

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement”) effective as of September 2, 2020 (the date upon which the settlement terms were accepted, by and between (1) Kentucky Educational Development Corporation (“KEDC”), as defined below, and (2) Devian LLC (“Devian”) and Jason Crossfield (“Crossfield”) as defined below. Individually, KEDC, Devian and Crossfield may be referred to herein as a “Party” and collectively, KEDC, Devian and Crossfield may be referred to as the “Parties.”

### **DEFINITIONS**

1. “KEDC” shall mean Kentucky Educational Development Corporation, a non-profit Kentucky Corporation with its principal office at 904 Rose Road, Ashland, KY 41102, and its divisions, departments, successors, assigns, trustees in bankruptcy, parents, subsidiaries, affiliates, administrators, agents, servants, employees, owners, members, shareholders, insurers, principals, agents, officers, directors (current, former, or successor), legal representatives, and any and all other affiliated or related persons or entities may have, or claim, an interest in ownership of, by, or through it.

2. “Devian” shall mean Devian LLC, which is a Kentucky for profit Limited Liability Company, having its principal place of business at 114 Squires Pointe Road, Paris, KY 40362, and its divisions, departments, successors, assigns, trustees in bankruptcy, parents, subsidiaries, affiliates, administrators, agents, servants, employees, owners, members, shareholders, insurers, principals, agents, officers, directors (current, former, or successor), legal representatives, and any and all other affiliated or related persons or entities may have, or claim, an interest in ownership of, by, or through it.

3. “Devian’s Affiliates” mean Devian’s successors, assigns, trustees in bankruptcy, parents, subsidiaries, affiliates, administrators, agents, servants, employees, owners, members, shareholders, insurers, principals, agents, officers, directors (current, former, or successor), legal representatives, and any and all other affiliated or related persons or entities may have, or claim, an interest in ownership of, by, or through it. This shall include Endeavor LLC, which is a for profit Kentucky Limited Liability Company, having its principal place of business at 114 Squires Pointe Road, Paris, KY 40361.

4. “Crossfield” shall mean Jason D. Crossfield, a Kentucky resident, with an address of 114 Squires Pointe Road, Paris, KY 40361. Crossfield is a member of both Devian and Endeavor, as well as the principal contact in dealings with KEDC.

5. “Dispute” shall mean all claims, crossclaims, counterclaims, and causes of actions that could have been asserted in a lawsuit by and between the parties regarding the contracts, ACE and NAVIGATOR platforms and programs.

6. “ACE” shall mean Achievement in Career Engagement. ACE is a digital platform that allows high school students to showcase their achievements and accomplishments, explore careers and jobs, colleges and institutions, build resumes, and

store important documents. ACE utilizes an endorsement approach that allows students to earn five core badges (Academics, Civic Responsibilities, Leadership Skills, Soft Skills, and Work Skills) by demonstrating academic and career readiness aligned with their Individual Learning Plan. Students self-report their accomplishments and experiences on their profile, which local district staff and KEDC confirm completion and competence. ACE allows students to demonstrate to potential employers and institutes of higher education that they are transition ready. In addition to the student platform, ACE also provides school administrator, teacher, and parent online platforms to track progress and confirm student competence.

7. “NAVIGATOR” shall mean the ACE NAVIGATOR, which is a digital platform designed to assist students in grades 6-8 in the exploration of careers, understanding the importance of setting learning goals, and discovering more about career pathways. Students in grades 6 and 7 complete activities as they “Navigate” around a compass. Students in grade 8 begin to explore the five core ACE badges (Academics, Civic Responsibilities, Leadership Skills, Soft Skills, and Work Skills) in preparation for high school. Students in grade 8 showcase achievements and accomplishments obtained during their years as a middle school student. In addition to the student platform, ACE makes available school administrator, teacher, and parent online platforms to track progress.

