

# Exhibit 1

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of this 7<sup>th</sup> day of September, 2022, by and among the following parties, as hereinafter defined: (1) Asha Smith and Emma Nedley (collectively, “Plaintiffs” or “Named Plaintiffs”), on behalf of themselves and the Settlement Class, by and through Class Counsel in this Action; and (2) The Trustees of the University of Pennsylvania (“Penn”), by and through its attorneys in this Action. The Named Plaintiffs and Penn are individually each a “Party” and collectively, the “Parties.”

### **RECITALS**

On April 30, 2020, Plaintiff Asha Smith filed a putative class action complaint in the United States District Court for the Eastern District of Pennsylvania styled *Asha Smith v. University of Pennsylvania*, Case No. 2:20-cv-2086 (the “First Action”). On June 25, 2020, Plaintiff Emma Nedley filed a separate class action complaint in the United States District Court for the Eastern District of Pennsylvania styled *Emma Nedley v. University of Pennsylvania*, Case No. 2:20-cv-03109 (the “Second Action”).

On July 30, 2020, Plaintiffs filed a Joint Motion to Consolidate the two putative class action cases and to appoint interim class counsel. The two actions were consolidated under the caption *Asha Smith and Emma Nedley, on behalf of themselves and all other similarly situated v. University of Pennsylvania*, Civil Action No. 20-2086 (the “Action”) (Dkt. No. 17).

Plaintiffs filed a Consolidated Class Action Complaint (“Complaint”) on August 31, 2020 (Dkt. No. 18). The Complaint alleged that Named Plaintiffs and putative class members are entitled to refunds of certain amounts of tuition, fees, and other charges because, beginning in March 2020,

Penn provided classes remotely in response to the COVID-19 pandemic. The Complaint alleged that Named Plaintiffs and all other Penn students who paid tuition and/or fees for the Spring 2020 semester had express and implied contracts with Penn that entitled them to in-person instruction, and that by switching to remote education in response to the pandemic, Penn was liable for breach of contract. Named Plaintiffs also contended that Penn’s shift to remote education gave rise to claims of unjust enrichment and conversion. Named Plaintiffs sought damages representing the “difference between the fair market value of the online learning provided versus the fair market value of the live, in-person instruction in a physical classroom on a physical campus with all the attendant benefits for which they contracted.” *Id.* ¶ 126.

The Complaint sought certification of a putative class of plaintiffs comprising:

**The Tuition Class:**

All people who paid tuition for or on behalf of students enrolled in classes at the University for the Spring 2020 semester but were denied live, in-person instruction and forced to use online distance learning platforms for the latter portion of that semester.

**The Fees Class:**

All people who paid fees for or on behalf of students enrolled in classes at the University for the Spring 2020 semester.

*Id.* ¶ 56.

On September 21, 2020, Penn filed a Motion to Dismiss all of Named Plaintiffs’ claims (Dkt. No. 26). On October 13, 2020, Named Plaintiffs filed papers in opposition to the Motion to Dismiss (Dkt. No. 31). On November 2, 2020, Penn filed its Reply in support of its Motion to Dismiss (Dkt. No. 33).

On April 20, 2021, the Court issued its decision on the Motion to Dismiss. The Court dismissed the tuition-based claims for breach of contract, unjust enrichment, and conversion, and it dismissed the fee-based claims for unjust enrichment and conversion. The sole remaining claim that the Court permitted to continue past the motion to dismiss was Plaintiffs' fee-based breach-of-contract claim (Dkt. No. 55).

Thereafter, the Parties participated in a Zoom-based full day mediation on August 20, 2021, with the Honorable Diane Welsh (Ret.) at JAMS Mediation, Arbitration and ADR Services serving as mediator, which included an extensive exchange of information. This mediation session did not result in a settlement.

The parties engaged in substantial class/class-related merits discovery, including issuing and responding to written discovery requests, collecting and producing responsive documents, and deposing Plaintiffs. In addition, Penn, through its counsel, engaged an expert economist to analyze Plaintiffs' alleged injury and damages and this expert produced a comprehensive expert report and Plaintiffs represent that they utilized approaches guided by work with non-testifying consultants.

On February 2, 2022, Named Plaintiffs moved to certify the Fee Class as defined above (Dkt. No. 78). Penn filed papers in opposition to Named Plaintiffs' Motion for Class Certification on February 25, 2022 (Dkt. No. 83). Named Plaintiffs filed their Reply in support of their Motion for Class Certification on March 11, 2022 (Dkt. No. 88).

On February 21, 2022 Penn moved for summary judgment (Dkt. No. 82). On March 3, 2022, Plaintiffs filed papers in opposition to Penn's Motion for Summary Judgment (Dkt. No. 87). On March 13, 2022 Penn filed its Reply in support of its Motion for Summary Judgment (Dkt. No. 89).

Thereafter, the Parties participated in a second, in person, mediation session on May 12, 2022, with the Honorable Diane Welsh (Ret.). This full day mediation involved vigorous negotiation and resulted in a settlement in principle and was, like the first mediation, preceded by information exchange between the Parties and detailed statements to Judge Welsh. The Parties utilized the work of experts and/or consultants, as well as an extensive survey of the changing legal landscape involving analogous claims.

Named Plaintiffs believe that the claims asserted in the Action have merit. Nonetheless, Named Plaintiffs and their counsel recognize that Penn raised factual and legal defenses in the Action that present a risk that Named Plaintiffs may not prevail at trial or on appeal. Named Plaintiffs and their counsel have also taken into account the costs, risks, and delays associated with the continued litigation of the Action, including litigating any appeal of the dismissal of all claims seeking a refund of tuition. Therefore, Named Plaintiffs and their counsel believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred under the terms and conditions set forth in the Settlement Agreement.

Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Action, Named Plaintiffs' counsel have concluded that the terms and conditions of the Settlement are fair, reasonable, and adequate to resolve the alleged claims of the Settlement Class Members, and that it is in the best interests of the Settlement Class Members to settle the claims raised in the Action under the terms and conditions set forth in the Settlement.

At all times, Penn has continued to deny all allegations of wrongdoing and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Nevertheless, taking into account the uncertainty

and risks inherent in litigation generally and the benefits that current and former students will receive from a negotiated settlement, Penn considers it desirable to resolve the Action on the terms and conditions stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that the Settlement on the terms and conditions set forth herein is in Penn's best interests.

As more fully explained below, neither the Settlement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability by any person or entity, or of the validity of any claim, defense, or any point of fact or law by any Party. All such liability is expressly denied. Neither the Settlement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault, wrongdoing, or culpability by Penn, or be offered or received in evidence as an admission, concession, presumption, or inference of any fault, wrongdoing, or culpability by Penn in any action or proceeding.

Although the Parties have agreed that a class may be certified for purposes of the Settlement, such certification shall not be binding or have any legal effect if the Settlement is terminated, if the Settlement is ultimately not approved, or if the approval is reversed or modified on appeal. Penn reserves all of its objections to class certification for litigation purposes and does not consent to certification of the proposed Settlement Class for any purpose other than to effectuate the Settlement.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the Parties, by and through their respective counsel, that subject to final approval of the Court, after a hearing as provided for in the Settlement pursuant to Federal Rule of Civil Procedure 23(e), and

in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Action and the Released Claims shall be fully and finally compromised, settled, and released and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in the Settlement.

### **DEFINITIONS**

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

(a) **“Action”** means *Asha Smith and Emma Nedley, on behalf of themselves and all other similarly situated v. University of Pennsylvania*, Civil Action No. 20-2086, and includes all actions consolidated therein.

(b) **“Administrative Expenses”** means: (a) the costs, fees, and expenses that are incurred by the Settlement Administrator in connection with providing notice to the Settlement Class and administering the Settlement, including but not limited to, distributing the Net Settlement Fund to the Settlement Class Members; (b) fees and expenses incurred in connection with the Escrow Account; and (c) Taxes.

(c) **“Service Award”** means any payments from the Settlement Fund granted by the Court to each of the Settlement Class Representatives.

(d) **“Class Counsel”** means the law firms of Lynch Carpenter, LLP, Poulin | Willey | Anastopoulo, LLC, and Carpey Law, P.C.

(e) **“Continuing Penn Student”** means a Settlement Class Member who Penn projects will have at least one full semester to complete in their respective program as of sixty (60) days after the Effective Date of the Settlement. For the avoidance of doubt, the

following categories of students shall not be considered a Continuing Penn Student: (a) an undergraduate student classified as “Class of 2023”; (b) a student enrolled in the last semester of their program as of sixty (60) days after the Effective Date of the Settlement; (c) a PhD student who has been enrolled in their program for five (5) years or more ; and (d) a student whose estimated program completion date is not apparent from the records of Penn’s Office of the University Registrar.

(f) **“Penn’s Counsel”** means Hogan Lovells US LLP.

(g) **“Court”** means the United States District Court for the Eastern District of Pennsylvania, the Honorable Timothy J. Savage presiding.

(h) **“Effective Date”** means the first date after which all of the following events and conditions have been met or have occurred: (i) the Parties’ counsel have executed the Settlement; (ii) the Court has entered the Preliminary Approval Order; (iii) the Court has entered the Final Judgment; and (iv) the Final Judgment becomes Final.

(i) **“Escrow Agent”** means the Settlement Administrator.

(j) **“Fee Award”** means the amount of attorneys’ fees awarded by the Court to Class Counsel from the Settlement Fund.

(k) **“Final”** (with respect to a judgment or any other court order) means: (i) if no appeal is taken, the expiration of the time to file a notice of appeal under the Federal Rules of Appellate Procedure; or (ii) if an appeal is taken from the judgment or order, the latest of: (1) the date of final dismissal of any such appeal, or the final dismissal of any proceeding on certiorari or otherwise; or (2) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ



of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

(l) **“Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment approving the Settlement to be entered by the Court and the Court will determine the Fee Award and the Service Awards, and award any Litigation Expenses to Class Counsel.

(m) **“Final Judgment”** means the order (or orders) both (1) granting final approval of the Settlement and (2) entering final judgment.

(n) **“Litigation Expenses”** means costs and expenses incurred by Class Counsel in connection with commencing, litigating, and settling the Action.

(o) **“Long Form Notice”** means the Notice of Class Action Settlement and Hearing, substantially in the form attached hereto as Exhibit A.

(p) **“Net Settlement Fund”** means the Settlement Fund less any (i) Administrative Expenses, (ii) Fee Award and Litigation Expenses, and (iii) Service Awards.

(q) **“Potential Settlement Class”** means all students enrolled in any Penn program who were assessed Spring 2020 Fees, with the exception of: (i) any person who withdrew from Penn on or before March 17, 2020; or (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was intended to be delivered as an online program.

(r) **“Potential Settlement Class Member”** means a person who falls within the definition of the Potential Settlement Class as set forth above in Paragraph 1(q).

(s) **“Preliminary Approval Order”** means an order granting preliminary approval of the Settlement, substantially in the form attached hereto as Exhibit B.

(t) **“Released Claims”** means any and all suits, claims, controversies, rights, agreements, promises, debts, liabilities, accounts, reckonings, demands, damages, judgments, obligations, covenants, contracts, costs (including, without limitation, attorneys’ fees and costs), losses, expenses, actions or causes of action of every nature, character, and description, in law or in equity, that any Releasing Party ever had, or has, or may have in the future, upon or by reason of any matter, cause, or thing whatever from the beginning of the world to the Effective Date, arising out of, concerning, or relating in any way to Penn’s transition to remote education or other services during and following the COVID-19 pandemic through the end of the Spring 2020 semester, or the implementation or administration of such remote education or other services. This definition includes but is not limited to all claims that were brought or could have been brought in the Action. This definition includes but is not limited to both so called “tuition” and “fees.” Further, Released Claims include any and all claims Penn may have, had, or discover against the Released Settlement Class Parties arising out of or related in any way to the Released Settlement Class Parties’ investigation, filing, prosecution, or settlement of this Action (including both the First Action and the Second Action).

