

**STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

IT IS HEREBY STIPULATED AND AGREED, by and between CHRIS HUNICHEN (“HUNICHEN or the “CLASS REPRESENTATIVE”), individually and on behalf of the class he seeks to represent (defined below as the “CLASS MEMBERS”), on the one hand, and Launch Capital LLC, Steven J. “Woody” Benson, and David Fragale (“LAUNCH,” “BENSON,” and “FRAGALE,” and collectively the “SETTLING DEFENDANTS”), on the other hand, through their duly-authorized counsel, that the proceeding against the SETTLING DEFENDANTS in the United States District Court for the Western District of Washington entitled *Hunichen v. Atonomi LLC et al.*, Case No. 2:19-cv-00615-RAJ-SKV (the “ACTION”) is settled, fully and finally, on the terms and conditions set forth in this AGREEMENT and the exhibits hereto, subject to the occurrences set forth herein that permit the SETTLING DEFENDANTS or the CLASS REPRESENTATIVE to terminate this AGREEMENT, and further subject to and expressly conditioned upon the approval of the COURT and the entry of a FINAL APPROVAL ORDER substantially in the form provided for in this AGREEMENT.

WHEREAS, the CLASS REPRESENTATIVE and the SETTLING DEFENDANTS (collectively the “PARTIES”) each concluded, based upon their respective investigation and discovery and taking into account the sharply contested issues, the expense and time necessary to pursue the ACTION through trial and appeals, the risks and costs of further prosecution of the ACTION, the uncertainties of complex litigation, and the potential benefits of settlement to the CLASS MEMBERS, that a SETTLEMENT on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the PARTIES.

WHEREAS, the CLASS REPRESENTATIVE has claimed, and continues to claim, that the contentions he made in the ACTION have merit.

WHEREAS, the SETTLING DEFENDANTS have denied, and continue to deny, each and every claim and contention made by the CLASS REPRESENTATIVE in the ACTION and affirm that they have acted properly and lawfully at all times. Further, SETTLING DEFENDANTS have denied expressly, and continue to deny, all allegations of wrongdoing, fault, liability, or damage against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the ACTION and deny that they have ever committed or attempted to commit any violations of law or any wrongdoing whatsoever. Had the terms of this AGREEMENT not been reached, SETTLING DEFENDANTS would have continued to contest CLASS REPRESENTATIVE'S allegations vigorously, and SETTLING DEFENDANTS maintain that they had and have meritorious defenses to all claims alleged in the ACTION. Nevertheless, SETTLING DEFENDANTS acknowledge that continuation of the ACTION would be lengthy and expensive, and recognize that it is desirable that the ACTION be fully and finally settled in the manner and upon the terms and conditions set forth in this AGREEMENT. Without admitting the validity of any of the claims that CLASS REPRESENTATIVE has asserted in the ACTION, or any liability with respect thereto, SETTLING DEFENDANTS have concluded that it is desirable that the claims be fully and finally settled on the terms and subject to the conditions set forth in this AGREEMENT.

WHEREAS, CLASS COUNSEL and the SETTLING DEFENDANTS' COUNSEL have conducted sufficient discovery, investigation, and research and there have been sufficient rulings by the COURT on the PARTIES' respective claims and defenses in the ACTION to reach this AGREEMENT.

WHEREAS, CLASS COUNSEL has investigated and evaluated the applicable law and facts regarding the claims presented in the ACTION and the potential defenses thereto. CLASS

COUNSEL and the CLASS REPRESENTATIVE have discussed and assessed the relative strength of the fundamental premises underlying the ACTION and have concluded that this SETTLEMENT with the SETTLING DEFENDANTS is fair and adequate under the circumstances.

WHEREAS, the CLASS REPRESENTATIVE recognizes the risks associated with further litigation against the SETTLING DEFENDANTS through trial and through appeals. The CLASS REPRESENTATIVE therefore deems it desirable and beneficial to himself and the CLASS MEMBERS that the ACTION against the SETTLING DEFENDANTS be settled in the manner and upon the terms and conditions set forth in this AGREEMENT.

NOW THEREFORE, the PARTIES enter this SETTLEMENT AGREEMENT upon the terms and conditions set forth below.

**I. DEFINITIONS AND CONVENTIONS**

**A. DEFINITIONS**

As used in this AGREEMENT, capitalized terms have the following meaning, unless specifically provided otherwise:

A. “ADMINISTRATION COSTS” means the actual and direct costs reasonably charged by the SETTLEMENT ADMINISTRATOR for its services.

B. “ADMINISTRATOR” or “SETTLEMENT ADMINISTRATOR” means the third-party agent or administrator retained by the PARTIES to provide services in the administration of this AGREEMENT, including providing CLASS NOTICE to the CLASS MEMBERS, the processing and evaluation of PROOFS OF CLAIMS, and the processing of other documents or tasks as provided for in this AGREEMENT or as otherwise agreed to by the PARTIES and ADMINISTRATOR or ordered by the COURT.

C. “AGREEMENT” means the terms and conditions of this document entitled “Stipulation of Class Action Settlement and Release.”

D. “ATONOMI” means Atonomi LLC, a Delaware Limited Liability Company.

E. “CLAIM” means the amount payable from the NET SETTLEMENT FUND to each SETTLEMENT CLASS MEMBER who submits a PROOF OF CLAIM, as calculated by the ADMINISTRATOR in accordance with Paragraph 26 and its subparts.

F. “CLASS COUNSEL” refers to Joel B. Ard of ARD LAW GROUP PLLC, Angus F. Ni of AFN LAW PLLC, and William R. Restis of THE RESTIS LAW FIRM, P.C.

G. “CLASS MEMBERS” means all individuals who either (i) purchased ATMI tokens via a Series 1 or Series 2 Simple Agreement for Future Tokens (SAFT) with ATONOMI in 2018; or (ii) purchased ATMI tokens through a “public sale” by ATONOMI on or about June 6, 2018.

H. “CLASS NOTICE” means all types of notice provided to the CLASS MEMBERS pursuant to Federal Rule of Civil Procedure 23(c)(2) and 23(e), including email notice, postcard notice, website notice, and publication notice as ordered by the COURT.

I. “COURT” means the United States District Court for the Western District of Washington.

J. “DEFENDANTS” means Atonomi LLC, a Delaware Limited Liability Company, CENTRI Technology, Inc., a Delaware Corporation; LaunchCapital, LLC, a Delaware Limited Liability Company; M37 Ventures Inc., a Nevada Corporation; Vaughan Emery, David Fragale, Rob Strickland, Don Deloach, Wayne Wisheart, Woody Benson, Michael Mackey, and James Salter.

K. “EFFECTIVE DATE” means the earliest of the following: (1) the date of entry of the FINAL APPROVAL ORDER and JUDGMENT, if no objections are filed to the

SETTLEMENT or if all objections are withdrawn prior to the COURT ruling on them; or (2) thirty-one (31) days after the entry of the FINAL APPROVAL ORDER and JUDGMENT, if objections are filed and overruled and no appeal is taken from the FINAL APPROVAL ORDER and JUDGMENT; or (3) if a timely appeal is made, three (3) business days after the date of the final resolution of that appeal and any subsequent appeals or petitions for certiorari from FINAL APPROVAL of the SETTLEMENT.

L. “ESCROW ACCOUNT” means the segregated and separate escrow account designated and controlled by the ESCROW AGENT at one or more national banking institutions into which the SETTLEMENT FUND will be deposited for the benefit of SETTLEMENT CLASS MEMBERS.

M. “ESCROW AGENT” means the escrow agent retained by the PARTIES, or its successor(s).

N. “FEE AND EXPENSE AWARD” means an award of attorneys’ fees and the reimbursement of litigation costs and expenses authorized by the COURT to be paid to CLASS COUNSEL for the services rendered representing the CLASS REPRESENTATIVE and the CLASS MEMBERS in the ACTION.

