

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p><b>EMILY CARPEY, JUAN JIMENEZ, NICK TUFANO, AND MILES LEVIN</b>, each individually and on behalf of all others similarly situated,</p> <p>Plaintiffs</p> <p>v.</p> <p><b>BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO</b>,</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No.: 2020CV31409</p> <p>Division: 466</p>
<p><b>SETTLEMENT AGREEMENT AND RELEASE</b></p>	

This Settlement Agreement and Release is entered into between Plaintiffs Emily Carpey, Juan Jimenez, Nick Tufano, and Miles Levin (collectively, “Plaintiffs”) and Defendant Board of Regents of the University of Colorado (the “University”) to effect a full and final settlement and dismissal with prejudice or all claims against the University as alleged in the above-captioned case on the terms set forth below and to the full extent reflected herein, subject to approval of the Court.

Capitalized terms shall have the meaning ascribed to them in Section II of this Settlement Agreement.

## I. RECITALS

A. On or about April 18, 2020, Miles Levin filed a class action lawsuit against the University captioned, *Levin v. Board of Regents of the University of Colorado*. Juan Jimenez filed a similar suit captioned, *Jimenez v. Board of Regents of the University of Colorado*, on or about July 27, 2020. Both suits alleged damages related to the University's moving to an online remote format in spring semester 2020 because of Covid-19.

B. Those suits were consolidated in this Court on or about November 9, 2020, in the case *Carpey, et al. v. Board of Regents of the University of Colorado*, Case No. 2020CV31409. Plaintiffs filed a Consolidated Complaint on or about January 29, 2021.

C. The University filed a motion to dismiss on or about February 12, 2021, which the Court denied on September 2, 2021.

D. After entering a case schedule and certain initial discovery, the Parties agreed to mediation, which was conducted on June 3, 2022 by the Hon. Diane Welsh (Ret.) of JAMS.

E. Plaintiffs and Class Counsel have conducted an examination of the facts and documents relating to the Litigation, including documents produced by the University in discovery prior to settlement discussions, and have concluded this Settlement provides substantial benefits to Plaintiffs and the Settlement Class and resolves all issues that were or could have been raised in the Litigation without prolonged litigation and the risks and uncertainties inherent in litigation. Plaintiffs and Class Counsel have further concluded that this Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

F. The University denies each allegation of wrongdoing, liability, and damages that were or could have been asserted in the Litigation and further denies the claims in the Litigation would be appropriate for class treatment if the Litigation were to proceed through trial.

Nonetheless, without admitting or conceding any wrongdoing, liability, or damages or the appropriateness of Plaintiffs' claims or similar claims for class treatment, the University consents to the Settlement solely to avoid the expense, inconvenience, and inherent risk of litigation as well as continued disruption of its business operations.

**G.** Nothing in this Settlement or Settlement Agreement shall be construed as an admission or concession by the University pertaining to the truth of any allegations raised in the Litigation or of any fault, wrongdoing, liability, or damages or any kind.

**H.** This Settlement Agreement, its terms, documents related to it and the negotiations or proceedings connected with it shall not be offered or received into evidence in this case or in any other action or proceeding to establish or defeat liability or as an admission by any Party.

**NOW, THEREFORE,** in consideration of the foregoing and the mutual covenants, promises, and general releases set forth below and subject to preliminary and final approval by the Court, the Parties hereby agree as follows:

## **II. DEFINITIONS**

As used in this Settlement Agreement and related documents, the following terms shall have the meaning set forth herein:

**A.** "Attorneys' Fee Award" means the Court-approved award of attorneys' fees to Class Counsel in an amount not to exceed \$250,000 to be paid by the University and separately from the Settlement Fund, as set forth in Section V.

**B.** "Class Counsel" means the law firms of Poulin | Willey | Anastopoulo, LLC, Lynch Carpenter, LLP, and Kishinevsky & Raykin, Attorneys at Law, as well as such other counsel (if any) that the Court appoints.

**C.** "Court" means the State of Colorado District Court, City and County of Denver.

**D.** “Days” means calendar days, except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Furthermore, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal or State of Colorado legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State of Colorado legal holiday.

