

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (this “Settlement Agreement,” “Settlement,” or “Agreement”), dated as of December 2, 2020, is entered into by and between (a) Nanette Kearney, Krister Johnson, and Sandra Shorago (each a “Customer Class Representative,” and collectively, the “Customer Class Representatives”), on behalf of themselves and in their capacity as representatives of the Customer Class (as that term is defined herein), and (b) Galileo Learning, LLC (“Galileo” or the “Debtor”), on behalf of itself and in its capacity as the debtor in possession and representative of the Estate (as that term is defined herein), and is effective on the Effective Date (as that term is defined herein). The Customer Class Representatives and the Debtor are referred to collectively as the “Parties” and individually as a “Party.”

1. INTERPRETATION

- 1.1. **Defined Terms.** Except as otherwise defined in this Agreement, or the context otherwise requires, all capitalized terms that appear in this Agreement, when used in this Agreement, shall have the respective meanings set forth in **Exhibit A** hereto.
- 1.2. **Rules of Interpretation.** The following rules of interpretation shall apply in interpreting this Agreement:
 - (a) Unless otherwise specified, any reference to a “Section” or an “Exhibit” is a reference to a section of or an exhibit to this Agreement, respectively;
 - (b) Any Exhibit is incorporated into this Agreement and deemed to be included in and part of this Agreement;
 - (c) Whenever the context so requires, (1) any term stated in the singular or the plural (e.g., it/its or they/their) includes both the singular and the plural, and (2) any term stated in the masculine, feminine, or neuter gender (e.g., he/his, she/her, or it/its) includes the masculine, feminine, and neuter genders;
 - (d) Unless otherwise specified, the phrase “under this Agreement” or any similar word or phrase (e.g., “of this Agreement,” “in this Agreement,” “hereunder,” “hereof,” “herein,” etc.) refers to this Agreement in its entirety, rather than to only a particular portion or portions of this Agreement;
 - (e) Any caption or heading to a Section or an Exhibit is inserted only as a matter of convenience and for reference and is not intended to (1) be part of this Agreement, (2) define, limit, extend, or describe the scope of this Agreement, or (3) otherwise affect the interpretation or construction of this Agreement;
 - (f) Any use of “include,” “includes,” or “including” is without limitation, whether stated or not;

- (g) Unless otherwise specified, any reference to an agreement, contract, instrument, release, or other document being in a particular form or on particular terms and conditions means that such document shall be substantially in that form or substantially on those terms and conditions; and
- (h) Unless otherwise specified, any reference to an existing document, schedule, or exhibit means such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time.

2. RECITALS

- 2.1. From late 2019 to early 2020, thousands of individuals paid money to or for the benefit of Galileo as deposits for Galileo's in-person camp programs scheduled for 2020 and other goods and services offered in connection with those camp programs. However, due to the Covid-19 pandemic and the governmental orders and directives in response thereto, in April 2020, Galileo canceled all of its camp programs and was unable to, and did not, provide refunds to any individuals.
- 2.2. On April 23, 2020, Nanette Kearney, on behalf of herself and others similarly situated, filed a class action complaint against Galileo, its affiliate Galileo Learning Franchising LLC, and its principal Glen Tripp in the United States District Court for the Northern District of California, commencing the Civil Case.
- 2.3. On May 6, 2020, Galileo filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Court, commencing the Chapter 11 Case, which is being jointly administered with the chapter 11 case of Galileo Learning Franchising LLC. The Civil Case remains pending but has been stayed due to the automatic stay.
- 2.4. In its first-day motions filed in the Chapter 11 Case, Galileo acknowledged that "some 10,585 families . . . had paid, in the aggregate, approximately \$11,636,780 . . . in 'tuition' for this Summer's programs."
- 2.5. On May 20, 2020, the Court entered the Summer 2020 Settlement Order in the Chapter 11 Case, which authorized Galileo to present the Summer 2020 Settlement Offer to the Customers. Under the Summer 2020 Settlement Offer, a Customer had until June 26, 2020, to elect the Credit Option or Coupon Option, if they so desired, or the Customer could make no election and retain their monetary Claim. Galileo estimates that (a) 4,054 Customers holding Claims totaling \$4,497,008.15 timely elected the Credit Option in response to the Summer 2020 Settlement Offer, and (b) 1,090 Customers holding Claims totaling \$1,075,299.29 timely elected the Coupon Option in response to the Summer 2020 Settlement Offer.
- 2.6. Some Customers sought a return or refund of some or all of their money paid to Galileo by pursuing a chargeback through their payment issuer. Those who were refunded all of their money by their payment issuer would be made whole and no longer hold any Claim, while those who were refunded less than all of their money would still hold a Claim but in a reduced amount. Galileo estimates that, as of

- November 13, 2020, (a) 1,229 Customers, who had held Claims totaling \$1,561,873.75, received all of their money back through a chargeback, (b) 63 Customers, who had held Claims totaling \$104,867.28, received some of their money back through a chargeback (with those chargebacks totaling \$73,065.63 and those Customers' remaining Claims then totaling \$31,801.65), and (c) 17 Customers, who had held Claims totaling \$26,613.75, received back, through a chargeback, more than what they had originally paid (with those chargebacks totaling \$34,395.71 and those Customers then altogether owing Galileo \$7,781.96).
- 2.7. On August 5, 2020, Nanette Kearney, on behalf of herself and others similarly situated, filed the *Class Representative's Motion for Order Applying Civil Rule 23 to Claims Administration Process and Authorizing Filing of Class Proof of Claim* in the Chapter 11 Case, at docket no. 148.
- 2.8. On October 13, 2020, Nanette Kearney, Sandra Shorago, and Krister Johnson, on behalf of themselves and others similarly situated, filed the *Supplement to Class Representative's Motion for Order Applying Civil Rule 23 to Claims Administration Process and Authorizing Filing of Class Proof of Claim* in the Chapter 11 Case, at docket no. 202.
- 2.9. On November 9, 2020, the Court entered the Class Certification Order in the Chapter 11 Case, which (a) made Civil Rule 23, via Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), applicable to the claims administration process in the Chapter 11 Case, (b) certified the Customer Class as a "mandatory" class under Civil Rule 23(b)(1)(B), (c) designated the three Customer Class Representatives as the representatives of the Customer Class, (d) appointed the Class Counsel as co-counsel for the Customer Class, and (e) authorized the Customer Class Representatives to file a class proof of claim on behalf of the Customer Class.
- 2.10. Following the entry of the Class Certification Order, Galileo provided the Customer Class Representatives certain information regarding the Customers and their Claims. Based upon that information, the Customer Class Representatives estimate that, as of November 13, 2020,
- (a) Approximately 1,246 Customers formerly holding Claims totaling approximately \$1,588,487.50 are Made-Whole Customers (i.e., excluded from the Customer Class); and
 - (b) Approximately 9,250 Customers holding Claims totaling approximately \$9,923,582.30 are Customer Class Members (i.e., included in the Customer Class), out of which
 - (1) Approximately 4,054 Customers holding Claims totaling approximately \$4,497,008.15 previously made a timely election of the Credit Option in response to the Summer 2020 Settlement Offer,

- (2) Approximately 1,090 Customers holding Claims totaling approximately \$1,075,299.29 previously made a timely election of the Coupon Option in response to the Summer 2020 Settlement Offer, and
- (3) Approximately 4,106 Customers holding Claims totaling approximately \$4,351,274.86 did not previously make a timely election of the Credit Option or Coupon Option in response to the Summer 2020 Settlement Offer.

Accordingly, the Customer Class Representatives estimate that the amount of the Customer Class Representative Claim is approximately \$9,923,582.30, which is comprised of approximately 9,250 individual Customer Class Member Claims.

- 2.11. On November 18, 2020, the Customer Class Representatives filed the Class Proof of Claim in the Chapter 11 Case, asserting the Customer Class Representative Claim in the amount of \$9,923,582.30, of which \$9,740,318.10 is asserted to be a priority unsecured claim under § 507(a)(7) of the Bankruptcy Code and \$183,264.20 is asserted to be a nonpriority unsecured claim.
- 2.12. Throughout the pendency of the Chapter 11 Case, the Class Counsel and Debtor's Counsel have engaged in extensive, arms'-length negotiations to reach an accord, whereby the Customer Class Members could receive the best possible treatment on account of their Customer Class Member Claims given the present circumstances and Galileo could avoid the cessation of its business and liquidation of its assets through a conversion of the Chapter 11 Case to one under chapter 7 of the Bankruptcy Code. The Parties acknowledge that in the event of such conversion, each Customer Class Member would recover significantly less than the amount of their Customer Class Member Claim.
- 2.13. The Parties have agreed to settle the claims, disputes, and issues relating to the Customer Class and the treatment of the Customer Class Member Claims in accordance with the terms of this Agreement, subject to the Court's Final Approval of this Agreement and confirmation of the Plan.