O. “FINAL APPROVAL” or “FINAL APPROVAL ORDER” means an order issued by the COURT finally approving this AGREEMENT as binding upon the PARTIES and substantially in the form attached hereto as **Exhibit 1**.

P. “FINAL APPROVAL HEARING” means a hearing held before the COURT to consider FINAL APPROVAL of the SETTLEMENT; any FEE AND EXPENSE AWARD to be awarded to CLASS COUNSEL; any INCENTIVE AWARD to be awarded to the CLASS REPRESENTATIVE; and the merits of any objections to this AGREEMENT.

Q. “JUDGMENT” means the final judgment dismissing the ACTION against the SETTLING DEFENDANTS with prejudice.

R. “LONG FORM NOTICE” means the long form notice of the SETTLEMENT approved by the COURT that the SETTLEMENT ADMINISTRATOR shall make available on the SETTLEMENT WEBSITE.

S. “NET SETTLEMENT FUND” means the SETTLEMENT FUND less CLASS NOTICE and ADMINISTRATION COSTS, less taxes and tax expenses described in this AGREEMENT, less the FEE AND EXPENSE AWARD and SERVICE AWARD, if and to the extent allowed by the COURT, and any other deductions allowed or ordered by the COURT.

T. “NON-SETTLING DEFENDANTS” means Atonomi LLC, a Delaware Limited Liability Company; CENTRI Technology, Inc., a Delaware Corporation; M37 Ventures Inc., a Nevada Corporation; Vaughan Emery, Rob Strickland, Don Deloach, Wayne Wisehart, Michael Mackey, and James Salter.

U. “OBJECTION/EXCLUSION DEADLINE” means the deadline to be set by the COURT, by which CLASS MEMBERS must submit objections to this SETTLEMENT or requests to be excluded from it.

V. “PARTY” or “PARTIES” means the CLASS REPRESENTATIVE and/or the SETTLING DEFENDANTS as defined herein.

W. “PLAN OF ALLOCATION” means a plan or formula of allocation of the NET SETTLEMENT FUND to be distributed to CLAIMANTS in accordance with Washington Revised Code § 21.20.430(1).

X. “PRELIMINARY APPROVAL” or “PRELIMINARY APPROVAL ORDER” means an Order entered by the COURT substantially in the form of **Exhibit 2** attached hereto

preliminarily approving the terms and conditions of this AGREEMENT and the SETTLEMENT and directing NOTICE to the CLASS MEMBERS.

Y. “PROOF OF CLAIM” means a Proof of Claim and Release, which, subject to approval of the COURT, shall be substantially in the form attached hereto as **Exhibit 3**.

Z. “PUBLIC SALE” means the sale of ATMI by ATONOMI on June 6, 2018.

AA. “PUBLIC SALE INVESTORS” means all natural and legal persons that purchased ATMI from ATONOMI on June 6, 2018.

BB. “RELEASED CLAIMS” mean any and all claims, demands, rights, causes of action, and liabilities of every nature and description, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, heretofore or previously existed, or may hereafter exist, including, but not limited to, any claims arising under federal, state, common, or foreign law, that the CLASS REPRESENTATIVE or any other member of the SETTLEMENT CLASS asserted in the Second Amended Class Action Complaint filed in the ACTION on November 9, 2020, or could have asserted in the ACTION or could in the future assert in any forum that concern, arise out of, refer to, are based upon, or are related in any manner to the allegations, transactions, facts, matters, occurrences, representations, statements, or omissions alleged, involved, set forth, or referred to in the ACTION. Notwithstanding the foregoing, “RELEASED CLAIMS” do not include claims relating to the enforcement of the settlement, nor does this release cover, include, or release any claims by any governmental entity that arise out of any governmental investigation of DEFENDANTS relating to the conduct alleged in the ACTION. RELEASED CLAIMS do not

include any claims for or right to the value of the Selective Insurance Company of America Policy No. 425126407 held by ATONOMI.

CC. “RELEASED PARTIES” means the SETTLING DEFENDANTS and each of their respective current and former parent companies, subsidiaries, divisions, and current and former officers, partners, directors, agents, shareholders, members, managers, principals, beneficial owners, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, agents, fiduciaries, affiliates and insurers, affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns and joint venturers (the SETTLING DEFENDANTS and all such persons, each a “SETTLING DEFENDANT AFFILIATE”), and each and all of the respective officers, partners, directors, servants, agents, shareholders, members, managers, principals, beneficial owners, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, agents, fiduciaries, affiliates and insurers of any SETTLING DEFENDANT AFFILIATE, and any current and former affiliated individuals and entities of any person so related to any DEFENDANT AFFILIATE. Notwithstanding the above, the RELEASED PARTIES do not include the NON-SETTLING DEFENDANTS or Selective Insurance Company of America Policy No. 425126407 held by ATONOMI.

DD. “SAFT INVESTORS” mean all natural and legal persons that executed a Simple Agreement for Future Tokens or ‘SAFT’ with ATONOMI in 2018.

EE. “SERVICE AWARD” means an award authorized by the COURT to be paid to the CLASS REPRESENTATIVE in recognition of his efforts in prosecuting the ACTION.

FF. “SETTLEMENT” means the terms and conditions set forth in this AGREEMENT.



GG. “SETTLEMENT AMOUNT” means Six Million Dollars (US\$6,037,500.00) to be paid by or on behalf of the SETTLING DEFENDANTS to the ESCROW AGENT by wire transfer, check, or as otherwise agreed pursuant this AGREEMENT. This SETTLEMENT AMOUNT shall be paid by or on behalf of the SETTLING DEFENDANTS within ten (10) business days after the PRELIMINARY APPROVAL of this AGREEMENT.

HH. “SETTLEMENT CLASS” means CLASS MEMBERS except (i) persons who properly exclude themselves from the SETTLEMENT; (ii) any person, firm, trust, corporation, or other entity affiliated with DEFENDANTS; or (iii) any judge, justice judicial officer, or judicial staff of the COURT.

II. “SETTLEMENT FUND” means the SETTLEMENT AMOUNT plus all interest and accretions thereto and which may be reduced by payments or deductions as provided herein or by COURT order.

JJ. “SETTLEMENT WEBSITE” means the website established by the SETTLEMENT ADMINISTRATOR to provide information regarding the SETTLEMENT, where CLASS MEMBERS can obtain information concerning requesting exclusion from or objecting to the SETTLEMENT, and where CLASS MEMBERS may submit a PROOF OF CLAIM consistent with this AGREEMENT.

KK. “SETTLING DEFENDANTS’ COUNSEL” means the following attorneys:

MORRISON & FOERSTER LLP Jamie Levitt Derek Foran Haimavathi V. Marlier	DAVIS WRIGHT TREMAINE Brendan T. Mangan
MURPHY & KING PC Steven M. Veenema	RYAN, SWANSON & CLEVELAND, PLLC Madeline S. Davis

LL. “SUMMARY NOTICE” means the email, postcard, and publication notice of the

SETTLEMENT approved by the Court that the SETTLEMENT ADMINISTRATOR shall distribute to CLASS MEMBERS. The PARTIES intend to propose that the COURT approve SUMMARY NOTICE substantially in the form attached hereto as **Exhibit 4**.

**B. CONVENTIONS**

MM. All personal pronouns used in this AGREEMENT, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary.

NN. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this AGREEMENT, unless otherwise expressly stated in the reference.

OO. The headings and captions contained in this AGREEMENT are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this AGREEMENT or the intent of any provision thereof.

**II. RELEVANT PROCEDURAL HISTORY**

1. HUNICHEN filed a Complaint on April 25, 2019 and a First Amended Complaint on June 20, 2019.

2. The named defendants at that time (DEFENDANTS, except LAUNCH and M37 Ventures) moved to dismiss and compel arbitration on July 22, 2019. That Motion was denied on April 21, 2020.

