSI
BY:  _____
Eric Ives
ITS: Vice-President and General Manager

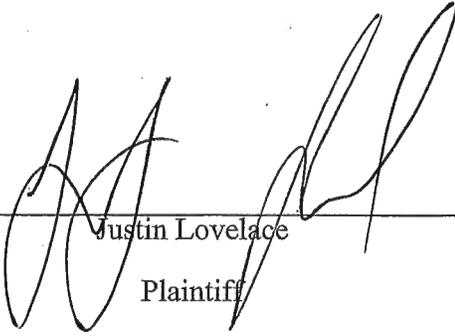
E. This Agreement has been carefully read by each of the Parties, or their responsible officers thereof, and its contents are known and understood by each of the Parties. This Agreement is signed freely by each party executing it.

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

DATED: 5/31, 2019

BY: 
Justin Lovelace
Plaintiff

DATED: _____, 2019

EDUCATIONAL COMPUTER SYSTEMS,
INC. D/B/A HEARTLAND ECSI

BY: _____
Eric Ives

ITS Vice-President and General Manager
:

AGREED AS TO CONFIDENTIALITY AND OTHERWISE APPROVED AS TO FORM:

DATED: 5/31, 2019

HYDE & SWIGART APC
Joshua B. Swigart
Yana A. Hart

KAZEROUNI LAW GROUP, APC
Seyed Abbas Kazerounian

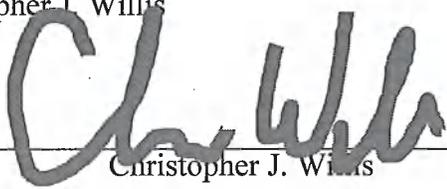
BY: 
Joshua B. Swigart

Attorneys for Plaintiff
Justin Lovelace

AGREED AS TO CONFIDENTIALITY AND OTHERWISE APPROVED AS TO FORM:

DATED: May 29, 2019

BALLARD SPAHR LLP
Christopher J. Willis

By: 
Christopher J. Willis

Attorneys for Defendant
Educational Computer Systems, Inc.
d/b/a Heartland ECSI