3. SETTLEMENT TERMS AND CONDITIONS

- 3.1. **Recitals.** The recitals under Section 2 hereof are incorporated by this reference as though fully set forth herein and shall constitute a part of this Agreement.
- 3.2. **Approval and Effectiveness of Settlement.**
 - 3.2.1. **Effective Date.** This Agreement shall become binding and effective on the first Business Day after which each of the following conditions has been satisfied (the "Effective Date"):
 - (a) Each Party has executed and delivered this Agreement;

- (b) The Court has granted Preliminary Approval of this Agreement and entered the Preliminary Approval Order in the Chapter 11 Case, in a form and in substance reasonably satisfactory to the Parties;
- (c) The Court has granted Final Approval of this Agreement and entered the Final Approval Order in the Chapter 11 Case, in a form and in substance reasonably satisfactory to the Parties;
- (d) The Final Approval Order has become a Final Order;
- (e) The Debtor has filed the Plan in the Chapter 11 Case, in a form and in substance consistent with this Agreement;
- (f) The Court has confirmed the Plan and entered the Confirmation Order in the Chapter 11 Case; and
- (g) The Confirmation Order has become a Final Order.

Notwithstanding the foregoing, the Parties shall comply in good faith with all obligations set forth herein that arise prior to the Effective Date in order to effectuate and implement this Agreement on and after the Effective Date.

- 3.2.2. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Debtor, Estate, Customer Class Representatives, Customer Class Members, and their respective successors, transferees, heirs, and assigns, including the Reorganized Debtor or any other entity into which the Debtor may reorganize.
- 3.2.3. **Exclusion of Made-Whole Customers.** A Made-Whole Customer is not or no longer considered a member of the Customer Class. Accordingly, nothing contained in this Agreement shall be construed as granting or conferring any rights or benefits to any Made-Whole Customers.
- 3.2.4. **Absence of Court Approval.** If the Court (a) declines to grant Preliminary or Final Approval of all material terms of this Agreement or (b) orders that Preliminary or Final Approval of this Agreement is conditioned upon material alterations to this Agreement to which the Parties do not agree, this Agreement shall be deemed null and void, and the Parties shall have no further obligations under this Agreement, with all rights expressly reserved by the Parties. For the avoidance of doubt, material alterations include changes to the benefits provided to the Customer Class Members or the timeframe for making any Settlement Disbursements.
- 3.2.5. **Minor Alterations.** The Court may make minor alterations to the terms of this Agreement that the Court deems necessary to grant Preliminary or

Final Approval thereof, and the Court, in its discretion, may hear argument from the Parties regarding any minor alterations or may make any minor alterations without further input from the Parties. Any minor alterations to this Agreement by the Court shall be reflected in the Preliminary Approval Order or Final Approval Order, as applicable, and deemed incorporated into this Agreement and immediately effective, unless otherwise specified by the Court. For the avoidance of doubt, minor alterations include changes to the procedure of settlement administration, the form and manner of notice to the Customer Class Members regarding this Agreement, or the timeframe for seeking Final Approval.

3.3. **Settlement Treatment Provided to Customer Class Members.**

3.3.1. **Prior Election Made.**

3.3.1.1. **Prior Election of Credit Option.** A Customer Class Member who previously made a timely election of the Credit Option in response to the Summer 2020 Settlement Offer shall, in full satisfaction, discharge, exchange, and release of their Customer Class Member Claim, continue to receive and retain the rights and benefits of the Credit Option, the terms and conditions of which are set forth in the Summer 2020 Settlement Order, and on the Effective Date, the Reorganized Debtor shall assume all of the Debtor's obligations in connection therewith.

3.3.1.2. **Prior Election of Coupon Option.** A Customer Class Member who previously made a timely election of the Coupon Option in response to the Summer 2020 Settlement Offer shall, in full satisfaction, discharge, exchange, and release of their Customer Class Member Claim, continue to receive and retain the rights and benefits of the Coupon Option, the terms and conditions of which are set forth in the Summer 2020 Settlement Order, and on the Effective Date, the Reorganized Debtor shall assume all of the Debtor's obligations in connection therewith.

3.3.1.3. **Disclosure Regarding Benefits.** For the avoidance of doubt, any Customer Class Member who previously made a timely election of the Credit Option in response to the Summer 2020 Settlement Offer is not entitled to receive the same rights and benefits of the Credit Option now offered to an Electing Customer Class Member under this Agreement (as set forth in **Exhibit B** hereto), and any Customer Class Member who previously made a timely election of the Coupon Option in response to the Summer 2020 Settlement Offer is not entitled to receive the same rights and benefits of the Coupon Option now offered to an Electing Customer Class Member under this Agreement (as set forth in **Exhibit C** hereto). The rights and

benefits of the Credit Option and Coupon Option offered under the Summer 2020 Settlement Offer are as set forth in the Summer 2020 Settlement Order.

3.3.2. No Prior Election Made.

3.3.2.1. Available Treatment Options. An Electing Customer Class Member (i.e., a Customer Class Member who did not previously make a timely election of the Credit Option or Coupon Option in response to the Summer 2020 Settlement Offer) shall elect one of the following three Treatment Options in full satisfaction, discharge, exchange, and release of their Customer Class Member Claim:

- (a) The Credit Option, as set forth in **Exhibit B** hereto;
- (b) The Coupon Option, as set forth in **Exhibit C** hereto;
or
- (c) The Deferred Cash Payment Option, as set forth in **Exhibit D** hereto.

3.3.2.2. Election of Treatment Option. An Electing Customer Class Member has made a timely and effective election of a Treatment Option if

- (a) The Electing Customer Class Member completed and executed the Settlement Response Form, in which they marked the appropriate box for their elected Treatment Option; and
- (b) The Electing Customer Class Member returned the Settlement Response Form to the Settlement Administrator in an authorized manner, such that it was actually received by the Settlement Response Deadline.

3.3.2.3. Failure to Make Election. An Electing Customer Class Member who has not made a timely and effective election of any Treatment Option shall be deemed to have elected the Deferred Cash Payment Option.

3.3.3. Tax Consequences. In the Customer Class Notice, notice shall be given advising each Customer Class Member to seek their own personal tax advice regarding (a) any potential tax consequences of receiving the Credit, Coupon, or Deferred Cash Payments and (b) if applicable, any potential tax consequences from the reduction or adjustment in their rights and benefits to the Credit, Coupon, or Deferred Cash Payments to account for the Administrative Costs, Class Counsel Fee Award, and Service

Awards. For the avoidance of doubt, the Debtor, Debtor's Counsel, Customer Class Representatives, and Class Counsel have not made, and are not making in connection with this Agreement, any representations regarding possible tax consequences relating to the Credit, Coupon, or Deferred Cash Payments, and the Debtor, Debtor's Counsel, Customer Class Representatives, and Class Counsel shall not be held responsible for any such tax consequences.