3. HUNICHEN and DEFENDANTS engaged in substantive discovery subsequent to the Court's denial of the Motion to Dismiss or Compel Arbitration.

4. HUNICHEN sought leave of court to file a Second Amended Complaint adding additional defendants including LAUNCH on October 22, 2020. The Court granted that Motion

on November 6, 2020 and entered the Second Amended Complaint on November 9, 2020.

5. Discovery continued after entry of the Second Amended Complaint.

6. HUNICHEN and all DEFENDANTS joined a mediation on March 4, 2021 before Louis D. Peterson of Hillis Clark Martin & Peterson P.S. The matter did not settle at that time. Formal and informal settlement discussions continued, directly between counsel and with the mediator, from March 4, 2021 through March 30, 2021 when Hunichen reached settlement terms with LAUNCH and BENSON, and through April 23, 2021 when Plaintiff reached settlement terms with FRAGALE.

### **III. CONSIDERATION FROM SETTLING DEFENDANTS**

7. Within ten (10) business days of PRELIMINARY APPROVAL of this AGREEMENT, the SETTLING DEFENDANTS will pay or cause to be paid the SETTLEMENT AMOUNT in accordance with the instructions to be provided by the ESCROW AGENT in the following amounts:

(A) LAUNCH and BENSON: collectively \$6,000,000;

(B) FRAGALE: \$37,500.

8. The SETTLEMENT AMOUNT may be paid by wire transfer, by delivering to the ESCROW AGENT a check or checks payable to the SETTLEMENT FUND, by any combination of those methods, or in any other manner agreed upon by CLASS COUNSEL and the SETTLING DEFENDANTS. The ESCROW AGENT will furnish to the SETTLING DEFENDANTS adequate payment instructions consisting of wire transfer instructions, instructions for payment by check, and a completed IRS Form W-9 for the SETTLEMENT FUND, including an address and tax ID number.

9. Effective from the date of FINAL APPROVAL forward, as additional

consideration for this SETTLEMENT, the SETTLING DEFENDANTS generally, and BENSON specifically, waive any right they may have to share prospectively in any proceeds, payments, refunds, defense or indemnity, from Selective Insurance Company of America Policy No. 425126407 held by ATONOMI. Should this AGREEMENT fail to become effective as a result of any of the occurrences in Section X.I herein, this waiver shall be deemed null and void *ab initio*, and the SETTLING DEFENDANTS shall have whatever rights to Selective Insurance Company of America Policy No. 425126407 they would have had absent this waiver.

10. If the entire SETTLEMENT AMOUNT is not timely paid to the ESCROW AGENT, CLASS COUNSEL may terminate the SETTLEMENT but only if (a) CLASS COUNSEL have notified SETTLING DEFENDANTS' COUNSEL in writing of CLASS COUNSEL's intention to terminate the SETTLEMENT, and (b) the entire SETTLEMENT AMOUNT is not transferred to the ESCROW AGENT within ten (10) calendar days after CLASS COUNSEL have provided such written notice. Failure by the ESCROW AGENT or CLASS COUNSEL to timely furnish adequate payment instructions to the SETTLING DEFENDANTS shall not be a basis for termination under this section and any delay in providing such instructions shall extend the period in which the SETTLEMENT AMOUNT will be paid by an equivalent number of days.

11. The ESCROW AGENT shall deposit the SETTLEMENT AMOUNT plus any accrued interest in a segregated ESCROW ACCOUNT maintained by the ESCROW AGENT.

12. The ESCROW AGENT shall invest the SETTLEMENT AMOUNT deposited pursuant to this AGREEMENT in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof and shall reinvest

the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the SETTLEMENT FUND in accordance with the investment guidelines set forth in this paragraph shall be borne by the SETTLEMENT FUND and the SETTLING DEFENDANTS shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the ESCROW AGENT, or any transactions executed by the ESCROW AGENT.

13. The ESCROW AGENT shall not disburse the SETTLEMENT FUND except as provided in this AGREEMENT, or by an order of the COURT, and the ESCROW AGENT shall copy CLASS COUNSEL and SETTLING DEFENDANTS' COUNSEL on all requests or instructions to disburse any portion of the SETTLEMENT FUND.

14. Subject to further order(s) and/or directions as may be made by the COURT, or as provided in this AGREEMENT, the ESCROW AGENT is authorized to execute such transactions as are consistent with the terms of this AGREEMENT and shall copy CLASS COUNSEL and SETTLING DEFENDANTS' COUNSEL on all such transactions. The SETTLING DEFENDANTS shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the ESCROW AGENT, or any transaction executed by the ESCROW AGENT in its capacity as such.

15. All funds held by the ESCROW AGENT shall be deemed and considered to be *in custodia legis* of the COURT, and shall remain subject to the jurisdiction of the COURT, until such time as such funds shall be distributed pursuant to this AGREEMENT and/or further order(s) of the COURT.

16. Upon the occurrence of the EFFECTIVE DATE, no SETTLING DEFENDANT, or any other person or entity who or which paid any portion of the SETTLEMENT AMOUNT,

shall have any right to the return of the SETTLEMENT FUND or any portion thereof for any reason whatsoever (including, without limitation, the number of PROOF OF CLAIM forms submitted, the collective amount of recognized claims of SETTLEMENT CLASS MEMBERS, the percentage of recovery of losses, or the amounts to be paid to SETTLEMENT CLASS MEMBERS from the NET SETTLEMENT FUND), except as set forth in this AGREEMENT.

17. Prior to the EFFECTIVE DATE and without further order of the COURT, up to \$200,000 of the SETTLEMENT FUND may be used by to pay reasonable CLASS NOTICE and ADMINISTRATION COSTS actually incurred. After the EFFECTIVE DATE, all further actual and reasonable CLASS NOTICE and ADMINISTRATION COSTS may be paid from the SETTLEMENT FUND, without further order of the COURT.

18. The PARTIES and the ESCROW AGENT agree to treat the SETTLEMENT FUND as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the ESCROW AGENT shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the ESCROW AGENT to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

19. For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the ESCROW AGENT. The ESCROW AGENT shall timely and properly file all informational and other tax returns necessary or advisable with respect to the SETTLEMENT FUND (including, without limitation, the returns

described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the elections) shall be consistent with this paragraph and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the SETTLEMENT FUND shall be paid out of the SETTLEMENT FUND.

20. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the SETTLEMENT FUND, including any taxes or tax detriments that may be imposed upon the SETTLING DEFENDANTS or their counsel with respect to any income earned by the SETTLEMENT FUND for any period during which the SETTLEMENT FUND does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with operation and implementation by the ESCROW AGENT, shall be paid out of the SETTLEMENT FUND. In all events the SETTLING DEFENDANTS and their counsel shall have no liability or responsibility for the taxes or tax expenses. Further, taxes and tax expenses shall be treated as, and considered to be, an ADMINISTRATION COST and shall be timely paid by the ESCROW AGENT out of the SETTLEMENT FUND without prior order from the COURT and the ESCROW AGENT shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to SETTLEMENT CLASS MEMBERS who submit a PROOF OF CLAIM any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)). The PARTIES hereto agree to cooperate with the ESCROW AGENT, each other, and their tax attorneys and accountants to the extent reasonably necessary.