(u) **“Released Penn Parties”** means Penn and all of its present, future, and former parent, subsidiary, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and each of the foregoing’s respective present, future, and former officers, directors, trustees, academic affiliates, employees, faculty members, students, agents, representatives, attorneys, outside counsel, predecessors, successors, and assigns.

(v) **“Released Parties”** means each and any of the Released Penn Parties and each and any of the Released Settlement Class Parties.

(w) **“Released Settlement Class Parties”** means the Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present, future, and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to Penn on their behalf.

(x) **“Releasing Penn Parties”** means Penn and all of its present, future, and former parent, subsidiary, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and each of the foregoing’s respective present, future, and former predecessors, successors, and assigns.

(y) **“Releasing Parties”** means each and any of the Releasing Penn Parties and each and any of the Releasing Settlement Class Parties.

(z) **“Releasing Settlement Class Parties”** means the Settlement Class Representatives, Class Counsel, and all other Settlement Class Members, and each of their respective present, future, and former heirs, family members, guardians, executors, administrators, employees, agents, representatives, attorneys, outside counsel, predecessors, successors, assigns, and any person who has made payments to Penn on their behalf.

(aa) **“Settlement”** means the settlement described in this Settlement Agreement.

(bb) **“Settlement Administrator”** means A.B. Data Ltd.

(cc) **“Settlement Amount”** means four million five hundred thousand dollars (\$4,500,000) consideration to be paid by Penn.

(dd) **“Settlement Benefit”** means each Settlement Class Member’s share of the Net Settlement Fund.

(ee) **“Settlement Class”** means all students enrolled in any Penn program who were assessed Spring 2020 Fees, with the exception of: (i) any person who withdrew from Penn on or before March 17, 2020; (ii) any person enrolled for the Spring 2020 semester solely in a program that, at the beginning of the Spring 2020 semester, was intended to be delivered as an online program; (iii) any person who properly executes and files a proper and timely opt-out request to be excluded from the Settlement Class; and (iv) the legal representatives, successors or assigns of any such excluded person.

(ff) **“Settlement Class Member”** means a person who falls within the definition of the Settlement Class as set forth above in Paragraph (ee).

(gg) **“Settlement Class Representatives”** means Named Plaintiffs Asha Smith and Emma Nedley.

(hh) **“Settlement Fund”** means the Settlement Amount plus any and all interest earned thereon.

(ii) **“Settlement Website”** means the website established by the Settlement Administrator to aid in administering the Settlement.

(jj) **“Short Form Notice”** means the notice provided for in Paragraphs 18–19, substantially in the form attached hereto as Exhibit C.

(kk) **“Spring 2020 Fees”** means fees assessed to students by Penn for the Spring 2020 semester, including, but not limited to the General Fee, the Technology Fee, and the Clinical Fee. “Spring 2020 Fees” does not include items billed as one-time fees for the entire academic

career of the student, fees that were assessed at the request of the student, or penalty fees. Examples of fees not included are document fees, ID card fees, elective Medical Insurance, returned check fees, collection-related fees, late fees, withdrawal fees, flexible spending funds, and fees that have already been refunded, such as recreation class fees or group exercise class fees, to the extent that they were refunded.

(ll) **“Taxes”** means (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the reasonable expenses and costs incurred in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, the reasonable expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(mm) **“Uncashed Settlement Checks”** means any checks sent to Settlement Class Members that remain uncashed after a period of one hundred and eighty (180) days from the date of distribution of the checks to Settlement Class Members.

2. The word “or” means “and/or.”
3. The plural includes the singular and vice versa.

**MONETARY RELIEF TO SETTLEMENT CLASS MEMBERS**

4. A portion of the Net Settlement Fund will be allocated pro rata to each Settlement Class Member based on the ratio of (a) the total number of Potential Settlement Class Members to (b) the total Net Settlement Fund. The resulting ratio will be multiplied by the Net Settlement Fund to determine each Settlement Class Member’s Settlement Benefit.

5. To the extent that a Potential Settlement Class Member properly executes and files a timely opt-out request to be excluded from the Settlement Class, the amount that would have been distributed to such Potential Settlement Class Member had they not filed an opt-out request will instead be distributed to Settlement Class Members, in equal amounts to each Settlement Class Member.

6. Each Settlement Class Member's Settlement Benefit will be distributed to that Settlement Class Member automatically, with no action required by that Settlement Class Member.

7. With respect to Settlement Class Members who are Continuing Penn Students, the Settlement Administrator will calculate the amount of the Settlement Benefit and provide this information to Penn, which will issue a credit in this amount to each Settlement Class Member's student account. Penn will not impose a charge to issue this credit. Except as otherwise stated in this paragraph, the remaining Settlement Class Members will be paid by a check issued by the Settlement Administrator, and the check will be mailed by first class U.S. Mail by the Settlement Administrator to the Settlement Class Member's last known mailing address on file with the University Registrar. For these remaining Settlement Class Members, the Settlement Administrator will also provide a form on the Settlement Website that such Settlement Class Members may visit to (a) provide an updated address for sending a check; or (b) elect to receive the Settlement Benefit by Venmo or PayPal instead of a paper check. These remaining Settlement Class Members must provide an updated address or elect to receive the Settlement Benefit by Venmo or PayPal no later than sixty (60) days after the Effective Date.

8. No later than seven (7) days after the Effective Date, Penn will send to the Settlement Administrator the names of the Potential Settlement Class Members.<sup>1</sup> No later than thirty (30) days after the Effective Date, Penn will produce to the Settlement Administrator the address of Settlement Class Members who are not Continuing Penn Students. No charge to the Settlement Class or Settlement Fund will be made by Penn for collection, correction, and provision of this information.