3.4. Plan-Related Provisions Affecting Customer Class Members.

- 3.4.1. **Incorporation of Settlement.** The Debtor shall incorporate this Agreement in the Plan by reference but need not attach a copy of this Agreement as an exhibit to the Plan.
- 3.4.2. **Conflicting Provisions.** Except to the extent waived by the Customer Class Representatives in writing, the Debtor shall not file or propose an iteration of the Plan in the Chapter 11 Case that conflicts or is inconsistent with this Agreement. To the extent that there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Plan Document (i.e., the Plan, without incorporating this Agreement or any provision hereof), the provisions of this Agreement shall control.
- 3.4.3. **Allowed Customer Class Representative Claim.** The Debtor shall not file an objection to the Class Proof of Claim or otherwise object to the allowance of the Customer Class Representative Claim in the Chapter 11 Case, except to the extent that the Customer Class Representative Claim is considered to be inconsistent with the following provisions:
- (a) For pre-confirmation purposes (including Plan-voting purposes), the Customer Class Representative Claim is an Allowed Customer Class Representative Claim in the estimated amount of \$9,923,582.30, of which \$9,740,318.10 is a priority unsecured claim under § 507(a)(7) of the Bankruptcy Code and \$183,264.20 is a nonpriority unsecured claim; and
 - (b) For post-confirmation purposes (including Plan-compliance or Plan-performance purposes), the Customer Class Representative Claim is an Allowed Customer Class Representative Claim in the amount equal to the aggregate amount of all Allowed Customer Class Member Claims.
- 3.4.4. **Effect of Filed Proofs of Claim.** To the extent that a Customer Class Member has filed a Proof of Claim on account of their Customer Class Member Claim in the Chapter 11 Case, such Customer Class Member Claim shall (a) be deemed duplicative of the corresponding portion of the Customer Class Representative Claim for Plan-related purposes and (b) not be individually or separately placed in a class under the Plan

(except to the extent that such Customer Class Member Claim is considered part of the Customer Class Representative Claim that is already placed in a class under the Plan).

- 3.4.5. **Plan Classification.** The Plan shall place the Customer Class Representative Claim in a single class, and no other Claims shall be placed in that class (except to the extent that a Customer Class Member Claim is considered to be a separate Claim). To the extent that the Court requires that the Customer Class Representative Claim be bifurcated and that the bifurcated portions thereof be placed into two separate subclasses under the Plan, the single class under the Plan shall be deemed to be two separate subclasses (with each subclass containing the appropriate bifurcated portion of the Customer Class Representative Claim), and a ballot voted in the single class by the Customer Class Representatives shall be deemed to be a ballot voted in each subclass.
- 3.4.6. **Plan Treatment.** In the class containing the Customer Class Representative Claim, the Plan shall provide that a Customer Class Member, as an individual holder of a Customer Class Member Claim (that comprises part of the Customer Class Representative Claim), shall receive, on account of such Customer Class Member Claim, the applicable treatment provided in this Agreement.
- 3.4.7. **Plan Disbursements to Junior Creditors.** Until and unless all Deferred Cash Payments have been made and all Customer Class Members who elected the Deferred Cash Payment Option have otherwise received the maximum recovery permitted under this Agreement, the Reorganized Debtor shall not make any Plan Disbursements to any holder of a Claim on account thereof, to the extent that such Claim is (a) junior in priority to the portion of the Customer Class Representative Claim that constitutes a priority unsecured claim under § 507(a)(7) of the Bankruptcy Code and (b) not a Customer Class Member Claim. Notwithstanding the foregoing, the Reorganized Debtor may, in its discretion, make Plan Disbursements to the holders of a Claim in the class under the Plan consisting of nonpriority unsecured claims held primarily by trade creditors if
- (x) Such Plan Disbursements are made no earlier than May 1, 2024;
 - (y) At the time that such Plan Disbursements are made, each Customer Class Member who elected the Deferred Cash Payment Option has already received Deferred Cash Payments in the aggregate amount equal to 75.0% of their Effective Date Principal; and

- (z) The aggregate amount of such Plan Disbursements does not exceed the lesser of (1) 50.0% of the allowed Claims in such class under the Plan or (2) \$200,000.

The language in this Section shall be expressly included in the Plan.

3.4.8. **Plan Voting.** In the class containing the Customer Class Representative Claim, the Plan shall provide that (a) the Customer Class Representatives, as the representative holders of the Customer Class Representative Claim, shall be entitled to vote on the Plan, via a single, joint ballot, on account of the Customer Class Representative Claim (and all Customer Class Member Claims), and (b) no Customer Class Members shall be entitled to individually or separately vote on the Plan on account of their Customer Class Member Claim.

3.4.9. **Plan Acceptance and Consent.** If the Plan is in a form and in substance consistent with this Agreement, the Customer Class Representatives shall vote to accept the Plan and provide their affirmative consent to the Plan's treatment of the Customer Class Representative Claim (and all Customer Class Member Claims) to the extent that such treatment is deemed different than the treatment otherwise required under § 1129(a)(9)(B) of the Bankruptcy Code.

3.5. **Payments to Customer Class Representatives.**

3.5.1. **Service Award.** Each Customer Class Representative shall receive, in addition to the Treatment Option elected on account of their Customer Class Member Claim, a Service Award on account of their services as a designated representative of the Customer Class. Subject to the approval of the Court, the Customer Class Representatives will request that the Service Awards be allowed in the following amounts:

- (a) For Nanette Kearney, in an amount not to exceed \$10,000; and
- (b) For Sandra Shorago and Krister Johnson, in an amount not to exceed \$5,000 (for each).

The Debtor shall not object to the allowance of the above requested Service Awards.

3.5.2. **Service Payments.** The Settlement Administrator shall make the Service Payments to the Customer Class Representatives in accordance with the Disbursement Schedule and subject to the Disbursement Priority Scheme. No taxes will be deducted or withheld from any Service Payments, and the Reorganized Debtor shall instead issue a Form 1099 to each Customer Class Representative, with respect to the Service Payments received thereby.

3.6. **Payments to Class Counsel.**

- 3.6.1. **Class Counsel Fee Award.** The Class Counsel shall receive the Class Counsel Fee Award on account of their services as the appointed co-counsel for the Customer Class. Subject to the approval of the Court, the Class Counsel will request that the Class Counsel Fee Award be allowed in an amount of not to exceed \$600,000 (representing approximately 6.05% of the estimated aggregate amount of the Customer Class Member Claims held by all Customer Class Members and approximately 13.79% of the estimated aggregate amount of the Customer Class Member Claims held by the Electing Customer Class Members). The Debtor shall not object to the allowance of the above requested Class Counsel Fee Award.
- 3.6.2. **Class Counsel Fee Payments.** The Settlement Administrator shall make the Class Counsel Fee Payments to the Class Counsel in accordance with the Disbursement Schedule and subject to the Disbursement Priority Scheme. No taxes will be deducted or withheld from any Class Counsel Fee Payments, and the Reorganized Debtor shall instead issue a Form 1099 to the Class Counsel, with respect to the Class Counsel Fee Payments received thereby.

3.7. **Settlement Administrator.**

- 3.7.1. **Appointment.** The Settlement Administrator shall be appointed by the Court in the Preliminary Approval Order, provided that such appointment is conditioned upon the Settlement Administrator agreeing to be bound by this Agreement with respect to the performance of the duties and services and the compensation set forth herein.
- 3.7.2. **Selection.** The Parties will request that the Court appoint Atticus Administration, Inc. (“Atticus”) as the Settlement Administrator. To the extent necessary, the Parties shall execute a joint retention agreement with Atticus, provided that such joint retention agreement is not inconsistent with the terms set forth in this Agreement. In the event that Atticus is not appointed by the Court as the Settlement Administrator, or is unable to administer the Settlement on the terms set forth herein, the Parties will request that the Court appoint another third party as the Settlement Administrator mutually agreeable to the Parties.
- 3.7.3. **Duties.** The Settlement Administrator shall administer the Settlement established by this Agreement, subject to monitoring by the Class Counsel and the Debtor or Reorganized Debtor, as applicable. The Class Counsel, Debtor, and Reorganized Debtor shall cooperate with the Settlement Administrator in connection with the performance of its duties and services set forth in this Agreement or any other function or service necessary to administer the Settlement.