#### **IV. RELEASES**

21. As of the EFFECTIVE DATE, the CLASS REPRESENTATIVE and the

SETTLEMENT CLASS hereby expressly fully release and forever discharge the RELEASED PARTIES and further expressly agree that they shall not now or thereafter institute, maintain, or assert against the RELEASED PARTIES, either directly or indirectly, on their own behalf, or on behalf of any class or other person or entity, in any action, regulatory action, arbitration, or court or other proceeding of any kind asserting causes of action, claims, damages, equitable, legal and administrative relief, interest, demands, rights or remedies, including, without limitation, claims for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, disgorgement, or equitable relief against the RELEASED PARTIES, whether based on federal, state, or local law, statute, ordinance, regulation, the Constitution, contract, common law, or any other source, that comprise, relate to, or arise out of the RELEASED CLAIMS.

22. The CLASS REPRESENTATIVE and the SETTLEMENT CLASS expressly agree that this release is, and may be raised as, a complete defense to and precludes any claim, action, or proceeding encompassed by the release against the RELEASED PARTIES. It is the intention of the CLASS REPRESENTATIVE in executing this release on behalf of himself and the SETTLEMENT CLASS to fully, finally, and forever settle and release all matters and all claims comprising, arising out of or relating to the RELEASED CLAIMS in every way.

23. Without limiting the foregoing, nothing in this AGREEMENT shall release, preclude, or limit any claim or action by the PARTIES to enforce the terms of this AGREEMENT.

**V. ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL AWARDS,  
AND SUPERVISION OF THE SETTLEMENT FUND**

24. The COURT shall have and retain exclusive jurisdiction over the SETTLEMENT FUND, which shall be applied as follows:



- (A) to pay all NOTICE and ADMINISTRATION COSTS;
- (B) to pay the taxes and tax expenses described in Paragraphs 18-20 of this AGREEMENT;
- (C) to pay any FEE AND EXPENSE AWARD to CLASS COUNSEL and any SERVICE AWARD to the CLASS REPRESENTATIVE, if and to the extent allowed by the COURT; and
- (D) to distribute the NET SETTLEMENT FUND to SETTLEMENT CLASS MEMBERS who submitted a PROOF OF CLAIM as allowed by this AGREEMENT, relevant case law or by orders of the COURT.

25. The PARTIES have requested the ADMINISTRATOR to develop a proposed NOTICE plan consistent with this AGREEMENT, Federal Rule of Civil Procedure 23(c), and Ninth Circuit precedent, to be disseminated and executed subject to the approval and supervision of the COURT.

26. The ADMINISTRATOR, subject to such supervision and direction of the COURT as may be necessary or as circumstances may require, shall administer and calculate the CLAIMS of SETTLEMENT CLASS MEMBERS and shall oversee distribution of the NET SETTLEMENT FUND to SETTLEMENT CLASS MEMBERS who submit a PROOF OF CLAIM pursuant to a PLAN OF ALLOCATON as approved by the COURT as follows:

- (A) The CLAIM of a SETTLEMENT CLASS MEMBER who is a SAFT INVESTOR shall be the US\$ value of the “Purchase Amount” “for purposes of Section 3” as specified in the introductory paragraph of such SETTLEMENT CLASS MEMBER’s SAFT, less the US\$ value of any consideration received for any ATMI tokens purchased through the SAFT, as of the date any such consideration was received.

(B) The CLAIM of a SETTLEMENT CLASS MEMBER who is a PUBLIC SALE INVESTOR shall be the number of ETH (Ethereum) invested multiplied by \$607.12, which represents the closing price for ETH on June 6, 2018, as reported by coinmarketcap.com, less the US\$ value of any consideration received for any ATMI tokens purchased through the PUBLIC SALE, as of the date any such consideration was received.

(C) The NET SETTLEMENT FUND will be reduced, dollar for dollar, for each CLAIM paid. In the event that the value of the CLAIMS does not exhaust the NET SETTLEMENT FUND, each SETTLEMENT CLASS MEMBER who submits a PROOF OF CLAIM will have their CLAIM multiplied *pro rata* to exhaust the NET SETTLEMENT FUND. In the event that the value of the CLAIMS exceeds the amount of money in the NET SETTLEMENT FUND, each SETTLEMENT CLASS MEMBER who submits a PROOF OF CLAIM will have their CLAIM reduced *pro rata*.

(D) The ADMINISTRATOR shall have discretion, subject to the approval of the COURT, to determine the appropriate proof required by any SETTLEMENT CLASS MEMBER to substantiate a PROOF OF CLAIM.

(E) The NET SETTLEMENT FUND shall be distributed to SETTLEMENT CLASS MEMBERS who submit valid PROOF OF CLAIMS substantially in accordance with the PLAN OF ALLOCATION set forth in the NOTICE and approved by the COURT. If there is any balance remaining in the NET SETTLEMENT FUND after a reasonable period of time after the date of the initial distribution of the NET SETTLEMENT FUND, CLASS COUNSEL shall, if feasible, reallocate (which may occur on multiple occasions) such balance among CLASS MEMBERS who submit valid PROOF OF CLAIMS. Thereafter, any balance not economically feasible to otherwise distribute which still remains in the NET SETTLEMENT FUND shall be

donated to a 501(c)(3) non-profit organization selected by, and unaffiliated with, CLASS COUNSEL, subject to the approval of the COURT.

27. Within such time as may be set by the COURT, each SETTLEMENT CLASS MEMBER who wishes to claim from the NET SETTLEMENT FUND shall be required to submit to the ADMINISTRATOR a completed PROOF OF CLAIM, supported by such documents as are reasonably required by the ADMINISTRATOR.

28. Except as otherwise ordered by the COURT, all SETTLEMENT CLASS MEMBERS who fail to timely submit a valid PROOF OF CLAIM, shall be forever barred from receiving any payments pursuant to the SETTLEMENT, but will in all other respects be subject to and bound by the provisions of the AGREEMENT, the releases contained herein, and the JUDGMENT. Notwithstanding the foregoing, CLASS COUNSEL shall have the discretion (but not an obligation) to accept late-submitted claims for processing by the ADMINISTRATOR so long as the distribution of the NET SETTLEMENT FUND to SETTLEMENT CLASS MEMBERS who submit a PROOF OF CLAIM is not materially delayed thereby.

29. A PROOF OF CLAIM that does not meet the submission requirements may be rejected. Prior to rejecting a PROOF OF CLAIM in whole or in part, the ADMINISTRATOR shall communicate with the claimant in writing to give the claimant the chance to remedy any curable deficiencies in the PROOF OF CLAIM submitted. The ADMINISTRATOR, under such supervision of CLASS COUNSEL, as necessary, shall notify, in a timely fashion and in writing, all claimants whose PROOFS OF CLAIMS the ADMINISTRATOR proposes to reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such notice that such SETTLEMENT CLASS MEMBER has the right to a review if the claimant complies with the requirements of Paragraph 30 below.

30. If any SETTLEMENT CLASS MEMBER whose timely PROOF OF CLAIM has been rejected in whole or in part for a curable deficiency desires to contest such rejection, the SETTLEMENT CLASS MEMBER must, within twenty (20) calendar days after the date of mailing of the notice, or a lesser period of time if the PROOF OF CLAIM was untimely, serve upon the ADMINISTRATOR a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation.

31. The ADMINISTRATOR, under such supervision of CLASS COUNSEL, as necessary, shall also have the right, but not the obligation, to waive what CLASS COUNSEL or the ADMINISTRATOR, deem to be *de minimis*, formal, technical or otherwise non-material defects in any PROOF OF CLAIM submitted.

32. The NET SETTLEMENT FUND shall be distributed to those SETTLEMENT CLASS MEMBERS who, within such time as may be set by the Court, submit a valid PROOF OF CLAIM that is approved by the ADMINISTRATOR. Approved CLAIMS to SETTLEMENT CLASS MEMBERS shall be paid by the ESCROW AGENT upon the later of: (a) five (5) business days after the EFFECTIVE DATE, or (b) ten (10) business days the last day for SETTLEMENT CLASS MEMBERS to submit a PROOF OF CLAIM.