9. The Settlement Administrator will send the Settlement Benefits to Settlement Class Members within sixty (60) days of the Effective Date. Funds for Uncashed Settlement Checks shall be donated, as a *cy pres* award, to (a) the Penn Vice Provost for University Life Emergency and Opportunity Fund and (b) the Penn Graduate Emergency Fund.

**RELEASE**

10. The Releasing Settlement Class Parties shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all Released Claims against the Released Penn Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Penn Parties.

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<sup>1</sup> Consistent with the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99 (collectively, “FERPA”), and Penn’s policies, Penn may disclose directory information to the Settlement Administrator. *See* 34 C.F.R. § 99.37; Policy on Confidentiality of Student Records, March 16, 2010, Volume 56, No. 25, <https://almanac.upenn.edu/archive/volumes/v56/n25/confidentiality.html>, (last visited August 16, 2022); *see also* University of Pennsylvania, Audit, Compliance, and Privacy, <https://oacp.upenn.edu/ferpa-notice/>, (last revised July 2020). Moreover, any order granting preliminary or final approval of the Settlement shall constitute a judicial order within the meaning of FERPA, *see* 34 C.F.R. § 99.31(a)(9)(i), and the Settlement and the Court’s order shall constitute specific notice of Penn’s intention to comply with that order, *see* 34 C.F.R. § 99.31(a)(9)(ii).

11. The Releasing Penn Parties shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all Released Claims against the Released Settlement Class Parties, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Settlement Class Parties.

12. The Released Claims include any unknown claims that reasonably could have arisen out of the same facts alleged in the Action that the Releasing Parties do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their decision to agree to the Settlement, their decision to release the Released Claims, or their decision not to object to the Settlement.

13. With respect to the Released Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, they shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law. Section 1542 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 THE RELEASING PARTY.

14. The Releasing Parties may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully,



finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, for damages, injunctive relief, rescission, disgorgement, or restitution or any other right, remedy, or relief of every nature and description whatsoever, whether based on federal, state local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, that were brought or could have been brought in this Action without regard to subsequent discovery or the existence of different or additional facts.

15. The Releasing Settlement Class Parties agree not to commence any legal or administrative action against any Released Penn Party with respect to any Released Claim, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum. The Releasing Penn Parties agree not to commence any legal or administrative action against any Released Settlement Class Party with respect to any Released Claim, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

#### **CAFA NOTICE**

16. Penn shall cause the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715(b) (“CAFA”) to be provided by Penn, no later than ten (10) days following the filing of the Settlement with the Court. Fees and costs associated with the CAFA notice shall be divided equally between Penn and Plaintiffs. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Penn shall cause to be served on Class Counsel and filed with the Court proof, by affidavit or declaration, regarding compliance with 28 U.S.C. § 1715(b).

**CLASS NOTICE**

17. Within fourteen (14) days of the entry of the Preliminary Approval Order, Penn will produce to the Settlement Administrator a list from the University Registrar's records that includes the names and last known email and postal addresses, to the extent available, belonging to all Potential Settlement Class Members (the "Class List"). The Class List will be provided to the Settlement Administrator for the sole purpose of the Settlement Administrator performing its obligations pursuant to the Settlement and shall not be used for any other purpose at any time.

18. Following the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Short Form Notice substantially in the form attached hereto as Exhibit C via email to persons listed on the Class List. If an email address is not available for a Potential Settlement Class Member, the Short Form Notice will be sent to the Potential Settlement Class Member's last known mailing address via U.S. mail. Unless adjusted by Court order, the sending or mailing of the Short Form Notice shall be completed within thirty (30) days after the entry of the Preliminary Approval Order.

19. The Short Form Notice shall advise the Potential Settlement Class Members of their rights under the Settlement, including the right to be excluded from and/or object to the Settlement or its terms. The Short Form Notice shall also inform Potential Settlement Class Members that they can access the Long Form Notice on the Settlement Website, which the Long Form Notice shall advise the Potential Settlement Class Members of the procedures outlined in Paragraphs 23–27 and 28–30, specifying how to request exclusion from the Settlement or submit an objection to the Settlement.

20. No later than fourteen (14) days after the entry of the Preliminary Approval Order, and before the issuance of the Short Form Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement Website will allow Settlement Class Members who are not Continuing Penn Students to provide an updated mailing address to receive a paper check or to elect to receive their Settlement Benefit via Venmo or PayPal. The Settlement Website shall include, in downloadable format, the following: (i) the Long Form Notice; (ii) the Preliminary Approval Order; (iii) the Settlement Agreement (including all of its exhibits); (iv) a Question and Answer section agreed to in good faith by the Parties anticipating and answering Settlement related questions from prospective class members; (v) contact information for the Settlement Administrator, including a Toll Free number, as well as Settlement Class Counsel; (vi) all preliminary and final approval motions filed by the Parties, and any orders ruling on such motions and (vii) any other materials agreed upon by the Parties and/or required by the Court.

21. No later than fifteen (15) days after the entry of the Preliminary Approval Order and until the date the Final Judgment is entered, Penn will provide a link to the Settlement Website at <https://www.upenn.edu/>. No later than thirty (30) days after the entry of the Preliminary Approval Order, Penn will publish the Short Form Notice as an advertisement once in *Penn Today*, or a publication with comparable reach.

22. Prior to the Final Approval Hearing, in connection with the motion for final approval of the Settlement, Class Counsel shall serve and file a sworn statement from the Settlement Administrator evidencing compliance with the provisions of the Preliminary Approval Order concerning the distribution of the Short Form Notice to the Settlement Class as well as a summary of activity on/visits to the dedicated Settlement Website.

