

# Exhibit F

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 23-cv-00408-GPG-MEH

DIANE S. JONES, and JOAN OGG,  
*on behalf of themselves and all others similarly situated,*

Plaintiffs,

v.

P2ES HOLDINGS, LLC,

Defendant.

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement, dated October 5, 2023, is made and entered into by and among the following Settling Parties (as defined below): Diane S. Jones and Joan Ogg (“Plaintiffs”), and P2ES Holdings, LLC (“Defendant” or “P2” and, together with Plaintiffs, the “Parties” or “Settling Parties”). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to resolve, discharge, and settle the Released Claims and this Litigation (as defined below), upon and subject to the terms and conditions set forth below.

**I. INTRODUCTION**

This is a nationwide class action brought by Plaintiffs on behalf of themselves, and purportedly, a class of “all individuals whose PII was compromised in the [Data Incident], first announced by Defendant on or about” November 2, 2022. (*See generally* Plaintiffs’ Consolidated Class Action Complaint (“CAC”), ECF No. 28, ¶ 129.)

The case arises from the alleged access to personal identifying information (“PII”) as a result of a November 2021 data incident experienced by Defendant (the “Data Incident”). Plaintiffs and Class Members include current and former customers of Defendant’s clients and customers, and their dependents, and other individuals affiliated with Defendant whose PII was potentially accessed in the Data Incident.

On February 12, 2023, Plaintiff Diane S. Jones filed the first complaint against Defendant in this Court for claims arising from the Data Incident. On February 20, 2023, Plaintiff Joan Ogg filed a second related Complaint in this Court. On May 8, 2023, the Court entered an order consolidating the two related actions. On August 10, 2023, the Plaintiffs filed their CAC.

In their CAC, Plaintiffs alleged individually, and purportedly on behalf of a putative class that, as a direct result of the Data Incident, that they potentially suffered numerous injuries and would likely suffer additional harm in the future. Plaintiffs’ claims for alleged damages and remedies included the following alleged categories of harms: (i) “the current and imminent risk of fraud and identity theft”; (ii) “lost or diminished value of the PII”; (iii) “out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, tax fraud, and/or unauthorized use of their PII”; (iv) “lost opportunity costs associated with attempting to mitigate the actual consequences of the Data [Incident], including but not limited to lost time”; (v) “the continued and certainly increased risk to their PII, which remains unencrypted and available for unauthorized third parties to access and abuse and may remain backed up in Defendant’s possession and is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect the PII”; (vi) “the invasion of privacy”; (vii) “the compromise, disclosure, theft, and unauthorized use of Plaintiffs’ and the Class Members’ PII”; and (viii) “emotional distress, fear, anxiety, nuisance, and annoyance related to

the theft and compromise of their PII.” *See* CAC at ¶ 12.

Plaintiffs, individually and on behalf of other members of the Class, asserted claims for (i) negligence; (ii) negligence *per se*; (iii) breach of implied contract; (iv) breach of third-party beneficiary contract; (v) breach of confidence; (vi) unjust enrichment; and, (vii) violations of the Colorado Consumer Privacy Act, Colo. Rev. Stat. § 6-1-105(1)(1) *et seq.* Plaintiffs also sought injunctive relief, declaratory relief, monetary damages, and all other relief as authorized in equity or by law. Defendant denies all claims, allegations of wrongdoing, and denies all liability.

Before entering into this Settlement Agreement, and in response to Plaintiffs’ informal discovery requests for settlement purposes, Defendant produced informal discovery that addressed the manner and mechanism of the Data Incident, the number of impacted individuals broken down by state, and Defendant’s notice program and incident response.

## **II. MEDIATION AND SETTLEMENT DISCUSSIONS**

On June 19, 2023, the parties engaged in a mediation session with Mr. Bruce A. Friedman, Esq. at JAMS. Mr. Friedman is a well-regarded mediator with substantial experience handling data breach class action mediations. Although a resolution was not reached, the parties continued to engage in direct settlement negotiations and were able to reach a resolution. The agreed resolution or settlement is memorialized in this Settlement Agreement.