33. The SETTLING DEFENDANTS shall have no responsibility for, interest in, or liability whatsoever with respect to any act, omission, or determination by CLASS COUNSEL, the ESCROW AGENT, or the ADMINISTRATOR, or any of their respective designees or agents, in connection with the administration of the SETTLEMENT FUND or determination, administration, or calculation of claims to be paid from the SETTLEMENT FUND, or any expenses or losses incurred in connection therewith.

34. No CLASS MEMBER shall have any claim against the CLASS

REPRESENTATIVE, CLASS COUNSEL, the ESCROW AGENT, the ADMINISTRATOR, or any other person designated by CLASS COUNSEL, based on determinations or distributions made substantially in accordance with this SETTLEMENT or further order(s) of the COURT.

35. It is understood and agreed by the PARTIES that any allocation of the NET SETTLEMENT FUND including, but not limited to, any adjustments to any SETTLEMENT CLASS MEMBER'S CLAIM set forth therein, is not a part of this AGREEMENT and may be considered by the COURT separately from the Court's consideration of the fairness, reasonableness, and adequacy of the SETTLEMENT. Any order or proceeding relating to any allocation of the NET SETTLEMENT FUND shall not operate to terminate or cancel this AGREEMENT or affect the finality of the COURT's JUDGMENT approving this AGREEMENT and SETTLEMENT set forth herein.

#### **VI. CLASS NOTICE AND SETTLEMENT ADMINISTRATOR**

36. Based on the proposal of the ADMINISTRATOR, the PARTIES have agreed that providing direct email and mail (as available), and SETTLEMENT WEBSITE notice to CLASS MEMBERS who are SAFT INVESTORS, and PUBLIC SALE INVESTORS for whom "Know Your Customer" information is available, is the best notice practicable under the circumstances.

37. Based on the proposal of the ADMINISTRATOR, the PARTIES have agreed that providing targeted publication notice and SETTLEMENT WEBSITE notice to CLASS MEMBERS who are PUBLIC SALE INVESTORS for whom "Know Your Customer" information is not available, is the best and most reasonable notice practicable under the circumstances.

38. The PARTIES have agreed that all NOTICE shall be consistent with Federal Judicial Center Guidelines *Judges' Class Action Notice and Claims Process Checklist and Plain*

*Language Guide*, Ninth Circuit precedent, and any orders of the COURT. The SUMMARY NOTICE shall be substantially in the form attached as Exhibit 4. The LONG FORM NOTICE will:

- (A) Contain a concise statement of the background of the ACTION and the SETTLEMENT;
- (B) Describe the nature and scope of the legal claims, causes of action, and defenses compromised in the SETTLEMENT that will be subject to the release;
- (C) Describe the relief provided by the SETTLEMENT;
- (D) Inform the CLASS MEMBERS how to submit an exclusion request and their right to object to the SETTLEMENT, any FEE AND EXPENSE AWARD, and/or SERVICE AWARD;
- (E) Inform CLASS MEMBERS how to submit a PROOF OF CLAIM and the deadline for submitting a PROOF OF CLAIM;
- (F) Explain the impact of the SETTLEMENT on participating in any existing and future litigation, arbitration, regulatory action, remediation, or other proceeding(s);
- (G) State that any relief to the SETTLEMENT CLASS MEMBERS is contingent on the COURT's FINAL APPROVAL and JUDGMENT;
- (H) State that any FEE AND EXPENSE AWARD or SERVICE AWARD as awarded by the COURT, will be paid out of the SETTLEMENT FUND, and that individual SETTLEMENT CLASS MEMBERS will not be responsible themselves for paying any attorneys' fees, costs, litigation expenses, or administration expenses (unless they elect to retain their own attorney at their own expense);

- (I) Inform CLASS MEMBERS of the date, time and place of the FINAL APPROVAL HEARING, their right to appear in support of any timely and validly submitted objection, and their right to appear at the FINAL APPROVAL HEARING as ordered by the COURT, on their own or through counsel of their own selection (at their own expense), and the procedures for doing so as described in this AGREEMENT, or as ordered by the COURT;
  - (J) Advise that any JUDGMENT entered in the ACTION will be binding on all SETTLEMENT CLASS MEMBERS as broadly as possible consistent with *res judicata* principles, if they do not timely exclude themselves from the SETTLEMENT;
  - (K) Inform CLASS MEMBERS that SETTLEMENT CLASS MEMBERS will be releasing all current and future claims against the RELEASED PARTIES comprising, concerning or relating in any way to the RELEASED CLAIMS; and
  - (L) Inform CLASS MEMBERS of the EXCLUSION DEADLINE and OBJECTION DEADLINE.
39. The ADMINISTRATOR shall be responsible for:
- (A) Printing and distributing the SUMMARY NOTICE approved by the COURT;
  - (B) Performing physical home address and email address updates, skiptraces and verifications prior to distribution of the SUMMARY NOTICE, and any secondary or supplemental SUMMARY NOTICE;
  - (C) Selecting those publications and venues calculated to most effectively reach CLASS MEMBERS *via* publication notice;

- (D) Creating and maintaining a toll-free number that CLASS MEMBERS can contact to request a copy of this AGREEMENT, a PROOF OF CLAIM form, and/or to obtain any other information concerning this SETTLEMENT or this AGREEMENT;
- (E) Creating and maintaining a SETTLEMENT WEBSITE, to which the ADMINISTRATOR shall post copies of the operative complaint in the ACTION, this AGREEMENT, the LONG FORM NOTICE, the PRELIMINARY APPROVAL motion, the PRELIMINARY APPROVAL ORDER, CLASS COUNSEL's motion for a FEE AND EXPENSE AWARD and/or SERVICE AWARD, an electronic PROOF OF CLAIM submission process, and when available, the FINAL APPROVAL motion and the FINAL APPROVAL ORDER and JUDGMENT. The SETTLEMENT WEBSITE will prominently contain instructions on how CLASS MEMBERS can submit a PROOF OF CLAIM, as well as instructions on how to request exclusion or file an objection, and the date and time of the FINAL APPROVAL hearing;
- (F) Consulting with SETTLING DEFENDANTS' COUNSEL and CLASS COUNSEL concerning any relevant issues, including (without limitation) distribution of CLASS NOTICE and processing of PROOF OF CLAIMS;
- (G) Processing and recording timely and proper requests for exclusion;
- (H) Processing and recording PROOF OF CLAIMS, and the calculation of the CLAIMS;
- (I) Serving notice of this SETTLEMENT to appropriate state and federal officials pursuant to the Class Action Fairness Act ("CAFA") at 28 U.S.C. § 1715. The



ADMINISTRATOR is responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715, and for identifying the appropriate state and federal officials to be notified;

(J) Providing any information and declarations requested by the PARTIES to assist with seeking PRELIMINARY APPROVAL and FINAL APPROVAL; and

(K) Such other tasks as the PARTIES mutually agree or the COURT orders the ADMINISTRATOR to perform.

40. The PARTIES each represent that he, she, or it will not have any financial interest in the ADMINISTRATOR ultimately appointed and otherwise will not have a relationship with the SETTLEMENT ADMINISTRATOR ultimately appointed that could create a conflict of interest.

41. The PARTIES acknowledge and agree that the ADMINISTRATOR is an agent of the COURT, and not an agent of the CLASS REPRESENTATIVE, CLASS COUNSEL, the SETTLING DEFENDANTS, or SETTLING DEFENDANTS' COUNSEL and that the ADMINISTRATOR is not authorized by this AGREEMENT or otherwise to act on behalf of the CLASS REPRESENTATIVE, CLASS COUNSEL, the SETTLING DEFENDANTS, or SETTLING DEFENDANTS' COUNSEL.