**E.** “Effective Date” means the date defined in Section XI.

**F.** “Fairness Hearing” means the hearing at which the Court orders final approval of the Settlement.

**G.** “Fees” means the mandatory or general fees charged by the University to support, for example, student services, student activities, technology, capital construction and need-based financial aid.

**H.** “Final” means final as defined in Section XI.B.

**I.** “Final Order and Judgment” means a final order entered by the Court after the Fairness Hearing, granting approval of the Settlement as further described in Section VIII.

**J.** “Service Award” means the Court-approved award, if any, to the individual class representatives as defined in Section V and payable from the Settlement Fund.

**K.** “Litigation” means the action captioned *Carpey, et al. v. Board of Regents of the University of Colorado*, Case No. 2020CV31409 (Colo. 2021).

**L.** “Notice and Administration Costs” means the reasonable and authorized costs and expenses of the Settlement Class Notice Program and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but

not limited to, costs and expenses associated with assisting members of the Settlement Class, processing claims, escrowing funds, issuing and mailing the benefits provided by the Settlement and other reasonable and authorized fees and expenses of the Settlement Administrator.

**M.** “Notice Date” means the first day on which the Settlement Administrator begins disseminating the Class Notice.

**N.** “Opt-Out” means a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section VII.

**O.** “Opt-Out List” shall refer to the list compiled by the Settlement Administrator identifying those who properly and timely submit a request for exclusion from the Settlement Class and become Opt-Outs.

**P.** “Opt-Out and Objection Date” means the date by which a request for exclusion must be filed with the Settlement Administrator in order for a member of the Settlement Class to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections, if any, to the Settlement.

**Q.** “Parties” means Plaintiffs and Settlement Class Members together with the University. Plaintiffs and Settlement Class Members shall be collectively referred to as one “Party,” with the University being the other “Party.”

**R.** “Person” means any individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust, unincorporated association, any business or legal entity and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

**S.** “Plaintiffs” means Emily Carpey, Juan Jimenez, Nick Tufano, and Miles Levin.

**T.** “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court and received by counsel for the Parties.

**U.** “Preliminary Approval Order” means the order defined in Section VIII and entered by the Court preliminary approving the Settlement.

**V.** “Release” means the release and discharge, as of the Effective Date, by Plaintiffs and all Settlement Class Members (and their respective present, former, and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest, and successors), who have not excluded themselves from the Settlement Class, of the Released Persons and shall include the agreement and commitment by Plaintiffs and all Settlement Class Members to not now or hereafter initiate, maintain, or assert against the Released Persons or any of them any and all causes of action, claims, rights, demands, actions, claims for damages, equitable, legal and/or administrative relief, interest, demands or rights, including without limitation, claims for damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law, or any other sources that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiffs or any Settlement Class Members against the Released Persons, or any of them, in the Litigation or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body arising out of or related to the Released Claims.

**W.** “Released Claims” means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to contract claims, unjust enrichment claims, conversion claims, negligence claims, claims for breach of the duty of good faith and fair dealing, conversion, restitution, rescission, compensatory

and punitive damages, injunctive or declaratory relief, attorneys' fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal, state, or local law, which Plaintiffs, Class Counsel, and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences on or prior to the Preliminary Approval Date arising from or relating to University's moving to an online remote format in spring semester 2020 because of Covid-19, including, without limitation, the causes of action and allegations made by Plaintiffs in the Litigation.

**X.** "Released Persons" means the University, its affiliates, past, present, and future direct and indirect predecessors, successors, assigns, parents, subsidiaries, affiliates, joint venturers, partnership, limited liability companies, corporations, unincorporated entities, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, insurers and attorneys.

**Y.** "Releasing Persons" means Plaintiffs and all Settlement Class Members, and the respective present, former, and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest, and successors of each of Plaintiffs and Settlement Class Members.

**Z.** "Settlement" means the settlement set forth in this Settlement Agreement.

**AA.** "Settlement Administrator" means the independent professional service company be selected by the University, subject to approval by Class Counsel, which approval shall not be reasonably withheld, and of the Court, which will administer the Settlement Class Notice Program

and the Settlement in accordance with this Settlement Agreement, maintain the Settlement Website and engage in any other tasks directed by the Court, Class Counsel or the University.

**BB.** “Settlement Agreement” or “Agreement” means this Settlement Agreement and Release, including all exhibits hereto.