Pursuant to the terms identified below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Parties (as defined below) relating to the Data Incident and this Litigation, by and on behalf of Plaintiffs and Class Members (as defined below).

## **III. PLAINTIFFS’ CLAIMS AND BENEFITS OF SETTLEMENT**

Plaintiffs believe the claims asserted in the Litigation, as set forth in their CAC against Defendant, have merit. Plaintiffs and Proposed Class Counsel recognize and acknowledge,

however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, trial, and potential appeals. Plaintiffs and Proposed Class Counsel have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Proposed Class Counsel are highly experienced in class action litigation and, in particular, data breach and privacy litigation, and have previously served as lead counsel in numerous data breach class actions through final approval. Plaintiffs and Proposed Class Counsel have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class Members.

**IV. DENIAL OF WRONGDOING AND LIABILITY**

Defendant denies each and all of the claims and contentions alleged against it in the CAC. Defendant denies all charges of wrongdoing or liability as alleged, or which could be alleged. Nonetheless, Defendant has concluded that further conduct of litigation would be protracted and expensive, and that it is desirable that this matter be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Defendant has considered the uncertainty and risks inherent in any litigation and in this matter. Defendant has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

**V. TERMS OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Class Members, Proposed Class Counsel, as set forth in the signature block below, and Defendant that, subject to the approval of the Court, the Released Claims (as defined below) shall be finally and fully compromised, settled, and released, and the

Litigation shall be dismissed with prejudice as to the Settling Parties and the Class Members, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

**1. Definitions**

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “**Administration Fees**” shall mean the fees, costs and other expenses incurred for the Settlement Administration, as defined below, and includes Costs of Settlement Administration, as defined below.

1.2 “**Agreement**” or “**Settlement Agreement**” means this agreement.

1.3 “**CAFA Notice**” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. Sec. 1711, *et seq.* (“CAFA”), to be served upon the appropriate State official in each State where Class Member resides and the appropriate federal official.

1.4 “**Class**” means all natural persons who were impacted in the November 2021 Data Incident. The Class specifically excludes: (i) P2 and its officers and directors; (ii) all Persons who timely and validly request exclusion from the Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.5 “**Class Member(s)**” means a Person(s) who falls within the definition of the Class.

1.6 “**Claim Form**” means the forms that will be used by Class Members to submit a Settlement Claim to the Settlement Administrator and that is substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

1.7 “**Claims Deadline**” means the postmark and/or online submission deadline for Settlement Claims pursuant to ¶ 2.1, which shall be 90 days after the Notice Date (as defined below). The Claims Deadline shall clearly be set forth in the order granting Preliminary Approval of the Settlement, as well as in the Notice and on the Claim Form.

1.8 “**Costs of Settlement Administration**” means all actual costs associated with or arising from Settlement Administration and any Notice under Fed. R. Civ. P. 23.

1.9 “**Court**” means the United States District Court of Colorado, United States District Judge Gordon P. Gallagher.

1.10 “**Data Incident**” means the data security incident perpetrated against Defendant on or around November 11, 2021, as described in the CAC.

1.11 “**Dispute Resolution**” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.12 “**Effective Date**” means the date when the Settlement Agreement becomes Final, which is 31 days after the Court grants the Final Approval Order, assuming no appeals have been filed. If an appeal is filed, the Effective Date will be 31 days from when the appeal is decided and a Judgment is entered in this case.

1.13 “**Escrow Account**” means the account opened by the Settlement Administrator.

1.14 “**Final**” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the Court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review.

Notwithstanding the above, any order modifying or reversing any attorneys' fees award or Service Awards made in this case shall not affect whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

1.15 "**Final Approval Order**" is the order through which the Court grants final approval of class action settlement and finds that this settlement is fair, reasonable, and adequate.