42. If a CLASS MEMBER requests that the ADMINISTRATOR and/or its agent or employee refer him/her to CLASS COUNSEL, regarding applicable deadlines or procedures for which the ADMINISTRATOR does not have an approved response, then the ADMINISTRATOR and/or its agent or employee will promptly refer the inquiry to CLASS COUNSEL.

43. Upon completion of the implementation and administration of the SETTLEMENT, the ADMINISTRATOR shall provide written certification of such completion to counsel for all PARTIES.

## **VII. OBJECTIONS TO AND EXCLUSIONS FROM THE SETTLEMENT**

### **A. Exclusions**

44. CLASS MEMBERS and persons purporting to act on their behalf who wish to be excluded from the SETTLEMENT shall submit written requests for exclusion using the following procedure: CLASS MEMBERS who wish to exclude themselves from the SETTLEMENT must submit to the ADMINISTRATOR a written statement requesting exclusion from the SETTLEMENT. Such written request for exclusion (i) must contain the name and address of the person requesting exclusion, (ii) must be made via email or mailed to the ADMINSTRATOR at the specified address, and (iii) must be submitted or postmarked on or before the OBJECTION/EXCLUSION DEADLINE.

45. CLASS MEMBERS who fail to submit a timely and valid written request for exclusion shall be deemed to be a member of the SETTLEMENT CLASS and as such shall be bound by all terms of the SETTLEMENT and the FINAL APPROVAL ORDER and JUDGMENT if the SETTLEMENT is approved by the COURT.

46. CLASS MEMBERS who submit a valid and timely written request for exclusion shall not be bound by this SETTLEMENT or any FINAL APPROVAL ORDER entered by the COURT approving this SETTLEMENT and shall not be entitled to receive any portion of the NET SETTLEMENT FUND under this SETTLEMENT.

47. The ADMINISTRATOR shall provide in writing to SETTLING DEFENDANTS' COUNSEL and CLASS COUNSEL the names of those CLASS MEMBERS who have requested

exclusion in writing no later than fifteen (15) days after the OBJECTION/EXCLUSION DEADLINE.

**B. Objections**

48. CLASS MEMBERS and persons purporting to act on their behalf who wish to object to the fairness, reasonableness, or adequacy of the SETTLEMENT or this AGREEMENT or to any request for a FEE AND EXPENSE AWARD or a SERVICE AWARD shall submit a written notice of objection in accordance with the following procedures. CLASS MEMBERS who wish to object must serve on the ADMINISTRATOR, a written statement of objection. Such written statement of objection must (i) contain the name and address of the person objecting; (ii) must be mailed to the ADMINISTRATOR at the specified address; and (iii) must be postmarked on or before the OBJECTION/EXCLUSION DEADLINE.

49. Subject to the COURT's approval, any objecting CLASS MEMBER may appear, in person or by counsel, at the FINAL APPROVAL HEARING, to show cause why this SETTLEMENT and this AGREEMENT should not be approved as fair, adequate, and reasonable or to object to any request for a FEE AND EXPENSE AWARD or SERVICE AWARD. To appear in person or by counsel at the FINAL APPROVAL HEARING, the objecting CLASS MEMBER must file with the COURT and serve upon all counsel designated in the NOTICE a Notice of Intention to Appear by the OBJECTION/EXCLUSION DEADLINE or such other date as the COURT may set. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting CLASS MEMBER (or his/her counsel) will present to the COURT in connection with the FINAL APPROVAL HEARING.

50. Any CLASS MEMBER who submitted a written objection in accordance with this AGREEMENT shall be entitled to all of the benefits of the SETTLEMENT and this

AGREEMENT, provided the objecting CLASS MEMBER complied with all the requirements for submitting a PROOF OF CLAIM, and shall be bound by all terms of the SETTLEMENT and the FINAL APPROVAL ORDER and JUDGMENT if the SETTLEMENT is approved by the COURT.

51. CLASS COUNSEL, and/or the ADMINISTRATOR, and/or SETTLING DEFENDANTS' COUNSEL shall serve on the other parties' counsel, and file with the COURT any non-duplicative objections to the SETTLEMENT no later than fifteen (15) days after the OBJECTION/EXCLUSION DEADLINE.

### **VIII. PRELIMINARY APPROVAL**

52. CLASS COUNSEL shall request a hearing before the COURT to be held on the earliest practicable date to seek PRELIMINARY APPROVAL of the SETTLEMENT, which SETTLING DEFENDANTS shall not oppose. In conjunction with such hearing, CLASS COUNSEL shall submit this AGREEMENT, together with the attachments hereto, and any other documents necessary to implement the SETTLEMENT. Solely for purposes of this SETTLEMENT, CLASS COUNSEL shall request that the COURT enter a PRELIMINARY APPROVAL ORDER, substantially in the form of Exhibit 2 attached hereto, preliminarily approving the proposed SETTLEMENT, conditionally certifying the SETTLEMENT CLASS MEMBERS for settlement purposes, approving the proposed NOTICE plan, approving and appointing the ADMINISTRATOR, approving CLASS COUNSEL as counsel for the SETTLEMENT CLASS MEMBERS, approving the CLASS REPRESENTATIVE as the representative for the SETTLEMENT CLASS MEMBERS, and setting a date for the FINAL APPROVAL HEARING.

**IX. FINAL APPROVAL AND JUDGMENT**

53. After PRELIMINARY APPROVAL, NOTICE to the CLASS MEMBERS, and the expiration of the OBJECTION/EXCLUSION DEADLINE, CLASS COUNSEL shall request a FINAL APPROVAL HEARING to be held on a date set by the COURT. In connection with the FINAL APPROVAL HEARING, the PARTIES shall file such papers with the COURT as either their counsel or the COURT may determine to be necessary.

54. Before the FINAL APPROVAL HEARING, proof of the extent and effectiveness of NOTICE shall be provided by the ADMINISTRATOR to the PARTIES no later than fifteen (15) days following the OBJECTION/EXCLUSION DEADLINE.

55. The FINAL APPROVAL ORDER and JUDGMENT shall include findings and a determination that the SETTLEMENT is fair, just, reasonable, and adequate, and is being entered into in good faith after arms-length negotiation by the PARTIES.

56. After FINAL APPROVAL, the PARTIES agree that the COURT will retain jurisdiction to enforce the terms of this AGREEMENT and the FINAL APPROVAL ORDER and JUDGMENT.

**X. CONTRIBUTION BAR**

57. As a material condition of the SETTLEMENT, the FINAL APPROVAL ORDER and JUDGMENT entered by the Court shall include a bar order (“BAR ORDER”) that permanently bars, enjoins, and restrains all persons and entities (including but not limited to NON-SETTLING DEFENDANTS, their successors or assigns, and any other person or entity later named as a defendant or third-party in the ACTION) from asserting, commencing, or prosecuting any claim against any of the SETTLING DEFENDANTS for contribution or indemnity, either directly, representatively, derivatively, or in any other capacity, arising out of, based upon, or

related to the claims and allegations asserted in the ACTION (or any other claims, however denominated, where the alleged injury to the claimant is based upon, arises from, or is related to the claimant's actual or threatened liability to the CLASS MEMBERS), whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in this Court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, and whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued. The FINAL APPROVAL ORDER and JUDGMENT shall also provide that any final verdict or judgment obtained by or on behalf of the SETTLEMENT CLASS against any individual or entity subject to the BAR ORDER shall be reduced by the greater of: (a) an amount that corresponds to the percentage of fault or responsibility attributed to the SETTLING DEFENDANTS for the alleged loss to the SETTLEMENT CLASS; or (b) the SETTLEMENT AMOUNT.