- 3.7.3.1. **Pre-Effective Date Duties.** Prior to the Effective Date, the Settlement Administrator shall be responsible for, without limitation, (a) establishing the Customer Database; (b) establishing the Settlement Website; (c) replicating all Customer Website Data from the Customer Database to the Settlement Website; (d) creating an online version of the Settlement Response Form on the Settlement Website; (e) responding to inquiries from the Customer Class Members, as appropriate; (f) receiving, processing, and evaluating the Settlement Response Forms; and (g) collecting, updating, and storing all applicable Supplemental Customer Data in the Customer Database.
- 3.7.3.2. **Post-Effective Date Duties.** On and after the Effective Date, the Settlement Administrator shall be responsible for, without limitation, (a) receiving funds from the Reorganized Debtor on account of Settlement Disbursements to be made on a Disbursement Date; (b) assessing and confirming with the Reorganized Debtor how those funds are to be allocated; (c) printing and mailing checks to the Class Counsel, Customer Class Representatives, or Customer Class Members with respect to their applicable Settlement Disbursements; (d) providing all applicable Reporting Data to the Reorganized Debtor for its periodic reports; (e) collecting, updating, and storing all applicable Customer Treatment Data in the Customer Database on a quarterly basis; (f) responding to inquiries from the Customer Class Member, as appropriate; and (g) all other tasks necessary to administer the Settlement and agreed to in writing by the Parties and the Settlement Administrator.
- 3.7.4. **Administrative Costs.** The Settlement Administrator shall be compensated for all Administrative Costs charged or incurred by the Settlement Administrator through the date on which all Settlement Disbursements have been made under this Agreement; provided, however, that in no event shall the aggregate compensation paid to the Settlement Administrator under this Agreement exceed \$100,000 or such other amount mutually agreeable to the Parties and Settlement Administrator and approved by an Order of the Court. For the avoidance of doubt, the fees that may qualify as Administrative Costs include the Settlement Administrator's agreed-upon fees for performing the duties or services set forth in Sections 3.7.3.1 or 3.7.3.2 hereof, and the costs or expenses that may qualify as Administrative Costs include the Settlement Administrator's actual costs to (a) maintain the Customer Database, (b) maintain the Settlement Website, and (c) print and mail the checks with respect to any Settlement Disbursements.

3.7.5. **Administrative Payments.** The Administrative Payments to the Settlement Administrator shall be made on the Disbursement Dates in accordance with the Disbursement Schedule and subject to the Disbursement Priority Scheme, and each Administrative Payment shall be made by the Settlement Administrator deducting for itself, from the funds received from the Reorganized Debtor on account of the Settlement Disbursements, the following applicable amount of funds:

- (a) For the Administrative Payment to be made on the first Disbursement Date, in the amount equal to the Administrative Costs charged or incurred by the Settlement Administrator through the first Disbursement Date; or
- (b) For the Administrative Payment to be made on any Disbursement Date thereafter, in the amount equal to the Administrative Costs charged or incurred by the Settlement Administrator from the day after the immediately preceding Disbursement Date through the applicable Disbursement Date.

Notwithstanding the foregoing, in no event shall the Settlement Administrator be entitled to receive Administrative Payments in the aggregate that exceed the maximum aggregate compensation permitted under Section 3.7.4 hereof.

3.8. **Settlement Disbursements Made by Settlement Administrator.**

3.8.1. **Obligations of the Reorganized Debtor.** All Settlement Disbursements (i.e., all Administrative Payments, Class Counsel Fee Payments, Service Payments, and Deferred Cash Payments) shall be funded from the cash of the Reorganized Debtor and constitute the Reorganized Debtor's obligations under this Agreement.

3.8.2. **Delivery of Funds to Settlement Administrator.** Whenever the Settlement Administrator is obligated to make Settlement Disbursements on a Disbursement Date, the Reorganized Debtor shall deliver funds to the Settlement Administrator in the amount equal to the Disbursable Amount corresponding to the applicable Disbursement Date, such that the funds are received by the Settlement Administrator by no later than the date that is 14 days prior to such Disbursement Date. Upon the Settlement Administrator's receipt of such funds in the full Disbursable Amount and written confirmation from the Reorganized Debtor agreeing with the Settlement Administrator's assessment of how the funds are to be allocated, (a) the Reorganized Debtor shall be deemed to have satisfied its obligations with respect to any Settlement Disbursements required to be made on the applicable Disbursement Date, and (b) the Settlement Administrator shall thereafter be solely responsible for disbursing such

Settlement Disbursements, made out of such funds received, in accordance with this Agreement.

3.8.3. **Incomplete Funds.** If the Settlement Administrator, by a Disbursement Date, has only received funds in an amount less than the corresponding Disbursable Amount from the Reorganized Debtor, the Settlement Administrator shall (a) immediately provide notice of its receipt of incomplete funds to the Class Counsel and (b) temporarily be excused from making any Settlement Disbursements required to be made on such Disbursement Date until the date that is 14 days after the Settlement Administrator's receipt of funds in the full Disbursable Amount.

3.8.4. **Disbursement Schedule.** The Settlement Administrator shall make Settlement Disbursements on the Disbursement Dates and in the corresponding Disbursable Amounts in accordance with the following Disbursement Schedule:

- (a) On the date that is 14 days after the Effective Date, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the greater of (1) 6.0% of the Effective Date Principal Pool or (2) \$200,000;
- (b) On October 1, 2021, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the greater of (1) 12.5% of the Effective Date Principal Pool or (2) \$375,000;
- (c) On October 1, 2022, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the greater of (1) 12.5% of the Effective Date Principal Pool or (2) \$375,000;
- (d) If the Annual Net Income for the calendar year 2022 is greater than \$1,750,000, then on May 1, 2023, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to 20.0% of the Annual Net Income for the calendar year 2022;
- (e) On October 1, 2023, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the greater of (1) 12.5% of the Effective Date Principal Pool or (2) \$425,000;

- (f) If the Annual Net Income for the calendar year 2023 is greater than \$1,750,000, then on May 1, 2024, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to 20.0% of the Annual Net Income for the calendar year 2023;
- (g) On October 1, 2024, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the balance of the Principal Pool as of such date, plus the accrued Administrative Costs as of such date;
- (h) On April 30, 2025, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the balance of the Interest Pool as of such date, plus the accrued Administrative Costs as of such date; and
- (i) If a Financing Event occurs prior to April 30, 2025, then on the date that is 60 days after the closing of such Financing Event, the Settlement Administrator shall make Settlement Disbursements in the aggregate amount equal to the lesser of (1) 20.0% of the net proceeds received by the Reorganized Debtor in connection with the Financing Event or (2) \$1,000,000.

3.8.5. **Disbursement Priority Scheme.** Whenever the Settlement Administrator is obligated to make Settlement Disbursements on a Disbursement Date, the corresponding Disbursable Amount shall be allocated between the Settlement Disbursements in accordance with the following Disbursement Priority Scheme:

- (a) First, for the Administrative Payment, in the applicable amount set forth in Section 3.7.5 hereof;
- (b) Second, for the Class Counsel Fee Payment, in an amount equal to the lesser of (1) the balance of the Class Counsel Fee Award or (2) the remainder of the Disbursable Amount;
- (c) Third, for the Service Payments, in an amount equal to the lesser of (1) the balance of the Service Awards or (2) the remainder of the Disbursable Amount; and
- (d) Fourth, for the Deferred Class Payments.

3.8.6. **Prepayment.** Nothing contained in this Agreement shall be construed as prohibiting the prepayment of the remaining Deferred Cash Payments ahead of the Disbursement Schedule, except that any such prepayment may be made only if (a) the prepayment is of all remaining Deferred Cash Payments owed to all Customer Class Members who elected the Deferred Cash Payment Option, with each such Customer Class Member receiving

a final lump-sum payment equal to the balances of their Principal and Interest as of the proposed prepayment date (i.e., no partial prepayment), and (b) on account of such prepayment, the Settlement Administrator has received funds from the Reorganized Debtor in an amount equal to the aggregate balances of the Principal Pool and Interest Pool as of the proposed prepayment date, plus the accrued Administrative Costs as of the proposed prepayment date. In the event of such prepayment, for reporting and compliance purposes, (y) the date on which the Settlement Administrator mailed out the final lump-sum payments shall be deemed a Disbursement Date, and (z) the amount of the funds required to be received by the Settlement Administrator on account of such prepayment shall be deemed the corresponding Disbursable Amount.

- 3.8.7. **Periodic Reporting.** By no later than the date that is 28 days after each Disbursement Date (regardless of whether Settlement Disbursements were obligated to be made on such Disbursement Date), the Reorganized Debtor, with the assistance of the Settlement Administrator, shall prepare and deliver to the Class Counsel a periodic written report containing the Reporting Data (described in **Exhibit E** hereto) regarding the applicable Disbursement Date and the period preceding such Disbursement Date.