#### RECITALS

WHEREAS, KEDC is Kentucky’s oldest and largest educational cooperative, providing services to more than 60 school districts in the Commonwealth, developing programs to assist schools and students in preparation of students’ academic advancement and career opportunities, specifically the ACE program for high school students and the NAVIGATOR program for middle school students to provide an Individual Learning Plan for the students to develop work-based learning skills;

WHEREAS, KEDC began working with Devian and Crossfield in 2017 to provide the platform and program support services for the ACE and NAVIGATOR programs to be utilized by KEDC’s school district customers;

WHEREAS, KEDC, Devian and Crossfield worked together under multiple contracts that have been in effect since 2017;

WHEREAS, in the most recent contract currently in effect as of July 3, 2019, KEDC contracted with Devian and Crossfield for the provision of “platform services for student/teacher support with programs that provide online data tools for migration between schools for peer and administrator observations, activities, assignments, and applications between on-line platforms and apps for devices;”

WHEREAS, in or about May and June 2020, the Parties attempted to negotiate a new contract for the services Devian and Crossfield were providing to KEDC, and by extension to KEDC’s school district customers;

WHEREAS, on or about July 1, 2020, after the Parties had been unable to agree to a new contract, Devian and Crossfield, without justification and notice, ceased performing services under the contract with KEDC;

WHEREAS, on or about July 1, 2020, Crossfield removed the source code for both the ACE and NAVIGATOR platforms from servers hosted by KEDC; prohibited KEDC access to the ACE and NAVIGATOR platforms and programs; resulting in KEDC's inability to provide the ACE and NAVIGATOR platforms and programs to KEDC's school district customers;

WHEREAS, KEDC made numerous efforts to persuade Devian and Crossfield to comply with their obligations under the 2019 contract in effect, and to provide KEDC access to and a complete copy of the ACE and NAVIGATOR platforms, programs, and source code;

WHEREAS, on or about July 2, 2020, Devian and Crossfield contacted KEDC and offered to continue running the ACE and NAVIGATOR platforms for a fixed cost to allow the Parties to continue contract negotiations;

WHEREAS, on August 17, 2020, KEDC sent a demand letter to Devian and Crossfield setting forth Devian's and Crossfield's improper and unlawful conduct and demanding immediate reinstatement of the platform and programs, along with a copy of those platforms and programs;

WHEREAS, to avoid the filing a lawsuit and instigation of injunctive proceedings, Parties began negotiating a resolution; and

WHEREAS, the Parties enter into and execute this Settlement Agreement without admitting or conceding the truth or legal sufficiency of any allegations that could be made by any party in a lawsuit, and solely in order to completely resolve their differences and disputes provided herein.

NOW THEREFORE, to avoid litigation expenses and uncertainties, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## TERMS

1. Settlement Terms.

- A. Devian and Crossfield agree to: (i) restore/reinstate KEDC's access to the ACE and NAVIGATOR platforms and programs; (ii) provide a copy of the ACE and NAVIGATOR source code, software and all related information through a GIT Repository transfer (the "Transferred Material"); and (iii) provide technical and maintenance assistance to KEDC and its designated agent through and including November 1, 2020 (the "Assistance"). In exchange for Devian and Crossfield's compliance, KEDC shall remit \$50,000.00 to Devian.

- B. KEDC acknowledges that the first two conditions set forth in section 1.A have been met and completed by Devian and Crossfield.
- C. Devian and Crossfield acknowledge that KEDC has already remitted \$50,000.00 to Devian.
- D. Devian and Crossfield agree to assign and hereby do assign to KEDC all right, title and interest in and to the Transferred Material, including any and all intellectual property rights therein, including, but not limited to the federal copyright registrations listed in Schedule A. Devian and Crossfield agree to assign, and hereby do assign to KEDC, all right, title and interest in and to any new software, documentation or other creative works created in performing the Assistance. The Parties shall complete and file the necessary documents to effect the transfer/assignment of the federal copyright registration, including, but not limited to, the Exhibit 1 attached hereto; and shall execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transfers described herein. Devian and Crossfield both irrevocably waive all claims that either of them may now or hereafter have in any jurisdiction to so-called “moral rights” or rights or droit moral with respect to the works assigned to KEDC.
- E. KEDC agrees to and hereby acknowledges that Devian and Crossfield have exclusive rights to, and ownership of the LANDED software developed by Devian and Crossfield. KEDC further acknowledges that it is not an author or co-author of the LANDED software, and the LANDED software does not qualify as a derivative work to the best of their knowledge. KEDC warrants that it will take no action to challenge the exclusive rights of Devian and Crossfield in the LANDED software. Devian and Crossfield further warrant that the LANDED software does not qualify as a derivative work of any of the copyright registrations listed in Schedule A.
- E.F. Devian and Crossfield represent and warrant that neither of them have granted any license, assignment, security interest or other contingent or non-contingent right, title, or interest under or relating to the Transferred Material that does or will conflict with or otherwise affect the transfers described above.
- F.G. Upon full execution of this Settlement Agreement by the Parties, KEDC will remit to Devian a second payment of \$50,000.00.
- G.H. Devian, Crossfield and the Devian Affiliates agree not to offer competing products to the ACE and NAVIGATOR products within the Commonwealth of Kentucky and to a Kentucky customer for a period of five (5) years. Devian, Crossfield and Devian Affiliates further agree

not to assist or be in active concert with another party offering a competing product to the ACE and NAVIGATOR products within the Commonwealth of Kentucky or to a Kentucky customer for a period of five (5) years. The five (5) year prohibition on competition in Kentucky against the ACE and NAVIGATOR products shall terminate on September 2, 2025.