**CC.** “Settlement Class” means all Persons who fall within the definition of the class identified in Section III.

**DD.** “Settlement Class Members” means all Persons in the Settlement Class who do not exclude themselves (i.e., become Opt-Outs) pursuant to Section VII.

**EE.** “Settlement Class Notice Program” means the process devised by the Parties and the Settlement Administrator, and approved by the Court, for notifying the Settlement Class of the Settlement and Settlement Agreement.

**FF.** “Settlement Fund” means \$5,000,000 as described in more detail in Section IV.

**GG.** “Spring 2020 Semester” means the semester that began in January 2020 and ended in May 2020.

**HH.** “Tuition” means the amounts charged by the University for instruction.

**II.** “Mandatory Fees” means the amounts charged by the University as “Mandatory Fees” or “General Fees” as set forth in the University’s Tuition & Fee Rate Sheets.

**JJ.** The “University” means Defendant Board of Regents of the University of Colorado.

**KK.** “University Counsel” means the Colorado Attorney General’s Office.

**LL.** The plural of any defined term includes the singular, and vice versa, as made necessary in context.



**III. PROPOSED SETTLEMENT CLASS**

**A.** Pursuant to Co. R. Civ. P. 23, the Parties hereto agree to certification, for settlement purposes only, of the following Settlement Class:

All students enrolled at one of the University of Colorado's campuses as of the Spring 2020 Semester census date who were assessed and paid Tuition and/or Mandatory Fees, excluding any student enrolled for the Spring 2020 Semester solely in a program that was always and originally delivered as an online program.

**B.** Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the entry of an order preliminarily certifying the Settlement Class, appointing Plaintiffs as representatives of the Settlement Class and appointing the following as counsel for the Settlement Class:

(EDDIE) JAE K. KIM  
Lynch Carpenter, LLP  
117 East Colorado Blvd.  
Suite 600  
Pasadena, CA 91105  
Office: 626.550.1250  
Email: ekim@lcllp.com

ROY T. WILLEY, IV  
BLAKE G. ABBOTT  
Poulin | Willey | Anastopoulo, LLC  
  
32 Ann Street  
Charleston, SC 29403  
Telephone: (843) 614-8888  
Email: roy@akimlawfirm.com;  
blake@akimlawfirm.com

IGOR RAYKIN  
MICHAEL NOLT  
Kishinevsky & Raykin, Attorneys at Law  
2851 S. Parker Rd., Suite 150  
Aurora, CO 80014  
Telephone: (720) 767-1846; (720) 588-9713  
Email: igor@coloradolawteam.com

**C.** Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily finding Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

**D.** If the Settlement Agreement is terminated pursuant to its terms or is not approved in a material respect by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court, the certification of the Settlement Class shall be deemed vacated. The Litigation shall proceed as if the Settlement Class had never been certified and no reference to the Settlement Class, this Settlement Agreement, or any other Settlement documents, shall be made for any purpose in the Litigation or in any other action or proceeding.

#### **IV. BENEFITS TO THE CLASS**

**A.** Pursuant to the terms and conditions set forth in this Agreement, the University agrees to fund a Settlement Fund of \$5,000,000, which will be used to pay all awards to Settlement Class Members. Attorneys' Fee Award and Notice and Administrative Costs will be paid separately from the Settlement Fund.

**B.** The Settlement Fund will be allocated to the four University campuses based on each campus' percentage of overall Tuition and Mandatory Fees charged to students as follows: \$3,500,000 (70 percent) to University of Colorado Boulder, \$1,050,000 (21 percent) to University of Colorado Denver, \$400,000 (8 percent) to University of Colorado, Colorado Springs, and \$50,000 (1 percent) to University of Colorado Anschutz. Each campus' share of the Settlement Fund will be distributed on a pro rata basis to the Settlement Class Members enrolled on that campus. The Settlement Fund will be distributed digitally to each Settlement Class Member via the email(s) on file or as provided. Settlement Class Members will be provided with a number of digital payment options such as PayPal, Venmo, or a digital debit card, to immediately receive their Settlement Payment. The distribution communication will inform Settlement Class Members of the deadline to redeem their payment digitally, which shall be no later than forty-five (45) days after the initial issuance of payments. The distribution

communication will also inform Settlement Class Members of their option to request a paper check be mailed using the address information on file or as provided.