**REQUESTS FOR EXCLUSION**

23. A Potential Settlement Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to the Settlement Administrator, in care of the address provided in the Long Form Notice, postmarked no later than forty-five (45) days after the issuance of the Short Form Notice (the “Objection/Exclusion Deadline”), which date shall be included in the Short Form Notice and on the dedicated Settlement Website, provided that (1) if there is no legible post mark, the request for exclusion must be received by the Settlement Administrator within fourteen (14) days of the Objection/Exclusion Deadline.

24. The written request for exclusion must:

- (a) include a statement requesting exclusion from the Settlement Class;
- (b) be personally signed by the Potential Settlement Class Member; and
- (c) include the caption for the Action and the Potential Settlement Class Member’s name, address, and either a telephone number or email address.

25. A request to be excluded from the Settlement Class that does not include all of the foregoing information in Paragraph 24, that is sent to an address other than that designated in the Long Form Notice, or that is not postmarked or received within the time specified, shall be invalid, unless otherwise agreed to by the Parties, and any individual sending such request shall be deemed to remain in the Settlement Class and shall be bound as a Settlement Class Member by the Settlement, if approved by the Court. Any Potential Settlement Class Member who properly elects to be excluded, in compliance with the requirements set forth in Paragraphs 23–24, shall not: (a) be bound by any orders of the Court or the Final Judgment; (b) be entitled to relief under the

Settlement; (c) gain any rights by virtue of the Settlement; or (d) be permitted to object to any aspect of the Settlement.

26. A request to be excluded from the Settlement Class must be personal. Any particular Potential Settlement Class Member may not purport to opt other Potential Settlement Class Members out of the Settlement Class on a class or representative basis.

27. Penn has the right to audit the exclusion process for evidence of fraud or error, and the Court will be the final arbiter of an exclusion's validity.

### **OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

28. Any Settlement Class Member may submit a written objection to the Settlement, the Service Awards, and/or the Fee Award. The Settlement Class Member must mail their written objection(s) to the Clerk of Court with a postmark no later than the Objection/Exclusion Deadline, provided that (1) if there is no legible post mark, the objection must be received by the Clerk of Court within fourteen (14) days of the Objection/Exclusion Deadline and (2) if the Settlement Class Member is represented by counsel, such counsel may submit the written objection via the Court's electronic case filing system no later than the Objection/Exclusion Deadline. Copies must also be sent at the same time via mail, hand, or overnight delivery service to Class Counsel and Penn's Counsel at the addresses set forth below in Paragraph 72.

29. The written objection(s) must:

- (a) state that the person objecting is a Settlement Class Member;
- (b) include the name, address, email, and telephone number of the Settlement Class Member objecting;
- (c) be personally signed by the objecting Settlement Class Member;

(d) contain a statement that includes all objections, provides whether each objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class, and provides the specific reasons for all objections, including any legal arguments and evidentiary support (including copies of any documents relied upon); and

(e) include a statement of whether the objector intends to appear at the Final Approval Hearing, with or without counsel.

30. Any Settlement Class Member who fails to timely file a written objection with the Court and/or timely file notice of their intent to appear at the Final Approval Hearing in accordance with the terms of Paragraphs 28–29 and as detailed in the Long Form Notice, with copies to designated counsel for each of the Parties, shall not be permitted to object to the Settlement, the Service Awards, and/or the Fee Award at the Final Approval Hearing; shall be foreclosed from seeking any review of the Settlement, the Service Awards, and/or the Fee Award by appeal or other means; and shall be deemed to have waived their objection(s) and be forever barred from making any such objection(s) in the Action or any other related action or proceeding.

#### **SETTLEMENT ADMINISTRATION**

31. The Settlement Administrator shall administer the Settlement and shall act under Class Counsel’s supervision and subject to the jurisdiction of the Court. Class Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund, subject to Court approval.

32. The Settlement Administration shall, inter alia:

(a) send Short Form Notice to the Potential Settlement Class Members, as described in Paragraph 19;

(b) establish the Settlement Website, and dedicated toll free informational phone number as described in Paragraph 20;

(c) serve as Escrow Agent for the Settlement Fund;

(d) forward to Class Counsel, with copies to Penn's Counsel, all documents and other materials received in connection with the administration of the Settlement promptly upon receipt;

(e) receive requests for exclusion and other requests from the Potential Settlement Class Members and promptly provide a copy of such requests to Class Counsel and Penn's Counsel upon receipt, including any requests received after the Objection/Exclusion Deadline;

(f) provide (at least) weekly reports to Class Counsel and Penn's Counsel, including without limitation, reports regarding any requests for exclusion received;

(g) make available for inspection by Class Counsel and Penn's Counsel any documentation related to the Settlement submitted to the Settlement Administrator, and any correspondence related to the Settlement sent or received by the Settlement Administrator, at any time upon reasonable notice;

(h) provide reports and other information to the Court as the Court may require;  
and

(i) undertake other administrative tasks in a rational, responsive, cost effective, and timely manner.

33. The Settlement Administrator shall keep the Class List and all personal information, including the identity and mailing addresses of the Potential Settlement Class

Members, confidential. The Parties agree that this information may not be used for any purpose other than effectuating the terms of the Settlement or the duties or obligations arising hereunder.

34. The Settlement Administrator shall maintain reasonably detailed records of its activities under the Settlement, including all such records as are required by applicable law, in accordance with its normal business practices, which will be made available to Class Counsel and Penn's Counsel upon request. Should the Court request, Class Counsel, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator.

**SETTLEMENT APPROVAL ORDER AND FINAL APPROVAL ORDER**

35. Promptly after the execution of this Agreement, in coordination with Penn's Counsel, Class Counsel will move for preliminary approval of the Settlement, provisional certification of the Settlement Class for settlement purposes only, appointment of Named Plaintiffs as Settlement Class Representatives, appointment of Class Counsel as counsel for the Settlement Class, and the scheduling of the Final Approval Hearing. Concurrently with the motion for preliminary approval, Class Counsel shall apply to the Court for, and Penn shall agree to, entry of the proposed Preliminary Approval Order, substantially in the form attached hereto as Exhibit B.