1.16 "**Judgment**" means a judgment rendered by the Court.

1.17 "**Litigation**" means this consolidated case, *Jones et al. v. P2ES Holdings, LLC*, Case No. 1:23-cv-00408-GPG-MEH, pending in the United States District Court for the District of Colorado.

1.18 "**Long Notice**" means the long-form notice of settlement to be posted on the Settlement Website (as defined below), substantially in the form as shown in **Exhibit B** to this Settlement Agreement.

1.19 The "**Notice Date**" means 45 days after the entry of the Preliminary Approval Order, which is the date of commencement of Notice being sent to Class Members.

1.20 "**Objection Date**" means the date by which Class Members may file with the Court through the Court's electronic case filing ("ECF") system and mail to Class Counsel and counsel for Defendant their objection to the Settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Objection Date shall be 60 days after the Notice Date.

1.21 "**Opt-Out Date**" means the date by which Class Members must mail to the Settlement Administrator their requests to be excluded from the Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be 60 days after the Notice Date.



1.22 “**Person**” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.23 “**Plaintiffs**” and “**Class Representatives**” mean Diane S. Jones and Joan Ogg.

1.24 “**Preliminary Approval Order**” means the order preliminarily approving the Settlement Agreement and ordering that Notice be provided to the Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached to this Settlement Agreement as **Exhibit D**.

1.25 “**Proposed Class Counsel**” and “**Class Counsel**” means Terence R. Coates, Justin C. Walker, and Dylan J. Gould of Markovits, Stock & DeMarco, LLC; and Gary M. Klinger and David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLC.

1.26 “**Released Claims**” shall collectively mean any and all past, present, and future claims and causes of action related to the Data Incident, including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. § 45, *et seq.*, and all similar statutes in effect in any states in the United States as defined below; state consumer-protection statutes; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of third-party beneficiary contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all

claims for damages, injunctive relief, disgorgement, declaratory relief or judgment, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Class Member against any of the Released Parties based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Class Member or any of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of any Person who has timely excluded themselves from the Class.

1.27 “**Related Entities**” means Defendant’s past, present, and future parents, subsidiaries, divisions, customers, partnerships, joint ventures, affiliates, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, principals, agents, attorneys, assigns, employees, servants, members, providers, partners, principals, officers, directors, shareholders, owners, heirs, executors, administrators, personal representatives, insurers, and reinsurers, and trustees of such entities, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.28 “**Released Parties**” means Defendant and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers.

1.29 “**Remainder Funds**” means the funds, if any, that remain in the Settlement Fund after settlement payments for all Valid Claims (as defined below). The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds will be sent to one or more court-approved charitable organizations as a *cy pres* distribution. The Parties will jointly recommend the entity or entities to the Court that will be the recipients of the *cy pres* distribution.

1.30 “**Service Awards**” shall have the meaning ascribed to it as set forth in ¶ 7.3 of this Settlement Agreement. The Service Awards requested in this matter will be \$5,000 to each Class Representative, subject to court approval and will be in addition to any other Settlement benefits Plaintiffs may receive. The Service Awards shall be paid using and through the Settlement Fund.

1.31 “**Settlement Administration**” means the means the providing of Notice, the processing and payment of awards of Attorneys’ Fees and Expenses and Service Award(s), and the processing and payment of Claims received from Class Members by the Settlement Administrator, and all undertakings reasonably necessary by the Settlement Administrator to fulfill its obligations hereunder.

1.32 “**Settlement Administrator**” means Kroll Settlement Administration, LLC, who is experienced in administering class action claims generally and specifically those of the type provided for and made in data security litigation.

1.33 “**Settlement Claim**” or “**Claim**” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.34 “**Settlement Fund**” means a non-reversionary common fund to be funded by Defendant in the amount of one million two hundred and fifty thousand dollars (\$1,250,000) which shall be deposited into the Escrow Account as set forth in ¶¶ 8.1, 8.2.