C. Within thirty (30) Days after the Effective Date, the University will cause the amount of the Settlement Fund to be transferred into an interest-bearing bank account (the “Settlement Account”) designated by the Settlement Administrator. Any interest that accrues on the Settlement Fund in the Settlement Account will be added to the Settlement Fund.

D. Within forty-five (45) days after the Effective Date, the Settlement Administrator will administer issuance of payments based on emails and addresses on record. During the payment redemption period, the Settlement Administrator will also send paper checks to Settlement Class Members who either do not timely redeem their digital payment, or who request a paper check be mailed. The Settlement Administrator will work with the Parties to determine the method and frequency of any reminder communications that are to be sent to Settlement Class Members during the payment redemption period. The payment redemption period for payments or physical checks will end 180 days after the initial issuance of payments.

E. Within thirty (30) days after the end of the payment redemption period, any funds remaining in the Settlement Account after all reasonable efforts have been made to distribute the Settlement Funds to Settlement Class Members will be given to a Student Emergency Fund to be created by the University for the purpose of providing assistance to University students needing emergency support.

V. **ATTORNEYS’ FEE AWARD AND INCENTIVE AWARDS**

A. Class Counsel will file a request for Attorneys’ Fee Award with the Court seeking an Attorneys’ Fee Award in an amount of \$250,000 to be paid by the University separately from the Settlement Fund. The University will not oppose Class Counsel’s application for said award

of fees and expenses. If the Court approves a request for Attorneys' Fee Award, the Settlement Administrator will distribute the awards to Class Counsel no later than thirty-five (35) days after the Effective Date.

**B.** Class Counsel will further request the Court set aside Service Awards of \$2,500 for each Plaintiff (for a total of \$10,000) to be paid from the Settlement Fund. The University will not oppose Class Counsel's application. Any Service Award approved by the Court to Plaintiffs are in addition to any benefits under the Settlement that Plaintiffs may receive as Settlement Class Members. If the Court approves a request for Service Awards, the Settlement Administrator will distribute the awards to Plaintiffs no later than thirty-five (35) days after the Effective Date.

**C.** Any order or proceedings relating to the applications for the Attorneys' Fee Award and the Service Awards, or any appeal from any order relating thereto or reversal or modification thereof. Will not operate to terminate or cancel this Agreement or affect or delay the finality of Final Order and Judgment approving the Settlement Agreement and the Settlement.

## **VI. SETTLEMENT CLASS NOTICE PROGRAM**

**A.** The Parties agree the following Settlement Class Notice Program provides reasonable notice to the Settlement Class.

**B.** All Notice and Administration Costs will be paid by the University separately from the Settlement Fund and will not operate to reduce the Settlement Fund or to be paid to the Settlement Class Members.

**C.** Prior to the hearing on Preliminary Approval, the Parties will submit an agreed-upon administrator to serve as the Settlement Administrator and will request the Court appoint such Settlement Administrator. Once approved by the Court, the Settlement Administrator will be

an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require.

**D.** Within fourteen (14) days of the entry of the Preliminary Approval Order, the University will provide to the Settlement Administrator a list from the University's records of the names and last known email(s) and mailing addresses, to the extent available, belonging to all members of the Settlement Class (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.

**E.** 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 1 via email to persons listed on the Class List. If an email address is not available for a member of the Settlement Class, the Short Form Notice will be sent to his or her last known mailing address via U.S. mail. Prior to sending any notice by U.S. mail, the mailing address will be updated with the national Change of Address Database maintained by the United States Postal Service.

**F.** Unless adjusted by Court order, the sending or mailing of the Short Form Notice shall be completed within forty-five (45) days after the entry of the Preliminary Approval Order.

**G.** No later than forty-five (45) 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 provide information and relevant documents related to this Settlement, including but not limited to, applicable deadlines; Short Form Notice; Long Form Notice (substantially in the form attached hereto as Exhibit 2); FAQs and answers; orders of the Court pertaining to the Settlement; this Agreement; contact address for questions;

and Plaintiffs' Motion for Attorneys' Fee Award and Service Awards. Class Counsel and the University shall agree on all information and documents to be posted on the Settlement Website.

