SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (this “**Agreement”**) is made and entered into as of February \_\_, 20\_\_ (the “**Effective Date**”), by and between **EXAMPLE, INC.** a Delaware corporation (“**EXAMPLE INC”**) and its wholly owned subsidiary **EXAMPLE, LLC,** a Delaware limited liability company,bothlocated at [STREET ADDRESS, CITY, STATE, ZIP] (“**EXAMPLE LLC**” and together with EXAMPLE INC, the “**Company**”) and **EXAMPLE VENDOR,** a California corporation, having its principal place of business at [STREET ADDRESS, CITY, STATE, ZIP] (“**Vendor**”), with reference to the following facts and on the following terms and conditions:

**RECITALS**

**WHEREAS,** the parties have entered into that certain Software and Support Agreement (AGREEMENT NUMBER), dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Software Agreement**”);

**WHEREAS,** the parties subsequently entered into the certain Amendment No. 1 to the Software Agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Amendment**”);

**WHEREAS,** the Company has advised Vendor that the Company’s funding efforts have not been successful to date and that the ability of the Company to continue in business is at risk; and

**WHEREAS**, the parties now wish to reach full and final settlement of all obligations of the Company and its affiliates to Vendor.

**AGREEMENT**

**NOW, THEREFORE,** in consideration of the premises and of the mutual covenants contained herein, the parties agree as follows:

**1. Definitions.**

Capitalized terms not defined herein are defined in the Software Agreement and Amendment.

**2. Payment of Final Settlement**. As a full and final settlement of claims on the Company and its affiliates by Vendor, the Company agrees to immediately pay Vendor $\_\_\_\_\_\_\_\_ (the “**Settlement Amount**”).

**3. Assignment Consent.** Vendor hereby agrees that in connection with the close of anticipated sale of substantially all of its assets to [Acquiring Company], Inc. or one of its affiliates (“**Acquiring Company**”), EXAMPLE INC shall have the right to assign the Software Agreement and the Amendment, both between the parties, to [Acquiring Company]; provided, however, that [Acquiring Company] agrees in writing to be bound by the terms of such agreements. For purposes of clarification, all of EXAMPLE INC’s rights and obligations under such agreements shall continue in full and shall transfer to [Acquiring Company] in connection with such assignment, except for the terms settled in this Agreement.

**4. Release of the Company**. Vendor agrees that the Settlement Amount represents settlement in full of all outstanding obligations owed to Vendor by the Company and on behalf of Vendor, and its heirs, executors, officers, directors, employees, investors, shareholders, creditor administrators, predecessor and successor corporations, assigns, legal representatives, agents, successors in interest, and partners, hereby fully and forever releases the Company and its affiliates and their officers, directors, employees, investors, shareholders, administrators, predecessor and successor corporations, assigns, legal representatives, agents, successors in interest, and partners, of and from any claim, duty, obligation, cause of action, action, right, judgment, obligation, demand, accounting, liability or damages relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that any of them may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date of this Agreement including, without limitation, any and all claims for attorneys’ fees and costs.

**5. Representations and Warranties by Company.** The Company hereby represents and warrants, as a material condition to this Agreement, that it is not engaged in any litigation proceedings.

**6. No Assignment.** Vendor represents and warrants that it has not assigned or surrogate any said claim, duty, obligation, cause of action, action, right judgment, obligation, demand accounting, liability or damages, or authorized any other person or entity to assert such a claim, duty, obligation, cause of action, action, right, judgment, obligation, demand, accounting, liability or damages on its behalf.

**7. No Reliance.** Each party represents that it has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

**8. Civil Code Section 1542.** With respect to all the matters herein released, Vendor knowingly waives any and all rights and benefits conferred by the provisions of Section 1542 of the Civil Code of the State of California, and any similar law of any state or territory of the United States or any other jurisdiction; provided that there is no fraud in this settlement. Said Section 1542 provides as follows.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

**9. Agreement Null and Void.** In the event that the Company does not make the payment set forth in paragraph 2.2(a) within seven (7) days of the signing of this Agreement, this Agreement shall be null and void.

**10. Governing Law.** This Agreement shall be governed by the laws of the State of California.

**11. Authority.** Each party warrants that any person executing this Agreement on its behalf has the full authority to do so.

**12. Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. The parties shall exchange among themselves original signed or telecopied counterparts.

**13. Entire Agreement.** This Agreement represents the entire agreement and understanding between the parties concerning its subject matter and supersedes and replaces any and all prior agreements and understandings concerning such matters.

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF,** the duly authorized representatives of each of the parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| **EXAMPLE, INC.**  **EXAMPLE, LLC**  By:  Name:  Title:  Date: February \_\_\_, 20\_\_ | **VENDOR, INC.**  By:  Name:  Title:  Date: February \_\_\_, 20\_\_ |

(SIGNATURE PAGE TO SETTLEMENT AND RELEASE AGREEMENT)