H.I. In exchange for the prohibition on competing for five (5) years in Kentucky against the ACE and NAVIGATOR products, KEDC shall remit an additional \$200,000.00 to Devian, payable in two (2) \$100,000.00 installments on the following dates: September 2, 2021 and September 2, 2022.

2. KEDC's Release of Claims. KEDC fully and forever releases, acquits, and discharges Devian, Crossfield and Devian Affiliates from any and all liability on account of any and all claims, liabilities, demands, actions, debts, contracts, damages, and/or causes of action or suits, whether in law or in equity or otherwise, whether in contract or tort, or pursuant to any statute, ordinance or regulation, whether direct or indirect, whether known or unknown, whether presently discoverable or undiscoverable, whether suspected or claimed, which KEDC could have against Devian, Crossfield and Devian Affiliates relating to the Dispute, except for the obligations contained in this Settlement Agreement.

3. Devian, Crossfield and Devian Affiliates' Release of Claims. Devian, Crossfield and Devian Affiliates fully and forever releases, acquits, and discharges KEDC from any and all liability on account of any claims, demands, actions, debts, contracts, damages, and/or causes of action, whether in law or in equity or otherwise, whether in contract or tort, or pursuant to any statute, ordinance or regulation, whether direct or indirect, whether known or unknown, whether presently discoverable or undiscoverable, whether suspected or claimed, which Devian, Crossfield and Devian Affiliates could have against KEDC relating to the Dispute, except for the obligations contained in this Settlement Agreement.

4. Non-Disparagement. Each Party shall refrain from purposefully issuing any press release, making any public statement, or making any statement directly, or through an intermediary, that is likely to become public, to the extent such press release or statement relates to the other party and is untrue or derogatory; provided however, the foregoing prohibition shall not prohibit the other party from defending itself against any public statements that would otherwise violate this clause.

5. Confidentiality. By signing this Agreement, each of the Parties agrees that the fact of and terms of this Settlement Agreement and any facts pertaining to any aspect of the Dispute between the Parties, shall remain strictly confidential and shall not be released, published or disseminated, and shall not be disclosed or discussed with any persons or entities (other than the Parties hereto and their respective counsel, accountants, professional representatives and others at KEDC with a business need to know the existence and terms of this Agreement) and further agrees to direct their respective counsel, representatives, and/or agents to maintain the confidentiality of such terms.

Notwithstanding any other provision under this Settlement Agreement, this stipulation shall continue in full force and effect, without limitation in time. This provision notwithstanding, each of the Parties agrees that the Parties may disclose information which might otherwise be prohibited by this provision as they are required by law, including to any valid tax authority.

6. Consideration. Each Party hereby acknowledges the sufficiency of the consideration for this Agreement and all the paragraphs contained herein. The consideration named herein is the sole consideration for this Agreement and such consideration is contractual and not a mere recital.

7. Representative Authority. Each person signing this Settlement Agreement in a representative capacity represents and warrants that he or she has all requisite authority to enter into this Settlement Agreement on behalf of and to bind his or her principal. Any Party hereto may request that any other Party deliver duly executed corporate resolutions authorizing the execution of this Settlement Agreement and all parties agree to deliver such resolutions if requested.

8. Breach of Settlement Agreement. In the event that any of the Parties dispute the scope or effect of this Settlement Agreement, or any Party breaches any of its promises or obligations made under this Settlement Agreement, and any further proceedings to enforce this Settlement Agreement or any of its terms occur, the losing party in such proceedings will pay the damages, costs, and expenses of the prevailing party or parties (as determined by a court of competent jurisdiction), including all attorneys' fees, expenses, and costs (including discovery costs) incurred defending or pursuing the same, and the prevailing party is entitled to, but not limited to, specific performance of the terms and conditions of this Settlement Agreement.