**H.** No later than forty-five (45) days after the entry of the Preliminary Approval Order, the University will publish the Short Form Notice as an advertisement in the CU Independent (Boulder campus), The Sentry (Denver campus), The Scribe (Colorado Springs campus) and, or any publication with comparable reach.

**I.** Prior to the Fairness Hearing, in connection with the motion for final approval of the Settlement, the University shall serve and file a sworn statement from the Settlement Administrator evidencing compliance with the Settlement Class Notice Program.

## **VII. OBJECTIONS AND OPT-OUT RIGHTS**

**A.** Any Settlement Class Member who intends to object must mail their written objection(s) to the Clerk of the Court and served on Class Counsel and the University Counsel with a postmark no later than forty-five (45) days after the issuance of the Short Form Notice ("Opt-Out and Objection Date"), which date shall be included in the Short Form Notice and on the dedicated Settlement Website. To object, the Settlement Class Member must include in the objection the following:

1. The name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel;
2. A signed declaration stating that he or she is a member of the Settlement Class and is not subject to one of the exclusions from the Settlement Class;
3. A statement of all objections to the Settlement; and
4. A statement of whether he or she intends to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of his or her counsel who will attend. Any Settlement Class Member who fails to file and serve a timely written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to this Paragraph and as detailed in the Settlement Class Notice Program shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed

from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

**B.** A member of the Settlement Class who wishes to opt out of the Settlement Class must complete and send to the Settlement Administrator a request for exclusion that is postmarked no later than the Opt-Out and Objection Date. The request for exclusion must be personally signed by the member of the Settlement Class requesting exclusion, contain a statement that indicates his or her desire to be excluded from the Settlement Class and contain a statement that he or she is otherwise a member of the Settlement Class. A member of the Settlement Class may opt-out on an individual basis only. So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a “mass” or “class” of class members or multiple class members where no personal statement has been signed by each and every individual class member shall not be allowed.

**C.** Except for those members of the Settlement Class who timely and properly file a request for exclusion, all members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement and upon the Effective Date will be bound by its terms.

**D.** Any member of the Settlement Class who properly opts out of the Settlement Class shall not: (i) be bound by any orders or judgments entered in the Litigation or relating to the Settlement; (ii) be entitled to relief under, or be affected by, the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement.

**E.** The Settlement Administrator shall provide Class Counsel and the University’s Counsel with the Opt-Out List within seven (7) Days after the Opt-Out and Objection Date.

## **VIII. PRELIMINARY AND FINAL APPROVAL**

**A.** Within fourteen (14) days of signing of this Agreement, Class Counsel will move for preliminary approval of the Settlement, provisional certification of the Settlement Class for settlement purposes only, appointment of Plaintiffs as representatives of the Settlement Class, appointment of Class Counsel as counsel for the Settlement Class, appointment of the Settlement Administrator, approve the Settlement Class Notice Program, and the scheduling of the Fairness Hearing and other applicable deadlines.

**B.** Concurrently with the motion for preliminary approval, Class Counsel shall apply to the Court for, and the University shall agree to, entry of the proposed Preliminary Approval Order, substantially in the form attached hereto as Exhibit 3.

**C.** If this Settlement Agreement (including any modification thereto made with the consent of the Parties as provided for herein) is approved by the Court following the Fairness Hearing scheduled by the Court in its Preliminary Approval Order, the Parties shall request the Court enter a Final Order and Judgment pursuant to the Colorado Rules of Civil Procedure and all applicable laws that, among other things:

- 1.** Certifies the Settlement Class solely for the purposes of this Settlement;
- 2.** Grants final approval of 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;
- 3.** Fully and finally dismiss the Action with prejudice, and without costs (except as may be provided herein) to any Party as against any other;
- 4.** Provides that upon the Effective Date, Plaintiffs and all Settlement Class Members shall be barred from asserting any Released Claims against the Universities and/or any Released Persons, and any such Settlement Class Members shall have released any and all Released Claims as against the University and all Released Persons;
- 5.** Approves the manner of distribution of the Settlement Fund and order the payments be made to Settlement Class Members only in accordance with same;



6. Approves payment of the Attorneys' Fee Award and Service Awards as determined by the Court; and
7. 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.

## **IX. RELEASES**

A. The Releasing Persons shall be deemed to have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged all Released Claims against the Released Parties and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Released Parties.