1.35 “**Settling Parties**” means, collectively, Defendant and Plaintiffs, individually and on behalf of the Class and all Released Parties.

1.36 “**Short Notice**” means the short notice of the proposed class action settlement, substantially in the form as shown in **Exhibit C** to this Settlement Agreement. The Short Notice will direct recipients to the Settlement Website where recipients may view the Long Notice and make a claim for monetary benefits. The Short Notice will also inform Class Members, *inter alia*, of the Claims Deadline, the Opt-Out Date and Objection Date, and the date of the Final Approval Hearing (as defined below).

1.37 “**Settlement Website**” shall be the URL that the Settlement Administrator will establish and will contain detailed information about this Litigation.

1.38 “**Unknown Claims**” means any of the Released Claims that any Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred

to Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims, including Unknown Claims. The Settling Parties acknowledge, and Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.39 “**Valid Claims**” means Settlement Claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

## **2. Settlement Benefits**

2.1 Claimed Benefits: All Class Members shall have the opportunity to submit a Claim Form for certain Claimed Benefits on or before the Claims Deadline. The Claimed Benefits, as described below, shall include: (a) Pro-Rata Cash Payments; (b) Out-of-Pocket-Expense Claims; (c) Lost-Time Claims; and (e) Verified Fraud Claims.

- a) \$50 Pro-Rata Cash Payment. After the distribution of attorneys’ fees, Class Counsel’s litigation expenses, Administrative Fees, Service Awards, Out-of-Pocket Expense Claims, Lost-Time Claims, and Verified Fraud Claims (each of which is defined below in this Section), the Settlement Administrator will make *pro rata* settlement payments of the remaining Settlement Fund to each Class Member who submits a claim. This may

cause a *pro rata* increase or decrease the \$50 cash payment. No documentation or attestation is required.

- b) Out-of-Pocket Expense Claims. Class Members can submit a Claim Form for reimbursement of documented out-of-pocket losses reasonably traceable to the Data Incident up to \$5,000 per individual (“Out-of-Pocket-Expense Claims”). Out-of-Pocket-Expense Claims will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after November 11, 2021 that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; and miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges.

Class Members with Out-of-Pocket-Expense Claims must submit documentation and attestation supporting their claims. This may include receipts or other documentation, not “self-prepared” by the claimant, which documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

- c) Lost-Time Claims. Class Members can submit a Claim Form for reimbursement for time spent remedying issues related to the Data Incident for up to four (4) total hours at a rate of \$25 per hour capped at \$100 (“Lost-Time Claims”). No documentation need be submitted in connection with Lost-Time Claims, but Class Members must attest that the time claimed was actually spent as a result of the Data Incident.
  
- d) Verified Fraud Claims: Class Members can submit a Claim Form for documented incident of fraud for \$250 per incident, capped at \$5,000 per individual for verified and documented incidents of fraud (“Verified Fraud Claims”). Verified Fraud Claims will include, without limitation, any verified incident regardless of reimbursement. This may include fraudulent bank or credit card charges, tax filings, opening of bank and/or credit accounts, unemployment filings, etc. Class Members with Verified Fraud Claims must submit documentation and attestation supporting their claims. Receipts or other documentation, not “self-prepared” by the claimant, which documents the incident are required. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

2.2 Any residual funds after payment of all class benefits, Settlement Administration fees, attorneys’ fees, costs, and Service Awards shall be used for a *pro rata* increase of the \$50 pro rata cash payment claims set forth in Section 2.1(a) above, with no maximum payment. Any funds that remain after the distribution and reissuance of all payments from the Settlement Fund,

including for settlement checks that are not cashed by the deadline to do so, will be Remainder Funds that shall be distributed to a charitable organization approved of by the Parties and subject to Court approval.