9. Notice. To the extent that a Party believes another Party breached any of its promises or obligations made under this Settlement Agreement or otherwise believes there is a dispute regarding the scope or effect of this Settlement Agreement, the complaining Party will provide written notice of the same to the non-complaining Party at least ten (10) business days prior to commencing further proceedings. All notices and/or other communications required or permitted by this Settlement Agreement shall be in writing, addressed as set forth below, and shall be deemed given to a party on:

- a. The first business day after such notice is sent by a nationally recognized overnight courier service (costs prepaid); or
- b. The business day that such notice is sent by e-mail, provided that such notice is also sent by a recognized overnight courier service (costs prepaid).

**To KEDC:**

Kentucky Educational Development Corporation  
ATTN: Nancy Hutchinson

904 Rose Road  
Ashland, KY 41102

Nancy.Hutchinson@KEDC.org

AND copies to:

FROST BROWN TODD LLC  
ATTN: Thomas P. O'Brien, III  
400 West Market Street, Suite 3200  
Louisville, KY 40202-3363

tobrien@fbtlaw.com

**To Devian and Jason D. Crossfield:**

Devian LLC and  
Jason D. Crossfield  
114 Squires Pointe Road  
Paris, KY 40361

jason.crossfield@gmail.com

AND copies to:

KING & SCHICKLI, PLLC  
ATTN: Mitchell T. Lyon  
800 Corporate Drive, Suite 200  
Lexington, KY 40503

mitch@iplaw1.net

10. No Admission. The Parties acknowledge and agree that this Settlement Agreement is made as a compromise and settlement of disputed claims, resulting from arms-length negotiations conducted by the Parties' attorneys with the Parties' full approval and consent. For these and other reasons, the Parties agree that nothing in this Settlement Agreement shall be construed as an admission of fault or liability in the Suit or shall be considered an admission of the truth or legal sufficiency of any or all of the allegations, arguments, and/or claims asserted in the Suit. The Parties agree that the Settlement Agreement shall not be presumptively construed against any Party, even if a court determines that the Settlement Agreement or any provision thereof was drafted by one Party, and that the Settlement Agreement shall not be admissible in any proceeding as evidence of, and shall not under any circumstances be considered an admission of the truth or legal sufficiency of any or all of the allegations, arguments and/or claims asserted in the Suit.

11. Choice of Law. This Settlement Agreement is entered into in the Commonwealth of Kentucky and shall be governed by the laws of the Commonwealth of Kentucky. This Settlement Agreement and any rights, remedies, or obligations provided for in this Settlement Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky without regard to the conflicts provisions thereof. The federal courts and/or the state courts located in the Commonwealth of Kentucky shall have exclusive jurisdiction regarding any litigation relating to this Settlement Agreement and any objection to jurisdiction or venue is specifically waived.

12. Severability. The provisions of this Settlement Agreement are severable. If any portion, provision, or part of this Settlement Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Settlement Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

13. Binding Effect. This Settlement Agreement shall be binding upon and shall inure to the benefit and/or detriment of the Parties, as each are defined above.

14. Merger, Integration, Modification, and Waiver. The Parties represent and acknowledge that this Settlement Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties and the releases set forth herein, and that all prior agreements, contracts, negotiations, promises, offers, acceptances, representations, warranties, covenants and understandings in any way relating to this Settlement Agreement, the releases set forth herein, and any other prior understandings or agreements between or among the Parties regarding the same are merged and integrated into the terms and conditions of this Settlement Agreement. This Agreement and its terms may not be amended, modified, or waived except in a writing signed by all Parties. Failure by any Party to insist upon the strict performance by another Party to the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement.

15. Counterparts. This Settlement Agreement may be executed in multiple counterparts, all of which taken together shall constitute one (1) document. The Parties further covenant and agree that signatures on this Agreement provided by facsimile or electronic transmission shall stand as and for the original, and the Parties agree to be bound thereby. Copies, electronic copies, and facsimile copies of signature pages shall be deemed to be originals for all purposes.

16. Benefit. This Settlement Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Settlement Agreement.



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SCHEDULE A

<b>Title</b>	<b>Alternative Titles</b>	<b>Jurisdiction</b>	<b>Registration Number</b>	<b>Registration Date</b>
Career Engagement Platform		USA	TX0008813195	12/9/2019
Middle School Career Engagement Platform		USA	TX0008868018	4/21/2020

EXHIBIT 1  
[COPYRIGHT ASSIGNMENT]

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