## **X. WITHDRAWAL FROM OR TERMINATION OF THE SETTLEMENT**

A. Within fourteen (14) Days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate the Settlement Agreement:

1. If the Court declines to approve the Settlement Agreement as written without material modification or if on appeal the Court's approval is reversed or modified through material modification of the Settlement Agreement;
2. If the Court materially alters any of the terms of the Settlement Agreement, except that a reduction in the Attorneys' Fee Award or the Service Awards shall not be deemed to be a material alteration; or
3. If the Preliminary Approval Order or the Final Order and Judgment is not entered by the Court without material modification of the Settlement Agreement or is reversed or modified on appeal or otherwise fails for any reason.

B. If the number of members of the Settlement Class who properly execute and file a timely request for exclusion from the Settlement reaches ten (10) percent of the Settlement Class, then the University, in its sole discretion, may elect to withdraw from the settlement. To withdraw

from the Settlement and terminate this Settlement Agreement on the basis set forth above, the University must notify Class Counsel in writing within fourteen (14) Days after the Opt-Out List has been served on the Parties. If the University exercises this right, Class Counsel shall have at their sole discretion, fourteen (14) Days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number on the Opt-Out List subsequently becomes and remains fewer than ten (10) percent of the Settlement Class, the University shall withdraw its election to withdraw from the Settlement and terminate the Settlement Agreement.

C. In the event of withdrawal by any Party in accordance with the terms set forth in this Section, the Settlement Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Litigation and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith are without prejudice to any Party and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter, or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Litigation shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court.

## **XI. EFFECTIVE DATE**

A. The Effective Date of this Settlement Agreement shall be the day after the date on which all of the following conditions have occurred:

1. This Settlement Agreement has been fully executed by all Parties and their counsel;

2. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement, and approving the forms of Class Notice and Claim Form, all as provided above;
3. The Settlement Class Notice Program has been executed in accordance with the Preliminary Approval Order;
4. The Court has entered a Final Order and Judgment finally approving this Agreement, as set forth above; and
5. The Final Order and Judgment has become Final as defined in Paragraph B below.

**B.** “Final,” when referring to a judgment or order means that (i) the judgment is a final, appealable judgment; and (ii) either (1) no appeal has been taken from the judgment as of the date on which all deadlines to appeal there from have expired; or (2) an appeal or other review proceeding of the judgment having been commenced, the date by which such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

**C.** If, for any reason, this Settlement Agreement fails to become Final pursuant to the foregoing Paragraph B, the orders, judgment, and dismissal to be entered pursuant to this Settlement Agreement shall be vacated, and the Parties will be returned to the status quo ante with respect to the Litigation as if this Settlement Agreement had never been entered into.

## **XII. NOTICES**

**A.** All notices (other than the Class Notice) required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All notices to the Settlement Class or Class Counsel shall be sent to:

(EDDIE) JAE K. KIM  
Lynch Carpenter, LLP

ROY T. WILLEY, IV  
BLAKE G. ABBOTT

1133 Penn Avenue  
Floor 5  
Pittsburgh PA 15222  
Office: 626.550.1250  
Email: ekim@lcllp.com

Poulin | Willey | Anastopoulo, LLC  
32 Ann Street  
Charleston, SC 29403  
Telephone: (843) 614-8888  
Email: roy@akimlawfirm.com;  
blake@akimlawfirm.com

IGOR RAYKIN  
MICHAEL NOLT  
Kishinevsky & Raykin, Attorneys at Law  
2851 S. Parker Rd., Suite 150  
Aurora, CO 80014  
Telephone: (720) 767-1846; (720) 588-9713  
Email: igor@coloradolawteam.com

All notices to the University shall be sent to:

LAUREN PEACH  
First Assistant Attorney General  
JENNIFER H. HUNT,  
Senior Assistant Attorney General  
MICHAEL D. MCMASTER,  
Assistant Solicitor General  
ERICA WESTON,  
Special Assistant Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 6th Floor  
Denver, CO 80203  
Telephone: 720-508-6215; -6484; -6182;  
303-860-5684  
E-Mail: [lauren.peach@coag.gov](mailto:lauren.peach@coag.gov)  
[jennifer.hunt@coag.gov](mailto:jennifer.hunt@coag.gov)  
[michael.mcmaster@coag.gov](mailto:michael.mcmaster@coag.gov)  
[erica.weston@cu.edu](mailto:erica.weston@cu.edu)

**B.** The notice recipients and addresses designated above may be changed by written notice.

**C.** Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, objections, requests for exclusion, or other documents or filings received as a result of the Class Notice.