36. At the time of the submission of the Settlement to the Court as described above, Class Counsel shall request that the Court hold a Final Approval Hearing, which shall be held no less than seventy-five (75) days after the Short Form Notice is disseminated.

37. After the Short Form Notice is disseminated, and no later than ten (10) days before the Final Approval Hearing, Class Counsel, in coordination with Penn's Counsel, shall request



that the Court submit a Final Judgment, substantially in the form attached hereto as Exhibit D, which will, among other things:

(a) approve the Settlement as fair, reasonable, and adequate to the Settlement Class, and direct consummation of the Settlement in accordance with the terms and provisions of the Settlement;

(b) fully and finally dismiss the Action with prejudice, and without costs (except as may be provided herein) to any Party as against any other;

(c) incorporate the releases set forth above in Paragraphs 10–15, make the releases effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

(d) approve the manner of distribution of the Net Settlement Fund and order that payments be made to Settlement Class Members only in accordance with same;

(e) award Class Counsel from out of the Settlement Fund such Fee Award and Litigation Expenses as the Court may allow;

(f) award the Settlement Class Representatives from out of the Settlement Fund such Service Awards as the Court may allow; and

(g) reserve jurisdiction over: (i) implementation of the Settlement and any distribution to Settlement Class Members, pursuant to further orders of the Court; (ii) disposition of the Settlement Fund; (iii) the Action, until each and every act agreed to be performed pursuant to the Settlement shall have been performed, pursuant to further orders of the Court; and (iv) the Parties, for the purpose of enforcing and administering the Settlement.

**SETTLEMENT CONSIDERATION**

40. The Settlement Amount shall be the sum of \$4,500,000. Within ten (10) business days after the Court enters the Preliminary Approval Order, Penn shall deposit into an escrow account established by the Settlement Administrator / Escrow Agent (the “Escrow Account”), the sum of \$4,500,000. No person or entity shall be liable to pay any amount pursuant to the Settlement except as set forth in this paragraph.

**USE OF SETTLEMENT**

41. The Settlement Fund shall be used to pay: (a) any Administrative Expenses incurred in accordance with Paragraph 1(b); (b) any Fee Award and Litigation Expenses granted by the Court; and (c) any Service Awards granted by the Court. The remaining funds, the Net Settlement Fund, shall be distributed to Settlement Class Members according to the Settlement.

42. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed as provided in Paragraphs 4–9.

43. Up until the Effective Date, the Escrow Account shall be under the control of the Escrow Agent, on behalf of the Settlement Class Representatives, the Settlement Class, and Penn. The Escrow Agent shall cause the Settlement Fund to be invested exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments), except that any cash balances up to the amount that is insured by the Federal Deposit Insurance Corporation (“FDIC”) may be deposited in any account that is fully insured by the FDIC. The Escrow Agent shall cause all interest on the Escrow Account to be collected and reinvested. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds

held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. The Released Penn Parties shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund.

44. The Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. The Settlement Administrator shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Penn Parties shall not have any liability or responsibility for any such Taxes. Upon written request, Penn will provide to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). The Settlement Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

45. All Taxes shall be paid out of the Settlement Fund and shall be timely paid pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Penn Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator with respect to the payment of Taxes.

46. This Settlement is not a claims-made settlement. As of the Effective Date, all rights of Penn in or to the Settlement Fund shall be extinguished.

47. Prior to the Effective Date, no disbursements shall be made out of the Settlement Fund except: (a) upon order of the Court; or (b) as provided in the Settlement. Prior to the Effective Date, the Escrow Agent may pay from the Settlement Fund Administrative Expenses actually incurred and paid or payable, which shall not exceed \$150,000. If, prior to the Effective Date, Administrative Expenses exceed \$150,000, such additional amounts shall be paid only after approval by both Class Counsel and Penn's Counsel, which shall not be unreasonably withheld. After the Effective Date, the Escrow Agent may pay from the Settlement Fund any additional, unpaid Administrative Expenses only after approval by both Class Counsel and Penn's Counsel. The Released Penn Parties are not responsible for, and shall not be liable for, any Administrative Expenses.

48. If the Effective Date does not occur, or if the Settlement is voided, terminated, or cancelled pursuant to the terms of the Settlement, the Settlement Class Representatives and Class Counsel shall have no obligation to repay any of the Administrative Expenses that have been paid

or incurred in accordance with Paragraph 1(b). Any amounts remaining in the Settlement Fund after payment of Administrative Expenses incurred in accordance with Paragraph 1(b), including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Penn. No other person or entity shall have any further claim whatsoever to such amounts.

49. The Net Settlement Fund will be distributed in the manner set forth in Paragraphs 4–9. The manner of distribution of the Net Settlement Fund, as described in Paragraphs 4–9, the treatment of Uncashed Settlement Checks, as described in Paragraph 9, and the identity of the Settlement Administrator, as described in Paragraph 1(bb), are not necessary terms of the Settlement, and it is not a condition of the Settlement that any particular manner of distribution of the Net Settlement Fund be approved by the Court. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement based on the Court’s or any appellate court’s ruling with respect to the manner of distribution of the Net Settlement Fund or any other plan of distribution in this Action. Any order or proceeding relating to the manner of distribution of the Net Settlement Fund or any other plan of distribution in this Action, or any appeal from any such order, shall not operate to terminate or cancel the Settlement.

50. Payment pursuant to the Final Judgment shall be final and conclusive against all Settlement Class Members. All Settlement Class Members who have not opted out of the Settlement Class shall be bound by all terms of the Settlement, including the Final Judgment to be entered in this Action, and will be permanently barred and enjoined from bringing any action against the Released Penn Parties with respect to any and all of the Released Claims.