3.9. **Customer Data.**

- 3.9.1. **Customer Database.** As soon as practicable after the execution of this Agreement, the Debtor and Settlement Administrator shall jointly establish the Customer Database. The Customer Database shall be maintained by the Settlement Administrator until the date that is one year after the later of (a) the first date after which all Credits and Coupons have expired under this Agreement or (b) the first date after which all Settlement Disbursements have been made under this Agreement, unless further extended by an Order by the Court for good cause.
- 3.9.2. **Access and Confidentiality.** The Customer Class Representatives and Class Counsel shall be granted uninterrupted access to the Customer Database. Except to the extent waived by the Debtor or Reorganized Debtor, as applicable, in writing, all data or information regarding any Customer stored in the Customer Database and accessed by the Customer Class Representatives or Class Counsel shall be subject to and constitute “Confidential Information” under the *Confidentiality and Non-Disclosure Agreement* previously executed by each Customer Class Representative and Class Counsel.
- 3.9.3. **Initial Customer Data.** As soon as practicable after the execution of this Agreement, the Debtor shall collect and store in the Customer Database the Initial Customer Data (described in **Exhibit F** hereto) regarding each Customer (but only to the extent that such Initial Customer Data exists in the Debtor’s records or is otherwise accessible to the Debtor). Any new or

corrected Initial Customer Data regarding a Customer obtained by the Debtor thereafter shall be updated in the Customer Database by the Debtor on a weekly basis, until the Effective Date.

- 3.9.4. **Supplemental Customer Data.** By no later than the date that is five days after the Settlement Response Deadline, the Debtor and Settlement Administrator shall collect and store in the Customer Database the Supplemental Customer Data (described in **Exhibit G** hereto) regarding each Customer Class Member. Any new or corrected Supplemental Customer Data regarding a Customer Class Member obtained by the Debtor or Settlement Administrator thereafter shall be updated in the Customer Database by the Debtor or Settlement Administrator, as applicable, on a weekly basis, until the Effective Date.
- 3.9.5. **Customer Treatment Data.** As soon as practicable after the Effective Date, the Reorganized Debtor and Settlement Administrator shall begin collecting and storing in the Customer Database the Customer Treatment Data (described in **Exhibit H** hereto) regarding each Customer Class Member. Any new or corrected Customer Treatment Data regarding a Customer Class Member obtained by the Reorganized Debtor or Settlement Administrator thereafter shall be updated in the Customer Database by the Reorganized Debtor or Settlement Administrator, as applicable, on a quarterly basis until the later of (a) the first date after which all Credits and Coupons have expired under this Agreement or (b) the first date after which all Settlement Disbursements have been made under this Agreement.
- 3.10. **Electronic Access to Settlement Information.**
- 3.10.1. **Settlement Website.** By no later than the date that is seven days prior to the Customer Class Service Deadline, the Settlement Administrator shall establish the Settlement Website. The Settlement Website shall be located at a domain mutually agreeable to the Parties. The Settlement Website shall be maintained by the Settlement Administrator and remain accessible online until the date that is one year after the later of (a) the first date after which all Credits and Coupons have expired under this Agreement or (b) the first date after which all Settlement Disbursements have been made under this Agreement, unless further extended by an Order by the Court for good cause.
- 3.10.2. **Contents of Settlement Website.** The Settlement Website shall make publicly available the following documents or information (in a form and in substance reasonably satisfactory to the Parties):
- (a) A summary of the terms of this Agreement;

- (b) The relevant dates, deadlines, and procedures with respect to the Final Approval of this Agreement, including the date, time, and location of the Final Approval Hearing;
 - (c) Electronic copies (in PDF format) of this Agreement, the Customer Class Notice, Settlement Response Form, Preliminary Approval Motion, Preliminary Approval Order, Final Approval Motion, Final Approval Order, Plan, Disclosure Statement, and Confirmation Order, whenever any such document becomes publicly available; and
 - (d) The contact information for the Settlement Administrator, Class Counsel, and Debtor's Counsel.
- 3.10.3. **Access by Customers.** The Settlement Website shall allow any Customer, after inputting some combination of information unique to the Customer (e.g., their last name, email address, or ZIP Code of the address used in the transaction that formed the basis of their Claim), to access the Customer Website Data (described in **Exhibit I** hereto) regarding such Customer.
- 3.10.4. **Access by Customer Class Members.** The Settlement Website shall allow any Customer Class Member, after inputting some combination of information unique to the Customer Class Member, to (a) complete, execute, and return an online version of the Settlement Response Form, and (b) update their name, email address, mailing address, and telephone number.

3.11. Procedure for Approving Settlement.

3.11.1. Preliminary Approval.

3.11.1.1. **Preliminary Approval Motion.** As soon as practicable after the execution of this Agreement, the Parties shall jointly file the Preliminary Approval Motion in the Chapter 11 Case and seek the Court's entry of the Preliminary Approval Order, in a form and in substance reasonably satisfactory to the Parties.

3.11.1.2. **Relief Requested.** In addition to requesting the Preliminary Approval of this Agreement, the Preliminary Approval Motion shall also request that the Court grant the following relief:

- (a) Approving the form and manner of notice to the Customer Class Members;
- (b) Appointing the Settlement Administrator;

- (c) Declaring that 28 U.S.C. § 1715 is inapplicable in the Chapter 11 Case;
- (d) Scheduling the Final Approval Hearing; and
- (e) Establishing other relevant dates, deadlines, and procedures with respect to the Final Approval of this Agreement.

3.11.1.3. **Preliminary Approval Hearing.** Except to the extent that the Court otherwise allows a shortened notice period, the Preliminary Approval Motion shall be filed with at least 28 days' notice of the Preliminary Approval Hearing. To the extent possible, the Parties shall use their best efforts to coordinate having the Preliminary Approval Hearing held before the Court on the same date and time as the Disclosure Statement Hearing.

3.11.1.4. **Regulatory Service.** Whether or not required in the Chapter 11 Case, on the date that the Preliminary Approval Motion is filed, the Debtor shall serve the Preliminary Approval Motion on the appropriate federal and state officials in accordance with 28 U.S.C. § 1715.

3.11.2. **Notice to Customer Class Members.**

3.11.2.1. **Contents of Customer Class Notice.** The Customer Class Notice shall be in a form reasonably satisfactory to the Parties and shall inform a Customer Class Member that

- (a) The Court has certified the Customer Class in the Chapter 11 Case;
- (b) This Agreement becomes effective only if the Court grants Final Approval thereof and also confirms the Plan;
- (c) If so approved, this Agreement is binding as to all Customer Class Members, and no Customer Class Member has the right to opt out of the Customer Class;
- (d) If the Customer Class Member is an Electing Customer Class Member, they have the right to make an election of (1) the Credit Option, (2) the Coupon Option, or (3) the Deferred Cash Payment Option;

- (e) The Customer Class Member must complete, execute, and return the Settlement Response Form in order to (1) assert their Customer Class Member Claim, (2) make an election of a Treatment Option, and (3) opt out of the releases granted under this Agreement; and
- (f) The Customer Class Member has the right to object to this Agreement and be heard at the Final Approval Hearing.

When served, the Customer Class Notice shall also be accompanied by the Settlement Response Form.

3.11.2.2. **Electronic Service by Email.** By no later than the Customer Class Service Deadline, the Debtor, through the Claims Agent, shall electronically serve the Customer Class Notice by email on all identified Customer Class Members. The email sent by the Claims Agent to a Customer Class Member shall (a) attach or provide a link to download an electronic copy (in PDF format) of the Customer Class Notice, (b) attach or provide a link to download an electronic copy (in PDF format) of the Settlement Response Form, and (c) provide a link to the Settlement Website where the Customer Class Member can complete, execute, and return an online version of the Settlement Response Form. To better ensure that a Customer Class Member is aware of and reviews the Settlement Administrator's email, by no later than the Customer Class Service Deadline, the Debtor shall send a courtesy email to all identified Customer Class Members advising them to expect to receive and look for the Claims Agent's email. The Debtor shall bear all costs associated with serving the Customer Class Notice on the Customer Class Members by email.

3.11.2.3. **Alternative Service by First-Class Mail.** If (a) the Debtor has no email address on file for a Customer Class Member or (b) the Customer Class Notice emailed to a Customer Class Member's email address was bounced back as undeliverable, by no later than the Customer Class Service Deadline, the Debtor, through the Claims Agent, shall serve the Customer Class Notice by first-class mail on such Customer Class Member. The Debtor shall bear all costs associated with serving the Customer Class Notice on the Customer Class Members by first-class mail.