### **XIII. MISCELLANEOUS PROVISIONS**

**A. Interpretation.** This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior discussions, agreements or understandings among them as well as any and all prior drafts of this Settlement Agreement. All terms are contractual. For the purpose of construing or interpreting this Settlement Agreement, the Parties agree the Settlement Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party, and the Parties further agree that any prior drafts may not be used to construe or interpret this Settlement Agreement.

**B. Binding Effect.** The terms are and shall be binding upon each of the Parties hereto, their administrators, agents, assigns, attorneys, executors, heirs, partners, representatives, predecessors-in-interest, and successors as well as upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

**C. Headings.** The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

**D. No Rescission on Grounds of Mistake.** The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. Moreover, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement

Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

**E. Amendment.** This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their counsel. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

**F. Integration Of Exhibits.** Any exhibits to this Settlement Agreement are hereby incorporated and made a part of the Settlement Agreement.

**G. Jurisdiction .** The District Court, City And County Of Denver State Of Colorado has jurisdiction over the Parties to this Settlement Agreement and the Settlement Class.

**H. No Admission.** Neither this Settlement Agreement nor any of its provisions, its exhibits, or related documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order or the Final Order and Judgment), its negotiation or any proceedings relating in any way to the Settlement shall be construed as or deemed to be evidence of an admission or concession by any person or Party and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order. The provisions of this Paragraph shall become effective when this Settlement Agreement has been signed by the Parties and shall be binding on the Parties and their counsel regardless of whether the Settlement Agreement is approved by this Court or any other court and regardless of whether the Settlement Agreement is otherwise rendered null and void.

**I. Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Colorado.

**J. Counterparts.** This Settlement Agreement may be executed in counterparts and may be executed by facsimile, and as so executed shall constitute one agreement. The Settlement may also be executed by Class Counsel and the University's Counsel on behalf of the Parties. All counsel executing the Settlement represent and warrant that they are authorized and empowered to execute the Settlement on behalf of their clients, and the signature of such counsel is intended to and does legally bind the clients of such counsel.

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

**L. No Assignment.** Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against the Released Persons that Plaintiffs have or may have arising out of any allegations made in any or the actions comprising the Litigation or pertaining to any of the Released Claims, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner, and no Person other than Plaintiffs have any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs.

**M. Stay.** The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined. except the stay of proceedings shall not prevent the filing or any motions, affidavits, and other matters necessary to obtain and preserve final judicial approval of the Settlement Agreement.

**N. Best Efforts.** In the event there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Parties and failing agreement, as ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts

necessary and proper to promptly effectuate the terms of this Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Agreement in order to give this Agreement full force and effect. The execution of documents must take place prior to the date scheduled for the Preliminary Approval Hearing.

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

**ACCEPTED AND AGREED:**

PLAINTIFFS

  
\_\_\_\_\_  
**EMILY CARPEY**

Dated: 11/24/2022

\_\_\_\_\_  
**JUAN JIMENEZ**

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

\_\_\_\_\_  
**NICK TUFANO**

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

\_\_\_\_\_  
**MILES LEVIN**

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

LYNCH CARPENTER, LLP  
(counsel for Plaintiffs)

By: \_\_\_\_\_  
(Eddie) Jae K. Kim

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

POULIN | WILLEY | ANASTOPOULO, LLP  
(counsel for Plaintiffs)

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

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



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
**ACCEPTED AND AGREED:**

PLAINTIFFS

\_\_\_\_\_

**EMILY CARPEY**

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

  
\_\_\_\_\_  
Juan De Dios Velazquez-Jimenez (Nov 21, 2022 18:44 MST)

**JUAN JIMENEZ**

Dated: 11/21/22

\_\_\_\_\_

**NICK TUFANO**

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

\_\_\_\_\_

**MILES LEVIN**

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

LYNCH CARPENTER, LLP  
(counsel for Plaintiffs)