51. No person or entity shall have any claim or cause of action against the Settlement Class Representatives, Class Counsel, the Settlement Administrator, or any other agent designated

by Class Counsel arising from distributions made substantially in accordance with the Settlement, the manner of distribution of the Net Settlement Fund as approved by the Court, or any order of the Court.

52. The Released Penn Parties shall have no responsibility for, interest in, or liability whatsoever with respect to distribution of the Net Settlement Fund, the payment or withholding of Taxes, the Escrow Account, the Escrow Agent, the Settlement Administrator, Administrative Expenses, or any losses incurred in connection with the foregoing. No person, including the Settlement Class Representatives, Settlement Class Members, and Class Counsel, shall have any claim of any kind against the Released Penn Parties with respect to the matters set forth in this paragraph.

**AWARDS FOR ATTORNEYS' FEES AND SETTLEMENT CLASS REPRESENTATIVES**

53. Settlement Class Representatives may seek, and the Court may award, reasonable case contribution Service Awards to them for their service in the case and to the Settlement Class not to exceed ten thousand dollars (\$10,000), which shall come from the Settlement Fund. This shall be in addition to any Settlement Benefit that Settlement Class Representatives may receive as Settlement Class Members. If the Court approves a request for Service Awards, the Settlement Administrator will distribute the Service Awards to the Settlement Class Representatives along with their Settlement Benefit no later than sixty (60) days after the Effective Date.

54. No later than fourteen (14) days prior to the Objection/Exclusion Deadline, Class Counsel will apply to the Court for a Fee Award to Class Counsel to be paid from (and out of) the

Settlement Fund and not to exceed one-third of the Settlement Fund. In addition to the Fee Award, Class Counsel also will apply to the Court for reimbursement of their Litigation Expenses, which may include a request for reimbursement of the Settlement Class Representatives' costs and expenses directly related to their representation of the Settlement Class, to be paid from (and out of) the Settlement Fund.

55. Any Fee Award and Litigation Expenses shall be paid to Class Counsel from out of the Settlement Fund upon request after entry of an order by the Court awarding such Fee Award and Litigation Expenses. In the event that there is no Effective Date or the Settlement is terminated pursuant to the terms of the Settlement, Class Counsel shall repay to Penn the full amount of the Fee Award and Litigation Expenses paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event that the Fee Award or award of Litigation Expenses is vacated, modified, reversed, or rendered void as the result of any appeal, further proceedings on remand, or successful collateral attack, Class Counsel shall repay to the Settlement Fund the amount of the Fee Award and/or Litigation Expenses reversed, vacated, or modified, including any accrued interest. Class Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from Penn's Counsel notice of the termination of the Settlement; or (b) any order reversing or modifying the Final Judgment, vacating the Final Judgment, or reducing or reversing the Fee Award or Litigation Expenses has become Final.

56. The granting by the Court of any Service Award, Fee Award, or Litigation Expenses is not a necessary term of the Settlement, and it is not a condition of the Settlement that any particular Service Award, Fee Award, or Litigation Expenses be approved by the Court. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement

based on this Court's or any appellate court's ruling with respect to any Service Award, Fee Award, or Litigation Expenses. Any order or proceeding relating to any Service Award, Fee Award, or Litigation Expenses, or any appeal from any such order, shall not operate to terminate or cancel the Settlement. However, distribution of all or a portion of the Settlement Fund may be delayed in the event of an appeal concerning any Service Award, Fee Award or Litigation Expenses.

**NO ADMISSION OF WRONGDOING**

57. Penn denies any wrongdoing or culpability. Neither the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, is, may be construed as, or may be used as an admission by or against Penn of any fault, wrongdoing, or liability whatsoever.

58. Pursuant to Federal Rule of Evidence 408, entering into or carrying out the Settlement, the exhibits hereto, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by Penn, and shall not be offered or received into evidence in any action or proceeding against the Released Penn Parties in any court or before any administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of the Settlement or the provisions of any related agreement or exhibit hereto.

**CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL  
CANCELLATION, OR TERMINATION**

59. The Parties agree that, if the number of persons who properly execute and file a timely request for exclusion from the Settlement reaches four percent (4%) of the Potential



Settlement Class Members, Penn has the unilateral right, in its sole discretion, to declare the Settlement void in its entirety upon notice to Class Counsel.

(a) Class Counsel shall promptly, and in any event not less than ten (10) days prior to the Final Approval Hearing, notify Penn's Counsel of all requests for exclusion submitted by Potential Settlement Class Members and provide Penn's Counsel with copies of any such requests for exclusion.

(b) If Penn intends to exercise its unilateral right of termination set forth herein, written notice of such intent must be provided to Class Counsel at least seven (7) days prior to the Final Approval Hearing. Within five (5) days of such notice, Class Counsel and Penn's Counsel shall meet and confer concerning the potential termination of the Settlement.

(c) Following the meet and confer, and at least seven (7) days prior to the Final Approval Hearing, Penn shall provide Class Counsel with written notice that Penn is exercising its unilateral right of termination set forth herein. Penn may withdraw its termination by providing written notice of such withdrawal to Class Counsel no later than one (1) business day prior to the scheduled Final Approval Hearing.

(d) If Penn elects to terminate the Settlement in accordance with the terms set forth herein, the Settlement shall be deemed terminated and cancelled, and the provisions of Paragraph 60 shall apply.