2.3 Business Practices Changes & Confirmatory Discovery. In connection with the Parties mediation and this Settlement, Defendant provided Plaintiffs with informal discovery regarding the Data Incident and the security and practices enhancements that Defendant has implemented or will implement.

2.4 Dispute Resolution for Claims. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Out-of-Pocket-Expense Claims or Verified Fraud Claims described in Section 2.1; and (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The Settlement Administrator may, at any time, request from the claimant, in writing, additional information as the Settlement Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed losses, and claims previously made for identity theft and the resolution thereof. For any such claims that the Settlement Administrator determines to be implausible, the Settlement Administrator will submit those claims to the Settling Parties (one Plaintiffs' lawyer shall be designated to fill this role for all Plaintiffs). If the Settling Parties do not agree with the claimant's Settlement Claim, after meeting and conferring, then the Settlement Claim shall be referred for resolution to the Settlement Administrator for final determination.



2.4.1. Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Settlement Administrator shall request additional information and give the claimant fourteen (14) days to cure the defect before rejecting the claim. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the defective claim.

2.4.2 Following receipt of additional information requested by the Settlement Administrator, the Settlement Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a claim is facially valid, then the claim shall be paid. If the claim is not facially valid because the claimant has not provided all information needed to complete and evaluate the claim, then the Settlement Administrator may reject the claim without any further action. A defect in one claim shall not cause rejection of any other valid claim submitted by the claimant.

2.4.3. Class Members shall have ten (10) days from receipt of the offer to accept or reject any offer of partial payment received from the Settlement Administrator.

2.5 Settlement Expenses. All costs for notice to the Class Members as required under ¶ 3.2, Administration Fees under ¶¶ 9.1–9.4 and the costs of Dispute Resolution described in ¶¶ 2.4, 9.1 shall be paid out of the Settlement Fund.

2.6 Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Class provided for herein, will be vacated and the Litigation shall proceed as though the Class had never

been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

**3. Order of Preliminary Approval and Publishing of Notice of Final Approval Hearing**

3.1. As soon as practicable after the execution of the Settlement Agreement, but no later than October 5, 2023, Proposed Class Counsel and counsel for Defendant shall jointly submit this Settlement Agreement to the Court, and Proposed Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form substantially similar to **Exhibit D** in both terms and cost, requesting, *inter alia*:

- a) certification of the Class for settlement purposes only pursuant to ¶ 2.6;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Proposed Class Counsel as Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of the Short Notice to be mailed to Class Members in a form substantially similar to the one attached as **Exhibit C** this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the Parties' respective litigation positions, statements that the settlement and notice of settlement are legitimate and that the Class Members are entitled to benefits under the settlement, the

general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, instructions for how to obtain the Settlement Benefits, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Approval Hearing;

- g) approval of a Claim Form to be used by Class Members to make a claim in a form substantially similar to the one attached as **Exhibit A** to this Settlement Agreement; and
- h) appointment of Kroll Settlement Administration, LLC as the Settlement Administrator.

The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of notice.

3.2 Costs for providing notice to the Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Settlement Administration Fees shall be paid from the Settlement Fund. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and Service Awards to Class Representatives, as approved by the Court, shall also be paid from the Settlement Fund. Notice shall be provided to Class Members by the Settlement Administrator as follows:

- a) *Class Member Information*: No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the name and last known physical address of each

Class Member (collectively, “Class Member Information”) that Defendant possesses.