3.11.2.4. **Most Current Address.** The Customer Class Notice shall be served on a Customer Class Member at their most current email address or mailing address, as applicable, that the Debtor

has on file for the Customer Class Member as of the Customer Class Service Deadline, which is deemed to be

- (a) The email address or billing or mailing address, as applicable, used in the Customer Class Member's original transaction with the Debtor that formed the basis of their Customer Class Member Claim;
- (b) If the Customer Class Member filed a Proof of Claim in the Chapter 11 Case, the email address or mailing address, as applicable, designated for notices in the Proof of Claim; or
- (c) If the Customer Class Member, at any time during the pendency of the Chapter 11 Case, gave written notice of their updated contact information to the Debtor, the email address or mailing address, as applicable, set forth in such written notice.

3.11.2.5. **Undeliverable Mailing Address.** Upon notice that the Customer Class Notice mailed to a Customer Class Member was returned as undeliverable, the Debtor shall direct the Claims Agent to promptly use all reasonable and cost-effective methods to locate a current or proper mailing address for the Customer Class Member, including running a name and last-known-address search through a national database and contacting the Customer Class Member at the most current telephone number that the Debtor has on file for the Customer Class Member. If the Debtor has obtained a current or proper mailing address for the Customer Class Member within 14 days after the Customer Class Service Deadline, the Debtor, through the Claims Agent, shall promptly re-mail the Customer Class Notice to the Customer Class Member at such mailing address and update the information in the Customer Database accordingly. Unless the Court orders otherwise, any re-mailing of the Customer Class Notice to a Customer Class Member shall not extend the Settlement Response Deadline or Settlement Objection Deadline with respect to that Customer Class Member.

3.11.2.6. **Customer Class Service Deadline.** The Parties shall request that the Court set the Customer Class Service Deadline on the date that is 14 days after the Preliminary Approval Hearing. To the extent possible, the Parties shall also request that the Court set the Customer Class Service Deadline on the same date as the Confirmation Service Deadline.

3.11.2.7. **Declaration of Due Diligence.** By the deadline to be established by the Court, the Debtor shall obtain from the Claims Agent and file the Claims Agent's declaration of due diligence in the Chapter 11 Case, setting forth its compliance with the service obligations under this Agreement. The Parties shall request that the Court set such deadline on the date that is 14 days after the Customer Class Service Deadline.

3.11.3. **Settlement Response Form.**

3.11.3.1. **Contents of Settlement Response Form.** The Settlement Response Form shall be in a form reasonably satisfactory to the Parties and shall allow a Customer Class Member to

- (a) Affirm that (1) they did not receive a return or refund of all money paid to or for the benefit of the Debtor through a chargeback with their payment issuer or otherwise and (2) no request or claim seeking such a chargeback remains pending;
- (b) Affirm that they, in response to the Summer 2020 Settlement Offer, (1) made an election of the Credit Option, (2) made an election of the Coupon Option, or (3) did not previously make an election of the Credit Option or Coupon Option;
- (c) Make an election of one of the three Treatment Options;
- (d) Opt out of the releases granted under this Agreement;
- (e) Specify the amount of their Customer Class Member Claim; and
- (f) Provide their name, email address, mailing address, and telephone number.

3.11.3.2. **Submission of Settlement Response Form.** A completed Settlement Response Form shall be submitted or returned to the Settlement Administrator in any of the following manners:

- (a) By mail at an address to be designated by the Settlement Administrator,
- (b) By facsimile at a facsimile number to be designated by the Settlement Administrator,

(c) By email at an email address to be designated by the Settlement Administrator, or

(d) By online submission through the Settlement Website.

3.11.3.3. **Settlement Response Deadline.** The Parties shall request that the Court set the Settlement Response Deadline on the date that is 28 days after the Customer Class Service Deadline. To the extent possible, the Parties shall also request that the Court set the Settlement Response Deadline on the same date as the Plan Voting Deadline.

3.11.4. **Objections to Settlement.**

3.11.4.1. **Settlement Objection.** All Customer Class Members shall have the right to object to this Agreement and the Final Approval thereof. A Customer Class Member has timely objected to this Agreement if the Customer Class Member filed the Settlement Objection with the Court in the Chapter 11 Case and served a copy of the Settlement Objection on the Class Counsel and Debtor's Counsel by no later than the Settlement Objection Deadline.

3.11.4.2. **Contents of Settlement Objection.** Any Settlement Objection by a Customer Class Member shall

(a) Be in writing;

(b) Contain their full name, address, telephone number, email address, and last four digits of their Social Security number;

(c) Provide a clear statement that they object to this Agreement, along with the legal and factual grounds on which their objection is based;

(d) State whether they intend to appear at the Final Approval Hearing, and if so, whether it will be on their own behalf or through counsel;

(e) Identify every case, action, or proceeding in which they (or their counsel) have objected to a class action settlement by the name of the court, the name and docket number of the case, the date of the objection, and any docket number assigned to the objection;

- (f) Attach any evidence to support their objection and any other documents they wish the Court to consider; and
- (g) Be signed by the Customer Class Member so objecting or by their counsel.

Any Customer Class Member who fails to timely file and serve a Settlement Objection that complies with the above shall be deemed to have waived and forfeited any and all rights they may have to object to this Agreement and appear and be heard at the Final Approval Hearing.

3.11.4.3. **Settlement Objection Deadline.** The Parties shall request that the Court set the Settlement Objection Deadline on the date that is 28 days after the Customer Class Service Deadline. To the extent possible, the Parties shall also request that the Court set the Settlement Objection Deadline on the same date as the Plan Objection Deadline.

3.11.4.4. **No Solicitation of Objections.** Neither the Parties nor their respective counsel shall solicit or otherwise encourage directly or indirectly any Customer Class Member to object to this Agreement.

3.11.5. **Final Approval.**

3.11.5.1. **Final Approval Motion.** By the deadline to be established by the Court, the Parties shall jointly file the Final Approval Motion in the Chapter 11 Case and seek the Court's entry of the Final Approval Order, in a form and in substance reasonably satisfactory to the Parties. The Parties shall request that the Court set such deadline on the date that is 14 days after the Customer Class Service Deadline.

3.11.5.2. **Relief Requested.** In addition to requesting the Final Approval of this Agreement, the Final Approval Motion shall also request that the Court grant the following relief:

- (a) Approving the Service Awards to the Customer Class Representatives; and
- (b) Approving the Class Counsel Fee Award to the Class Counsel.

3.11.5.3. **Summary of Settlement Response Forms.** By the deadline to be established by the Court, the Settlement Administrator shall file a summary of the returned Settlement Response Forms in the Chapter 11 Case, setting forth the numbers of the Customer

Class Members who elected the Credit Option, Coupon Option, and Deferred Cash Payment Option. The Parties shall request that the Court set such deadline on the date that is seven days after the Settlement Response Deadline.

3.11.5.4. **Final Approval Hearing.** In the event that the Court declares that 28 U.S.C. § 1715 is applicable in the Chapter 11 Case, the date of the Final Approval Hearing shall be no earlier than the earliest date for entry of a binding Final Approval Order under 28 U.S.C. § 1715. To the extent possible, the Parties shall request that the Court set the Final Approval Hearing on the same date and time as the Confirmation Hearing.

3.11.6. **Proposed Timetable.** To the extent possible, the Parties shall prepare a proposed timetable mutually agreeable to the Parties for concurrently seeking the Final Approval of this Agreement and the confirmation of the Plan, with such proposed timetable to be attached to the Preliminary Approval Motion.

3.12. **Resolution of Customer Class Member Claims.**

3.12.1. **Subsequent Full Chargeback.** Notwithstanding any other provision to the contrary, if a Customer Class Member, at any time (including after being served the Customer Class Notice, using the Credit, redeeming the Coupon, or receiving a Deferred Cash Payment), receives a return or refund of all of their money through a chargeback with their payment issuer or otherwise,

- (a) The individual shall no longer be deemed a member of the Customer Class;
- (b) The amount of the individual's Allowed Customer Class Member Claim shall be deemed to be zero;
- (c) The individual shall no longer be entitled to receive or retain any rights or benefits provided under the Summer 2020 Settlement Order or under this Agreement, as applicable; and
- (d) The individual shall have a duty to return cash to the Reorganized Debtor in the amount equal to the dollar value of the Credit used, the dollar value of the discounts received from redeeming the Coupon, or the amount of the Deferred Cash Payments received, as applicable, failing which, the Reorganized Debtor may pursue the individual for the return of such cash in the Court.