#### **XI. CONDITIONS IMPACTING FINALITY OF SETTLEMENT**

58. If the total US\$ value of potential claims of CLASS MEMBERS who exclude themselves from the SETTLEMENT exceeds seventeen percent (17%) of the SETTLEMENT FUND, the SETTLING DEFENDANTS, and each of them, shall have the option, at their sole discretion, of terminating and withdrawing from the SETTLEMENT in its entirety; provided, however, that the SETTLING DEFENDANTS must notify CLASS COUNSEL and the COURT in writing that they are exercising such option within seven (7) days after being notified in writing by the ADMINISTRATOR concerning the CLASS MEMBERS who have timely requested exclusion from the SETTLEMENT and whose potential claims (valued in US\$) collectively exceed 17% of the SETTLEMENT FUND.

59. In the event that LAUNCH and/or BENSON exercise the option to terminate and

withdraw from the SETTLEMENT, the SETTLEMENT shall also terminate as to FRAGALE, thereby terminating the SETTLEMENT in its entirety.

60. The PARTIES expressly agree that in the event of any of the following conditions:

- (A) The COURT does not enter a PRELIMINARY APPROVAL ORDER;
- (B) The COURT does not finally approve the SETTLEMENT;
- (C) The COURT does not enter a FINAL APPROVAL ORDER and JUDGMENT;
- (D) The COURT does not approve the BAR ORDER;
- (E) LAUNCH and BENSON, or either of them, withdraw and cancel the SETTLEMENT pursuant to Paragraph 59; or
- (F) This SETTLEMENT does not become final for any reason;

then this AGREEMENT shall be null and void *ab initio* and any order entered by the COURT in furtherance of this SETTLEMENT shall be treated as withdrawn or vacated by stipulation of the PARTIES; provided, however, that in the event of the denial of PRELIMINARY APPROVAL or FINAL APPROVAL, the PARTIES may seek appellate review through a writ or pursue any other available appellate remedy in support of the SETTLEMENT or this AGREEMENT. During the pendency of any appeal of the denial of PRELIMINARY APPROVAL or FINAL APPROVAL, this AGREEMENT shall remain valid and binding.

61. If any of the conditions outlined in Paragraph 60 occur such that this SETTLEMENT does not become final, the PARTIES shall proceed in all respects as if this AGREEMENT had not been executed, including their right to bring and oppose motions in the ACTION; provided, however, that the SETTLING DEFENDANTS shall have no claim to recover for the payment of reasonable CLASS NOTICE and ADMINISTRATION COSTS, or taxes or tax expenses paid, incurred, or due and owing in connection with the SETTLEMENT incurred up to

such time.

62. If any of the conditions outlined in Paragraph 60 occur such that this SETTLEMENT does not become final, the SETTLEMENT FUND (including accrued interest), less CLASS NOTICE and ADMINISTRATION COSTS, and taxes or tax expenses paid, incurred, or due and owing in connection with the SETTLEMENT incurred up to such time, shall be refunded to SETTLING DEFENDANTS pro rata to their contributions without delay pursuant to written instructions from SETTLING DEFENDANTS' COUNSEL.

63. If PRELIMINARY APPROVAL is denied, upon the latest of the following events the PARTIES shall be returned to their respective statuses as of the date immediately prior to the execution of this AGREEMENT: (1) the expiration of time to appeal the denial of PRELIMINARY APPROVAL; or (2) the conclusion of any unsuccessful appeal or petition for a writ of mandamus from the denial of PRELIMINARY APPROVAL. The PARTIES agree that in either of these events, they will request a mutually convenient date for trial as appropriate.

64. If FINAL APPROVAL is denied, upon the latest of the following events the PARTIES shall be returned to their respective statuses as of the date immediately prior to the execution of this AGREEMENT: (1) the expiration of time to appeal the denial of FINAL APPROVAL; or (2) the conclusion of any unsuccessful appeal or petition for a writ of mandamus from the denial of FINAL APPROVAL. The PARTIES agree that in either of these events, they will request a mutually convenient date for trial as appropriate.

65. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any FEE AND EXPENSE AWARD or SERVICE AWARD shall constitute grounds for cancellation or termination of this AGREEMENT.



**XII. FEE AND EXPENSE AND SERVICE AWARDS**

**A. Fee and Expense Award**

66. CLASS COUNSEL intend to request that the COURT award them a FEE AND EXPENSE AWARD from the SETTLEMENT FUND consistent with Washington law and Ninth Circuit precedent. CLASS COUNSEL shall not petition the COURT for any additional payments for fees or expenses to be paid by the SETTLING DEFENDANTS except from the SETTLEMENT FUND.

67. The PARTIES agree that the amount of any FEE AND EXPENSE AWARD will be solely in the discretion of the COURT. The SETTLING DEFENDANTS shall not be required to otherwise pay any portion of the attorneys' fees and expenses of CLASS COUNSEL, the CLASS REPRESENTATIVE, or SETTLEMENT CLASS MEMBERS except from the SETTLEMENT FUND.

68. Any FEE AND EXPENSE AWARD approved by the COURT, shall be paid by the ESCROW AGENT to CLASS COUNSEL, within five (5) business days after the EFFECTIVE DATE.

69. Payment of the FEE AND EXPENSE AWARD to CLASS COUNSEL shall constitute full satisfaction by the SETTLING DEFENDANTS of any obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, expenses, or costs in the ACTION incurred by any attorney on behalf of the CLASS REPRESENTATIVE or the SETTLEMENT CLASS, and shall relieve the SETTLING DEFENDANTS and the RELEASED PARTIES of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of the CLASS REPRESENTATIVE and/or SETTLEMENT CLASS MEMBERS for any RELEASED CLAIM.

70. The SETTLING DEFENDANTS' own legal fees, costs, and expenses incurred in the ACTION shall be borne by the SETTLING DEFENDANTS.

**B. Service Award**

71. CLASS COUNSEL intends to request that the COURT approve a SERVICE AWARD for the CLASS REPRESENTATIVE from the SETTLEMENT FUND in an amount consistent with Ninth Circuit precedent. This SERVICE AWARD is not conditioned on the CLASS REPRESENTATIVE'S support for the SETTLEMENT.

72. The PARTIES agree that the amount of any SERVICE AWARD will be solely in the discretion of the COURT. The SETTLING DEFENDANTS shall not be required to otherwise pay any portion of any SERVICE AWARD for the CLASS REPRESENTATIVE except from the SETTLEMENT FUND.

73. Any SERVICE AWARD approved by the COURT shall be paid by the ESCROW AGENT to the CLASS REPRESENTATIVE within five (5) business days after the EFFECTIVE DATE.

74. The COURT's award of any SERVICE AWARD to the CLASS REPRESENTATIVE does not preclude the CLASS REPRESENTATIVE from receiving any other benefits to which he may be entitled under the terms of this AGREEMENT as part of the SETTLEMENT CLASS.

75. Any SERVICE AWARD paid to the CLASS REPRESENTATIVE shall be reported on an IRS Form 1099 (*i.e.*, as "Other Income") and provided to the CLASS REPRESENTATIVE and applicable governmental authorities.

### **XIII. CONFIDENTIALITY**

76. Any information and documentation provided to CLASS COUNSEL and the ADMINISTRATOR by the SETTLEMENT CLASS is confidential and cannot be provided to third parties or used for any purpose other than effectuating the terms of this AGREEMENT.

### **XIV. WAIVER OF RIGHT TO ARBITRATE**

77. Unless and until any of the conditions outlined in Paragraph 60 occur such that this AGREEMENT does not become final, the SETTLING DEFENDANTS, on behalf of the RELEASED PARTIES, agree to waive any rights they may have to compel arbitration of the RELEASED CLAIMS in any arbitral tribunal or to rely on any arbitration agreement purporting to bind the CLASS MEMBERS. If any of the conditions outlined in Paragraph 60 occur such that this SETTLEMENT does not become final, any such waiver shall have no force and effect.

### **XV. AGREEMENT TO COOPERATE**

78. All PARTIES, their successors and assigns, and their attorneys, agree to use reasonable efforts to cooperate with one another in seeking COURT approval of this AGREEMENT and to effectuate this AGREEMENT.