- b) For any Class Member whose information does not include a valid address, the Settlement Administrator shall use the available information to conduct a reverse look-up search to obtain a physical address to mail the Notice.
- c) The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- d) *Settlement Website*: Prior to the dissemination of the Notice, the Settlement Administrator shall establish the Settlement Website ([www.p2settlement.com](http://www.p2settlement.com)) that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information (“Settlement Website”). The Settlement Website, which shall be active within 24 hours of the Notice Date, shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; and (v) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class

Members with the ability to complete and submit the Claim Form electronically.

e) *Short Notice*: Within forty-five (45) days after the entry of the Preliminary Approval Order (“Notice Date”), the Settlement Administrator shall commence disseminating notice to the Class. Within fifteen (15) days thereafter, dissemination of the Notice shall be completed through the following means:

- via mail to the postal address in Defendant’s possession. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;
- in the event that a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address within ten (10) days of receiving the returned Short Notice;
- in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is

no longer valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- f) Publishing, on or before the Notice Date, the Claim Form, Long Notice and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- g) A toll-free help line with an IVR system and a live operator option shall be made available to provide Members with additional information about the settlement. The Settlement Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request; and
- h) Contemporaneously with seeking Final Approval of the Settlement, Proposed Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Class may be adjusted by the Settlement Administrator in consultation and agreement with the Settling Parties as may be reasonable and not inconsistent with such approval.

3.4 Proposed Class Counsel and Defendant's counsel shall request that after Notice is completed the Court hold a hearing (the "Final Approval Hearing") and grant final approval of the settlement set forth herein.

3.5 Defendant will also cause the Settlement Administrator to provide (at Defendant's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act.

#### **4. Opt-Out Procedures**

4.1 Each Person wishing to opt-out of the Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest a Person's intent to opt-out of the Class. To be effective, written notice must be postmarked no later than the Opt-Out Date, as defined in ¶ 1.19.

4.2 All Persons who submit valid and timely notices of their intent to opt-out of the Class, as set forth in ¶ 1.19 above, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Class who do not validly opt-out of the Class shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within ten (10) days after the Opt-Out Date, the Settlement Administrator receives more than 50 Opt-Outs from the Settlement, Defendant shall have the right to terminate the Settlement Agreement in its entirety. If Defendant voids this Settlement

Agreement under this paragraph then, (a) the Parties shall be restored to their respective positions in the Litigation, and the Parties shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the settlement shall have no further force and effect with respect to the Parties, and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated and null and void, *nunc pro tunc*.

## **5. Objection Procedures**

5.1 Each Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date, as defined in ¶ 1.18. Such notice shall state: (i) the objector's full name and address; (ii) the case name and docket number, *Jones v. P2ES Holdings, LLC*, Case No. 1:23-cv-00408-GPG-MEH in the United States District Court for the District of Colorado; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date



no later than the Objection Date, to Terence Coates (Markovits, Stock, & DeMarco, LLC) at 119 East Court Street, Suite 530, Cincinnati, Ohio 45202, as Class Counsel; and Casie D. Collignon (Baker & Hostetler, LLP) at 1801 California Street, Suite 4400, Denver, CO 80202-2662, as counsel for Defendant. The objector or his or her counsel may also file objections with the Court through the Court's ECF system or submitting them to the Clerk of Court, with service on Class Counsel and Defendant's Counsel made through the ECF system. For all objections mailed to Class Counsel and counsel for Defendant, Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement.

5.2 Any Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement, including any claims, shall be through the provisions of ¶¶ 2.4, 5.1, 9.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

## **6. Release**

6.1 Upon the Effective Date, each Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims, including all Unknown Claims, as against all Released Parties. Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member

of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, continuing in, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted. Any other claims or defenses Plaintiffs and each and all of the Class Members may have against Defendant that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Data Incident, the Litigation, or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

**7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Awards to Plaintiffs**

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or Service Awards to Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that reasonable attorneys' fees, costs, expenses, and Service Awards to Plaintiffs as may be agreed to by Defendant and Class Counsel and as ordered by the Court shall be paid from the Settlement Fund. Defendant and Class Counsel then negotiated and agreed to the procedure as set forth herein.

7.2 Class Counsel will move the Court for an award of attorneys' fees not to exceed 33.33% of the Settlement Fund, or approximately \$416,666.67 and litigation expenses not to exceed \$15,000 to be paid from the Settlement Fund. Class Counsel, in their discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel.