3.12.2. **Assertion of Customer Class Member Claim.**

3.12.2.1. **By Settlement Response Form.** A Customer Class Member has timely and effectively asserted their Customer Class Member Claim, in the amount specified in their Settlement Response Form, if

- (a) The Customer Class Member completed and executed the Settlement Response Form, in which they (1) marked the appropriate box that they disagree that the Debtor's records accurately reflect the amount of their Customer Class Member Claim and (2) specified the amount of their Customer Class Member Claim;
- (b) The Customer Class Member attached to the Settlement Response Form any documentation to support their Customer Class Member Claim; and
- (c) The Customer Class Member returned the Settlement Response Form to the Settlement Administrator in an authorized manner, such that it was actually received by the Settlement Response Deadline.

3.12.2.2. **By Proof of Claim.** A Customer Class Member has timely and effectively asserted their Customer Class Member Claim, in the amount specified in their Proof of Claim, if

- (a) The Customer Class Member completed and executed the Proof of Claim, in which they specified the amount of their Customer Class Member Claim;
- (b) The Customer Class Member attached to the Proof of Claim any documentation to support their Customer Class Member Claim; and
- (c) The Customer Class Member filed the Proof of Claim in the Chapter 11 Case by the Settlement Response Deadline.

3.12.2.3. **By Both Forms.** If a Customer Class Member (a) timely returned a Settlement Response Form and (b) filed a Proof of Claim by the Settlement Response Deadline, the Customer Class Member shall be deemed to have asserted their Customer Class Member Claim in the amount specified in the Settlement Response Form, regardless of whether the Settlement Response Form was returned before or after the Proof of Claim was filed.

3.12.3. **Allowance.** A Customer Class Member Claim shall be deemed an Allowed Customer Class Member Claim to the following extent:

- (a) For a Customer Class Member Claim (1) that is (A) scheduled in the Debtor's Schedules and identified therein as not contingent, not unliquidated, and not disputed or (B) otherwise reflected in the Debtor's records as an Allowed Customer Class Member Claim, and (2) for which (A) no Proof of Claim has been filed by the Settlement Response Deadline and (B) no Settlement Response Form has been timely returned, in the amount as scheduled in the Debtor's Schedules or as reflected in the Debtor's records, whichever is greater;
- (b) For a Customer Class Member Claim (1) for which (A) no Settlement Response Form has been timely returned but (B) a Proof of Claim has been filed by the Settlement Response Deadline, and (2) that is not the subject of a dispute by the Reorganized Debtor, in the amount specified in the Proof of Claim;
- (c) For a Customer Class Member Claim (1) for which a Settlement Response Form has been timely returned (and regardless of whether a Proof of Claim has been filed or not), and (2) that is not the subject of a dispute by the Reorganized Debtor, in the amount specified in the Settlement Response Form; and
- (d) For a Customer Class Member Claim (1) for which (A) a Proof of Claim has been filed by the Settlement Response Deadline or (B) a Settlement Response Form has been timely returned, and (2) that is the subject of a dispute by the Reorganized Debtor, in the amount as mutually agreed to in writing by the Reorganized Debtor and Customer Class Member or as allowed by an Order of the Court.

3.12.4. **Disputes.**

- 3.12.4.1. **Dispute Resolution.** If the Reorganized Debtor disputes a Customer Class Member's Customer Class Member Claim as asserted in their Proof of Claim or Settlement Response Form, the Reorganized Debtor shall (a) give written notice of such dispute to the Settlement Administrator, (b) make a reasonable attempt to meet and confer with the Customer Class Member by email, telephone, or other reasonable form of communication, and (c) further attempt in good faith to resolve such dispute without intervention by the Court.

- 3.12.4.2. **Resolution by Mutual Agreement.** If the Reorganized Debtor is able to resolve a dispute regarding a Customer Class Member's Customer Class Member Claim without intervention by the Court, such resolution shall be memorialized in a writing executed by the Reorganized Debtor and Customer Class Member.
- 3.12.4.3. **Resolution by Claim Objection.** If the Reorganized Debtor is unable to resolve a dispute regarding a Customer Class Member's Customer Class Member Claim, the dispute may be submitted to the Court for resolution, which shall be (a) initiated by the Reorganized Debtor filing in the Chapter 11 Case and serving on the Customer Class Member by first-class mail an objection to the allowance of the Customer Class Member Claim and (b) resolved by an Order of the Court.
- 3.12.4.4. **Claim Objection Deadline.** Any objection by the Reorganized Debtor to the allowance of a Customer Class Member Claim shall be filed and served by no later than the date that is 180 days after the Effective Date.
- 3.12.4.5. **Interim Allowance.** Effective upon the Settlement Administrator's receipt of written notice of a dispute regarding a Customer Class Member's Customer Class Member Claim given by the Reorganized Debtor, and until such dispute has been resolved by the mutual agreement of the Reorganized Debtor and Customer Class Member or by an Order of the Court, the Customer Class Member Claim shall be temporarily deemed an Allowed Customer Class Member Claim in the amount not in dispute by the Reorganized Debtor, as set forth in its notice.

3.13. **Releases and Waivers of Claims.**

- 3.13.1. **Opt Out of Releases.** A Customer Class Member has timely and effectively opted out of the releases granted under this Agreement if
- (a) The Customer Class Member completed and executed the Settlement Response Form, in which they marked the appropriate box to "opt out" of the releases; and
 - (b) The Customer Class Member returned the Settlement Response Form to the Settlement Administrator in an authorized manner, such that it was actually received by the Settlement Response Deadline.
- 3.13.2. **Releases by Customer Class Representatives.** Except for the rights arising out of, provided for, or reserved in this Agreement, upon the

Effective Date, the Customer Class Representatives, and all persons or entities claiming by and through them, and each of them (collectively, the “Representative Releasing Parties”), release and forever discharge the Debtor, the Estate, and their parents, subsidiaries, affiliates, related entities, predecessors, successors, assigns, employees, officers, directors, insurers, agents, representatives, professionals, attorneys, and other persons or entities claiming by or through them, and each of them (collectively, the “Released Parties”) from any and all liabilities, claims, debts, demands, controversies, rights of recovery, rights to payment, suits, actions, causes of action, complaints, obligations, damages, liquidated damages, losses, injuries, penalties, attorneys’ fees, expenses, and costs, of any kind or nature whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, asserted or not asserted, subject to dispute or otherwise, from the beginning of time through their respective execution of this Agreement, which the Representative Releasing Parties, or any of them, may have had or held, now have or hold, or may hereafter purport to have or hold against the Released Parties, or any of them, with respect to any matters concerning, arising out of, related to, or in connection with their respective Customer Class Member Claims, the subject matter of the Civil Case, or the subject matter of the Chapter 11 Case relating to the Customer Class Representative Claim (collectively, the “Representative Released Claims”).

- 3.13.3. **Releases by Customer Class Members.** Except for the rights arising out of, provided for, or reserved in this Agreement, upon the Effective Date, the Customer Class Members who (a) have timely returned their Settlement Response Form to the Settlement Administrator and (b) did not elect to “opt out” of the releases by marking the appropriate box on the Settlement Response Form, and all persons or entities claiming by and through them, and each of them (collectively, the “Member Releasing Parties,” and together, with the Representative Releasing Parties, the “Releasing Parties”), release and forever discharge the Released Parties from any and all liabilities, claims, debts, demands, controversies, rights of recovery, rights to payment, suits, actions, causes of action, complaints, obligations, damages, liquidated damages, losses, injuries, penalties, attorneys’ fees, expenses, and costs, of any kind or nature whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, asserted or not asserted, subject to dispute or otherwise, from the beginning of time through their respective execution of the Settlement Response Form, which the Member Releasing Parties, or any of them, may have had or held, now have or hold, or may hereafter purport to have or hold against the Released Parties, or any of them, with respect to any matters concerning, arising out of, related to, or in connection with their respective Customer Class Member Claims, the subject matter of the Civil Case, or the subject matter of the Chapter 11 Case relating to the Customer Class Representative Claim (collectively,

the “Member Released Claims,” and together, with the Representative Released Claims, the “Released Claims”).