79. The PARTIES further agree to cooperate in the SETTLEMENT administration process and implementation of the SETTLEMENT and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the SETTLEMENT.

### **XVI. WARRANTIES**

80. Each signatory to this AGREEMENT hereby warrants that he, she, or it has the authority to execute this AGREEMENT and thereby bind the respective PARTY. The CLASS REPRESENTATIVE warrants and represents that he is the sole and lawful owner of all rights,

title, and interest in and to all RELEASED CLAIMS and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any RELEASED CLAIMS or any part or portion thereof.

#### **XVII. BINDING EFFECT OF THE AGREEMENT**

81. The terms of this AGREEMENT shall inure to the benefit of, and be binding upon, the PARTIES and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon the EFFECTIVE DATE. Notwithstanding, this AGREEMENT does not purport to impact any CLASS MEMBER claims against the NON-SETTLING DEFENDANTS.

#### **XVIII. INTEGRATION CLAUSE**

82. This AGREEMENT and its attachments constitute the entire agreement of the PARTIES with respect to the matters discussed herein and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this AGREEMENT, the PARTIES acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this AGREEMENT. The PARTIES also acknowledge and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this SETTLEMENT and this AGREEMENT and the risks and consequences thereof.

83. All exhibits to this AGREEMENT are integrated herein and are to be considered terms of this AGREEMENT as if fully set forth herein.

#### **XIX. MODIFICATIONS**

84. This AGREEMENT may not be amended or modified in any respect except by a written instrument duly executed by all of the PARTIES to this AGREEMENT or their counsel.

85. The PARTIES agree that nonmaterial amendments or modifications to this AGREEMENT may be made in writing after PRELIMINARY APPROVAL without the need to seek the COURT's approval.

86. If the COURT indicates, prior to PRELIMINARY APPROVAL or FINAL APPROVAL, that the SETTLEMENT will not be approved unless certain changes are made, the PARTIES will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this AGREEMENT. However, if no such agreement can be reached within thirty (30) days after the COURT indicates that the SETTLEMENT will not be approved unless certain changes are made, then the CLASS REPRESENTATIVE or SETTLING DEFENDANTS may terminate and withdraw from this AGREEMENT. If this AGREEMENT is terminated under such circumstances, the CLASS REPRESENTATIVE, the SETTLING DEFENDANTS and the CLASS MEMBERS shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by the SETTLING DEFENDANTS and the CLASS REPRESENTATIVE into this AGREEMENT and any and all other understandings and agreements between the PARTIES and their respective counsel relating to the SETTLEMENT shall be deemed to be null and void and of no force and effect. Upon termination under this Paragraph of the AGREEMENT, the PARTIES shall jointly notify the COURT of the need to set litigation deadlines and they will request a mutually convenient date for trial as appropriate.

87. Without further order of the COURT, the PARTIES may agree in writing to reasonable extensions of time to carry out any of the provisions of this AGREEMENT.

**XX. STAY OF PROCEEDINGS AGAINST SETTLING DEFENDANTS.**

88. Pending the Court's entry of a FINAL APPROVAL ORDER and JUDGMENT, unless the PARTIES otherwise agree, all proceedings in the ACTION against the SETTLING DEFENDANTS shall be stayed.

**XXI. COUNTERPARTS**

89. This AGREEMENT may be executed in one or more counterparts, each of which shall be an original, and this AGREEMENT is effective upon execution of at least one counterpart by each PARTY to this AGREEMENT.

**XXII. NO ADMISSIONS**

90. If this AGREEMENT does not become effective or is cancelled, withdrawn, or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the ACTION or any proceedings between the PARTIES or in any other action related to the RELEASED CLAIMS or otherwise involving the PARTIES, or any RELEASED PARTY.

91. Nothing in this AGREEMENT may be construed as, or may be used as, an admission by the CLASS REPRESENTATIVE that any of their claims are without merit.

92. Nothing in this AGREEMENT may constitute, may be construed as, or may be used as an admission by the RELEASED DEFENDANTS of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate.

**XXIII. WAIVER**

93. Any failure by any PARTY to insist upon the strict performance by any other PARTY of any provision of this AGREEMENT shall not be deemed a waiver of any provision of this AGREEMENT and such PARTY, notwithstanding such failure, shall have the right thereafter

to insist upon the specific performance of any and all of the provisions of this AGREEMENT.

**XXIV. AGREEMENT DRAFTED BY ALL PARTIES**

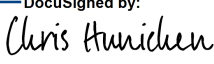
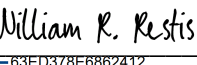
94. This AGREEMENT has been, and shall be construed to have been, drafted by all the PARTIES to it and the PARTIES agree that any rule which construes ambiguities against the drafter shall have no force or effect.

**ATTACHMENTS**

- EXHIBIT 1 FINAL APPROVAL ORDER
- EXHIBIT 2 PRELIMINARY APPROVAL ORDER
- EXHIBIT 3 PROOF OF CLAIM
- EXHIBIT 4 SUMMARY NOTICE

**SIGNATURES**

*(continued on next page)*

Dated: <u>6/2/2021</u> , 2021	DocuSigned by:  _____ 4F16C6B27F6B433 CHRIS HUNICHEN  CLASS REPRESENTATIVE
Dated: <u>6/2/2021</u> , 2021	DocuSigned by:  _____ 63ED378E6862412 WILLIAM R. RESTIS  ATTORNEYS FOR THE CLASS REPRESENTATIVE AND THE SETTLEMENT CLASS
Dated: _____, 2021	LAUNCH CAPITAL LLC  _____ BY: ELON BOMS (ITS CHAIRMAN)
Dated: _____, 2021	_____ STEVEN J. "WOODY" BENSON  DEFENDANT
Dated: _____, 2021	MORRISON & FOERSTER LLP  _____ JAMIE A. LEVITT  ATTORNEYS FOR LAUNCH CAPITAL LLC AND WOODY BENSON







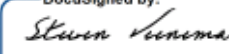
**ATTACHMENTS**

- EXHIBIT 1 FINAL APPROVAL ORDER
- EXHIBIT 2 PRELIMINARY APPROVAL ORDER
- EXHIBIT 3 PROOF OF CLAIM
- EXHIBIT 4 SUMMARY NOTICE

**SIGNATURES**

*(continued on next page)*

<p>Dated: _____, 2021</p>	<p>_____                  CHRIS HUNICHEN                  CLASS REPRESENTATIVE</p>
<p>Dated: _____, 2021</p>	<p>THE RESTIS LAW FIRM                  _____                  WILLIAM R. RESTIS                  ATTORNEYS FOR THE CLASS REPRESENTATIVE AND THE SETTLEMENT CLASS</p>
<p>Dated: <u>6/2/2021</u>, 2021</p>	<p>LAUNCH CAPITAL LLC                    _____                  BY: ELON BOMS (ITS CHAIRMAN)</p>
<p>Dated: <u>6/2/2021</u>, 2021</p>	<p>                  _____                  STEVEN J. "WOODY" BENSON                  DEFENDANT</p>
<p>Dated: <u>6/2/2021</u>, 2021</p>	<p>MORRISON &amp; FOERSTER LLP                    _____                  JAMIE A. LEVITT                  ATTORNEYS FOR LAUNCH CAPITAL LLC AND WOODY BENSON</p>

Dated: <u>June 2, 2021</u> , 2021	<p>DocuSigned by:</p>  <p>DAVID FRAGALE DEFENDANT</p>
Dated: <u>June 2,</u> _____, 2021	<p>MURPHY &amp; KING PC</p> <p>DocuSigned by:</p>  <p>STEVEN M. VEENEMA ATTORNEYS FOR DAVID FRAGALE</p>