7.3 Subject to Court approval, Plaintiffs intend to request a Service Award in the amount of \$5,000 to each individual Plaintiff, also to be paid from the Settlement Fund. Any Service Award that is awarded by the Court shall be paid within fourteen (14) days of the Effective Date.

7.4 If awarded by the Court, the attorneys' fees and expenses as set forth in ¶ 7.2 will be distributed to Class Counsel, within thirty (30) days after the Effective Date. Payment of the Settlement Fund will be deposited into the Escrow Account opened by the Settlement Administrator. Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and Service Awards to Plaintiffs consistent with ¶ 7.2.

7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the Service Awards to Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Class as described herein. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or Service Awards ordered by the Court to Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **8. Settlement Fund**

8.1 Deposits. Defendant agrees to make a payment of one million two hundred fifty thousand dollars (\$1,250,000), and deposit that payment into, the Settlement Fund as follows: Defendant shall pay an amount sufficient to satisfy the Costs of Notice, Settlement Administration, as estimated by the Settlement Administrator, within thirty (30) days after the Court's entry of (i) the Court's entry of the Preliminary Approval Order to pay the Administration Fees, and (ii) the receipt of a W-9 from the Settlement Administrator, along with wire instructions and independent verbal confirmation of the payment details, whichever date is later. Within thirty (30) days after the Court's entry of the Final Approval Order, Defendant shall deposit the remaining balance of the Settlement Fund. Settlement Administrator shall use the balance to complete Settlement

Administration and pay the Attorneys' Fees, Service Awards, and Valid Claims. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant P2's liability shall not exceed one million two hundred and fifty thousand dollars (\$1,250,000).

8.2 Custody of the Settlement Fund. The Settlement Fund shall be deposited into an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to the Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

8.3 Treasury Regulations and Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund ("QSF") within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including

any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

8.4 Taxes. All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to any tax treatment by any Class Representative or any Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, they, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

**9. Administration of Claims**

9.1 The Settlement Administrator shall administer and calculate the claims submitted by Class Members under ¶ 2.1. Class Counsel and Defendant shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process set forth in ¶ 2.4. All claims agreed to be paid in full by Defendant shall be deemed valid.

9.2 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be made within thirty (30) days of the Effective Date.

9.3 All Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

9.4 No Person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, Plaintiffs, and/or Defendant's counsel based on distributions of benefits to Class Members.

**10. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

10.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) Defendant has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3;
- b) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- c) the Judgment has become Final, as defined in ¶ 1.12.

10.2 If all conditions specified in ¶ 1.12 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the Settlement Agreement.

10.3 Within ten (10) days after the Opt-Out Date, the Settlement Administrator shall furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

10.4 In the event that the Settlement Agreement or the releases set forth in ¶ 6.1 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (a) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or Service Awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Defendant shall be obligated to pay amounts already billed or incurred for costs of notice to the Class, Settlement Administration, and Dispute Resolution pursuant to ¶¶ 2.4, 3.2, 9.1–9.4 above and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

**11. Miscellaneous Provisions**

11.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

11.2 In the event that the aggregated amount of payments of all Valid Claims (i.e., \$50 Pro Rata Cash Payment, Out-of-Pocket Expense Claims, Lost-Time Claims, and Verified Fraud Claims) exceeds the total amount of the Settlement Fund, then the value of the payments to be paid to each Class Member making a Valid Claim shall be reduced on a pro rata basis, such that the aggregate value of all payments for all claims does not exceed the Settlement Fund (after payment of all Settlement Administration Costs and Expenses, Attorneys' Fees, Expenses, and Service Awards). All pro rata reduction determinations shall be made by the Settlement Administrator.