- 3.13.4. **Waiver of Unforeseen Claims.** It is the intention of the Releasing Parties, and each of them, that this Agreement shall be effective as a complete, full, and final accord and satisfaction, and release of each and every Released Claim set forth in, and within the scope of, Sections 3.13.2 or 3.13.3 hereof, as applicable. To the extent any law of any State purports to limit the general releases intended by this Agreement, except with respect to enforcing this Agreement, the Releasing Parties, and each of them, knowingly and voluntarily, fully and forever, waive any and all benefits and rights that they may have had or held, now have or hold, or may hereafter purport to have or hold with respect to the subject matter of the Released Claims by reason of section 1542 of the California Civil Code or any other statute or common law of any State to the same effect. Section 1542 of the California Civil Code provides,

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- 3.13.5. **No Litigation.** Except as may be necessary to enforce the terms of this Agreement, the Debtor, Reorganized Debtor, Customer Class Representatives, Class Counsel, and Releasing Parties agree that they shall not commence or proceed with any action, claim, suit, proceeding, or litigation on the Released Claims, or take any action inconsistent with the terms of this Agreement.
- 3.13.6. **Dismissal of Civil Case.** By no later than the date that is 28 days after the Effective Date, Customer Class Representative Nanette Kearney shall seek the dismissal of the Civil Case with prejudice. The Parties shall bear their own respective attorneys’ fees and costs in connection with the Civil Case.

3.14. **Miscellaneous Terms.**

- 3.14.1. **No Admission of Liability.** Each Party enters into this Agreement without admitting any liability or wrongdoing or conceding any allegations not already expressly admitted. Regardless of whether the Court grants Final Approval of this Agreement, nothing in this Agreement, any document, statement, proceeding, or conduct related to this Agreement, or any settlement discussions leading to this Agreement shall be (a) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any Party, including evidence of a presumption, concession, indication, or admission by any Party of any liability, fault, wrongdoing, omission, concession, or damage, or

(b) disclosed, referred to, or offered in evidence against any Party in the Chapter 11 Case or any other civil, criminal, or administrative action or proceeding, except for purposes of interpreting, implementing, or enforcing this Agreement.

- 3.14.2. **Representations and Warranties.** Each Party represents and warrants that upon the Final Approval of this Agreement by the Court, it will have the legal right and authority to enter into this Agreement and the transactions and releases contemplated hereby.
- 3.14.3. **Further Assurances.** The Parties shall cooperate fully and shall execute and deliver any and all supplemental papers, documents, instruments, and other assurances and shall do any and all acts that may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. If the Parties are unable to agree on the form or substance of any documents or supplemental provisions that are or may become necessary to implement or effectuate the terms of this Agreement, the Parties shall seek the assistance of the Court in the Chapter 11 Case, and in all cases, all such documents, supplemental provisions, and assistance of the Court shall be consistent with this Agreement.
- 3.14.4. **Attorney Authorization.** The Class Counsel and Debtor's Counsel warrant and represent that they are authorized by the Customer Class Representatives and Debtor, respectively, to take all appropriate action required or permitted to be taken by the Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.
- 3.14.5. **Integration.** This Agreement, including any Exhibits hereto, constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior negotiations, agreements, and understandings, whether written or oral, between and among the Parties concerning the subject matter of this Agreement. Each Party acknowledges that it is executing this Agreement without reliance on any representations, warranties, covenants, commitments, or inducements, other than those representations, warranties, covenants, commitments, and inducements expressly stated in this Agreement and the Exhibits hereto. The Exhibits to this Agreement are

Exhibit A	Defined Terms
Exhibit B	Credit Option
Exhibit C	Coupon Option
Exhibit D	Deferred Cash Payment Option
Exhibit E	Reporting Data
Exhibit F	Initial Customer Data
Exhibit G	Supplemental Customer Data
Exhibit H	Customer Treatment Data

Exhibit I Customer Website Data

- 3.14.6. **Non-Severability.** Each of the provisions of this Agreement is a material and integral part hereof. If one or more of the provisions of this Agreement shall become invalid, illegal, or unenforceable in any respect, this Agreement, in its entirety, shall be deemed null and void unless all Parties agree otherwise.
- 3.14.7. **Modification.** This Agreement may not be amended, modified, changed, waived, or terminated, in whole or in part, except by an express written instrument duly executed by all Parties and approved by a Final Order of the Court.
- 3.14.8. **Collaborative Drafting.** Each Party warrants and represents that it has been fully and competently represented by counsel of its own choosing in the negotiations and drafting of this Agreement. Accordingly, (a) neither this Agreement nor any provision contained herein shall be construed against any Party or its counsel because this Agreement was drafted in full or in part by such Party or its counsel, and (b) this Agreement shall be construed equally against all Parties. In this regard, each Party waives any and all benefits and rights that it may have under section 1654 of the California Civil Code, which provides,
- In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.**
- 3.14.9. **No Third-Party Beneficiaries.** This Agreement does not constitute a contract for the benefit of any third parties, any prior creditors or claimants of the Parties, or any non-party, other than the Customer Class Members in relation to the provisions of this Agreement.
- 3.14.10. **Jurisdiction.** The Court shall retain exclusive jurisdiction over any matter concerning, arising out of, relating to, or in connection with the interpretation, implementation, or enforcement of this Agreement, and if necessary to effect the Court’s jurisdiction, each Party, by their execution of this Agreement, stipulates to the entry of an Order by the Court retaining such jurisdiction.
- 3.14.11. **Applicable Law.** Except where superseded by applicable federal law, this Agreement shall be governed by and interpreted and enforced according to the laws of the State of California, without giving effect to any conflict-of-law principles or choice-of-law principles thereof.
- 3.14.12. **Notice.** All notices, demands, requests, or other communications given or served under this Agreement shall be (a) in writing, (b) delivered by courier service or by certified, registered, or first-class mail (return receipt

requested), (c) deemed to have been received on the date of delivery, and (d) addressed as follows (or to such other address as the Party entitled to notice shall hereafter designate by a written notice filed in the Chapter 11 Case):

(a) **If to the Customer Class, Customer Class Representatives, or Class Counsel:**

Randall B. Aiman-Smith
John A. Lofton
AIMAN-SMITH & MARCY, P.C.
7677 Oakport Street, Suite 1150
Oakland, California 94621

and

Dean G. Rallis Jr.
Matthew D. Pham
HAHN & HAHN LLP
301 E. Colorado Boulevard, Ninth Floor
Pasadena, California 91101-1977

(b) **If to the Debtor or Reorganized Debtor:**

Neal L. Wolf
Anthony J. Dutra
HANSON BRIDGETT LLP
425 Market Street, 26th Floor
San Francisco, California 94105

- 3.14.13. **No Customer Class Member Signatures.** The Parties acknowledge that since the Customer Class Members are so numerous, it is impossible or impractical to have each Customer Class Member execute this Agreement. Nevertheless, the occurrence of the Effective Date shall have the same force and effect as if this Agreement had been executed by each Customer Class Member.
- 3.14.14. **Execution in Counterparts.** This Agreement may be executed in separate counterparts, each of which, when so executed and delivered, shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same instrument. Any counterpart may be effective if delivered by the Party or its counsel by facsimile or email, and any such facsimiled or emailed counterpart shall be deemed an original.

4. EXECUTION BY PARTIES AND COUNSEL

AGREED TO AND ACCEPTED:

Dated: December ____, 2020

**Nanette Kearney, Class Representative on behalf
of the Customer Class**

By: _____
Nanette Kearney

Dated: December ____, 2020

**Krister Johnson, Class Representative on behalf
of the Customer Class**

By: _____
Krister Johnson

Dated: December ____, 2020

**Sandra Shorago, Class Representative on behalf
of the Customer Class**

By: _____
Sandra Shorago

Dated: December ____, 2020

Galileo Learning, LLC

By: _____
Glen E. Tripp, Chief Executive Officer

APPROVED AS TO FORM:

Dated: December ____, 2020

Class Counsel for the Customer Class

Aiman-Smith & Marcy, P.C.

By: _____
John A. Lofton

Dated: December ____, 2020

Class Counsel for the Customer Class

Hahn & Hahn LLP

By: _____
Dean G. Rallis Jr.

Dated: December ____, 2020

Attorneys for Galileo Learning, LLC

Hanson Bridgett LLP

By: _____
Neal L. Wolf