By: \_\_\_\_\_  
(Eddie) Jae K. Kim

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

POULIN | WILLEY | ANASTOPOULO, LLP  
(counsel for Plaintiffs)

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

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

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PLAINTIFFS

\_\_\_\_\_  
**EMILY CARPEY**

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

\_\_\_\_\_  
**JUAN JIMENEZ**

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

  
Nickolus J Tufano (Nov 28, 2022 21:33 GMT)  
\_\_\_\_\_  
**NICK TUFANO**

Dated: Nickolus J Tufano

\_\_\_\_\_  
**MILES LEVIN**

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

**LYNCH CARPENTER, LLP**  
(counsel for Plaintiffs)

By: \_\_\_\_\_  
(Eddie) Jae K. Kim

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

**POULIN | WILLEY | ANASTOPOULO, LLP**  
(counsel for Plaintiffs)

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

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

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PLAINTIFFS

\_\_\_\_\_  
**EMILY CARPEY**

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

\_\_\_\_\_  
**JUAN JIMENEZ**

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

\_\_\_\_\_  
**NICK TUFANO**

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

  
\_\_\_\_\_  
**MILES LEVIN**

Dated: 11/23/2022

LYNCH CARPENTER, LLP  
(counsel for Plaintiffs)

By: \_\_\_\_\_  
(Eddie) Jae K. Kim

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

POULIN | WILLEY | ANASTOPOULO, LLP  
(counsel for Plaintiffs)

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

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

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**ACCEPTED AND AGREED:**

PLAINTIFFS

\_\_\_\_\_  
**EMILY CARPEY**

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

\_\_\_\_\_  
**JUAN JIMENEZ**

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

\_\_\_\_\_  
**NICK TUFANO**

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

\_\_\_\_\_  
**MILES LEVIN**

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

LYNCH CARPENTER, LLP  
(counsel for Plaintiffs)

By:   
(Eddie) Jae K. Kim

Dated: 12-1-22

POULIN | WILLEY | ANASTOPOULO, LLP  
(counsel for Plaintiffs)

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

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

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**ACCEPTED AND AGREED:**

**PLAINTIFFS**

\_\_\_\_\_  
**EMILY CARPEY**

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

\_\_\_\_\_  
**JUAN JIMENEZ**

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

\_\_\_\_\_  
**NICK TUFANO**

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

\_\_\_\_\_  
**MILES LEVIN**

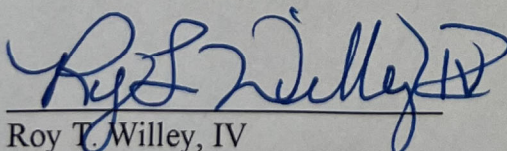
Dated: \_\_\_\_\_

LYNCH CARPENTER, LLP  
(counsel for Plaintiffs)

By: \_\_\_\_\_  
(Eddie) Jae K. Kim

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

POULIN | WILLEY | ANASTOPOULO, LLP  
(counsel for Plaintiffs)

By:   
Roy T. Willey, IV

Dated: 11/22/22

KISHINEVSKY & RAYKIN, Attorneys at Law  
(counsel for Plaintiffs)

By: Michael Nolt  
Michael Nolt

Dated: 11/20/22

BOARD OF REGENTS OF THE  
UNIVERSITY OF COLORADO

John Salvi

Dated: 12/6/2022

By:  
Its:

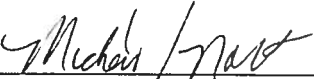
OFFICE OF THE COLORADO ATTORNEY  
GENERAL

(counsel for Board of Regents of the  
University of Colorado)

By: \_\_\_\_\_  
Jennifer Hunt

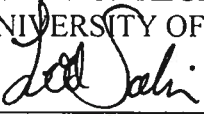
Dated: \_\_\_\_\_

KISHINEVSKY & RAYKIN, Attorneys at Law  
(counsel for Plaintiffs)

By:   
Michael Noft

Dated: 11/28/22

BOARD OF REGENTS OF THE  
UNIVERSITY OF COLORADO

  
By: Todd Saliman  
Its: President

Dated: 12/6/2022

OFFICE OF THE COLORADO ATTORNEY  
GENERAL  
(counsel for Board of Regents of the  
University of Colorado)

By:   
Jennifer Hunt

Dated: 12/7/2022