60. If (i) Penn exercises its right to terminate the Settlement as provided in Paragraph 59; (ii) the Court disapproves the Settlement; or (iii) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) the Settlement shall be cancelled and terminated;

(b) the terms and provisions of the Settlement shall have no further force and effect whatsoever;

(c) Class Counsel shall repay to Penn any Fee Award and/or Litigation Expenses paid to Class Counsel from the Settlement Fund, including any accrued interest, within thirty (30) days after: (1) receiving from Penn's Counsel notice of the termination of the Settlement; or (2) any order reversing or vacating the Final Judgment;

(d) within ten (10) business days after written notice is sent by Penn or its counsel to the Escrow Agent and Class Counsel, the Escrow Agent shall cause the Settlement Fund and all interest earned thereon (subject to the expiration of any time deposit not to exceed ninety (90) days) to be refunded to Penn, less any Administrative Expenses paid or incurred in accordance with the terms of the Settlement; and

(e) the Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of the Settlement, and they shall proceed in all respects as if the Settlement, its exhibits, and any related agreements or orders, had never been executed. In such event, the Parties jointly will seek to vacate any order entered or actions taken in connection with the Settlement.

### **MISCELLANEOUS PROVISIONS**

61. The Settlement will be executed by Penn, Penn's Counsel, the Named Plaintiffs, and Class Counsel. All counsel executing the Settlement represent and warrant that they are authorized and empowered to execute the Settlement on behalf of their clients, and that the signature of such counsel is intended to and does legally bind the clients of such counsel.

62. Class Counsel, on behalf of the Settlement Class, are authorized to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement to effectuate its terms. Class Counsel also are authorized to enter into any modifications or amendments to the Settlement on behalf of the Settlement Class which such counsel deem appropriate.

63. All of the exhibits attached hereto are hereby incorporated by this reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of the Settlement and the terms of any exhibit attached hereto, the terms of the Settlement shall prevail.

64. The Settlement may be amended or modified only by a written instrument signed by or on behalf of the Settlement Class Representatives and Penn or their successors-in-interest, except to the extent that any modification would be inconsistent with any order by the Court.

65. The waiver by one Party of any breach of the Settlement by any other Party shall not be deemed a waiver, by that Party or by any other Party to the Settlement, of any other prior or subsequent breach of the Settlement.

66. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

67. The Settlement and its exhibits constitute the entire agreement among the Parties hereto, and no other agreements, representations, warranties, or inducements have been made to any Party concerning the Settlement or its exhibits other than those contained and memorialized in such documents.

68. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. Signatures may be originals, or facsimile or pdf copies.

69. The Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties to the Settlement.

70. The construction, interpretation, operation, effect, and validity of the Settlement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Pennsylvania, without regard to conflicts of laws, except to the extent federal law requires that federal law govern.

71. Any action arising under or to enforce the Settlement or any portion thereof, shall be commenced and maintained only in this Court.

72. The Parties and their counsel agree to use their best efforts, and to take all reasonable steps necessary, to obtain the entry of the Final Judgment, and to effectuate the Settlement. Any such actions taken by the Parties, and any actions taken by the Parties to comply with the Settlement, will be in accordance with federal, state, and/or local law, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and associated regulations, 34 C.F.R. Part 99.

If to the Settlement Class Representatives or Class Counsel:

**LYNCH CARPENTER, LLP**

Attn: Edward W. Ciolko  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Email: [eciolko@lcllp.com](mailto:eciolko@lcllp.com)

**POULIN | WILLEY | ANASTOPOULO, LLC**

Attn: Roy T. Willey, IV  
32 Ann Street  
Charleston, SC 29403  
Email: [roy@akimlawfirm.com](mailto:roy@akimlawfirm.com)

**CARPEY LAW, P.C.**

Attn: Stuart A. Carpey  
600 W. Germantown Pike  
Suite 400  
Plymouth Meeting, PA 19462  
Telephone: (610) 834-6030  
Email: [tsonnentag@carpeylaw.com](mailto:tsonnentag@carpeylaw.com)

If to the University of Pennsylvania:

**HOGAN LOVELLS US LLP**


Attn: Michael L. Kidney  
555 Thirteenth Street NW  
Washington, D.C. 20004  
Email: [michael.kidney@hoganlovells.com](mailto:michael.kidney@hoganlovells.com)

73. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Representatives, and any other Settlement Class Members, against the Released Penn Parties with respect to the Released Claims. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a Settlement that was reached voluntarily after (1) extensive negotiations through an extensive mediation process conducted by an experienced mediator and former federal magistrate judge suggested by the Court and (2) consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

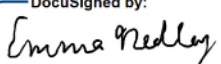
**IN WITNESS WHEREOF**, the Parties hereto have caused this Settlement to be executed, by their duly authorized attorneys, as for the date stated above:

ACCEPTED AND AGREED:

PLAINTIFFS

  
\_\_\_\_\_  
Asha Smith

Dated: 09/07/2022

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Emma Nedley

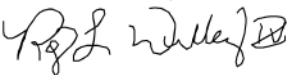
Dated: 9/7/2022

LYNCH CARPENTER, LLP  
(counsel for Plaintiffs)

By:   
\_\_\_\_\_  
Edward W. Ciolko

Dated: 9/7/2022

POULIN | WILLEY | ANASTOPOPOULO, LLC  
(counsel for Plaintiffs)

By:   
\_\_\_\_\_  
Roy T. Willey, IV

Dated: 

CARPEY LAW, P.C.  
(counsel for Plaintiffs)

By:   
\_\_\_\_\_  
Stuart A. Carpey

09/07/2022

TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Wendy White

Dated: 9/7/2022

By: Wendy White  
Senior Vice President & General Counsel

HOGAN LOVELLS US LLP  
(counsel for Defendant Trustees of the University of Pennsylvania)

Dated: \_\_\_\_\_

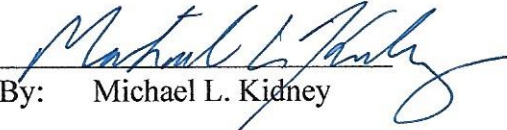
\_\_\_\_\_  
By: Michael L. Kidney

TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Wendy White  
Senior Vice President & General Counsel

HOGAN LOVELLS US LLP  
(counsel for Defendant Trustees of the University of Pennsylvania)

  
By: Michael L. Kidney

Dated: Sep. 7, 2022