11.3 The Settling Parties intend this settlement to be a final and complete resolution of all claims and disputes between them with respect to the Data Incident and this Litigation. The settlement compromises claims, including but not limited to all Released Claims, that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

11.4 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal or administrative



proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of 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.

11.5 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

11.6 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

11.7 This Settlement Agreement, including all exhibits hereto, contains the entire understanding between Defendant and Plaintiffs, individually and on behalf of the Class and all Released Entities, regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between the Parties in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between the Parties.

11.8 Class Counsel, on behalf of the Class, and Defendant's counsel, on behalf of Defendant, are expressly authorized to take all appropriate actions required or permitted to be taken by the Parties pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Parties which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Parties.

11.9 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

11.10 The Settlement 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. A complete set of original executed counterparts shall be filed with the Court.

11.11 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

11.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

11.13 As used herein, “he” means “he, she, they, or it;” “his” means “his, hers, theirs, or its,” and “him” means “him, her, them, or it.”

11.14 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Colorado, and the rights and obligations

of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Colorado.

11.15 All dollar amounts are in United States dollars (USD).

11.16 If a Class Member opts to receive settlement benefits via mailed check, cashing the settlement check is a condition precedent to any Class Member's right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Class Member shall have one hundred and eighty (180) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member's right to receive monetary relief shall be extinguished, and there shall be no obligation to make payments to the Class Member for expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

11.17 The Settlement Website shall be deactivated ninety (90) days after the Effective Date.

11.18 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

Class Counsel

Counsel for P2ES Holdings, LLC Duly  
Authorized Signatory

DATED this 5th day of October, 2023

DATED this 5th day of October, 2023

By: /s/ Terence R. Coates

By: /s/ Casie D. Collignon

Terence R. Coates  
Justin C. Walker  
Dylan J. Gould  
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By: /s/ Gary M. Klinger

Gary M. Klinger  
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\_\_\_\_\_  
Diane S. Jones  
Plaintiff

Joan E. Ogg  
Joan E. Ogg (Oct 5, 2023 12:51 EDT)

\_\_\_\_\_  
Joan Ogg  
Plaintiff

Class Counsel

Counsel for P2ES Holdings, LLC Duly  
Authorized Signatory

DATED this 5th day of October, 2023

DATED this \_\_\_ day of \_\_\_\_, 2023

By: /s/ Terence R. Coates

By: /s/ \_\_\_\_\_

Terence R. Coates  
Justin C. Walker  
Dylan J. Gould  
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By: /s/ \_\_\_\_\_

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Diane S. Jones (Oct 5, 2023 11:15 EDT)  
\_\_\_\_\_  
Diane S. Jones  
Plaintiff

\_\_\_\_\_  
Joan Ogg  
Plaintiff

**SETTLEMENT TIMELINE**

<b><u>From Order Granting Preliminary Approval</u></b>	
Defendant provides list of Class Members to the Settlement Administrator	+14 days after preliminary approval order
Long and Short Notices Posted on the Settlement Website	-Upon Notice Date
Notice Date	+45 days after preliminary approval order
Notice Completion Date	+15 days after Notice Date
Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards	-14 days before Final Approval Hearing, to be filed with Motion for Final Approval
Objection Deadline	+60 days after Notice Date
Opt-Out Deadline	+60 days after Notice Date
Settlement Administrator Provide List of Objections/Exclusions to the Parties’ counsel	+70 days after objection/opt-out deadline
Claims Deadline	+90 days after Notice Date
<b><u>Final Approval Hearing</u></b>	
Motion for Final Approval	_____, 2023
	-14 days
<b><u>From Order Granting Final Approval</u></b>	
Effective Date	+31 days, assuming no appeal has been taken. See definition of Final in the Agreement.
Payment of Attorneys’ Fees and Expenses and Class	+30 days after Effective Date

Representative Service Awards	
Payment of Claims to Class Members	+30 days of Effective Date
Settlement Website Deactivation	+90 days after Effective Date