

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF RENSSELAER

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JAY BURDICK, CONNIE PLOUFFE,  
EMILY MARPE,  
as parent and natural guardian of E.Y. an infant,  
and, G.Y., an infant, JACQUELINE MONETTE, WILLIAM  
SHARPE, EDWARD PERROTTI-SOUSIS,  
MARK DENUÉ and MEGAN DUNN,  
individually, and on behalf of all similarly situated,

Plaintiffs,

v.

**Index No.: 00253835**

TONOGA INC., (d/b/a TACONIC),

Defendant.

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### **CLASS SETTLEMENT AGREEMENT**

This Class Settlement Agreement is entered into as of the 1st day of October, 2021, by, between and among Plaintiffs, on behalf of themselves and the Settlement Class Members, by and through Class Counsel, and the Defendant, by and through its counsel of record in this Action.

### **RECITALS**

WHEREAS, Plaintiffs have asserted claims against the Defendant in this Action on behalf of four classes, including owners and renters of properties supplied with drinking water either by the Town Public Water System or by private wells in the Town of Petersburg in which PFOA has been detected, and current and former residents of the Town with PFOA detected in their blood;

WHEREAS, Plaintiffs allege that the Defendant is liable under several tort theories for various damages and other relief based on the presence of PFOA in the Town Public Water System, in private wells, on or at their properties, and/or in their blood;

WHEREAS, Plaintiffs allege that PFOA detected in the Town Public Water System and private wells was released from a facility in the Town of Petersburg, which Plaintiffs allege that Defendant currently owns or operates;

WHEREAS, the Defendant has denied and continues to deny Plaintiffs' allegations, any alleged wrongdoing in connection with any PFOA or other PFAS present in the Town Public Water System, in private wells in the Town of Petersburg, on or at Plaintiffs' properties, or in Plaintiffs'

blood, and any liability in connection with Plaintiffs' claims; dispute the factual, legal, scientific, and other bases for Plaintiffs' claims; and maintains that it has meritorious defenses to the claims of liability and damages asserted by Plaintiffs; and

WHEREAS, after carefully considering the facts and applicable law and the risks, costs, delay, inconvenience, and uncertainty of continued and protracted litigation, and after engaging in extensive, arm's-length negotiations, with the assistance of a mediator, the Parties desire to settle the Action and the related claims of Plaintiffs and the Settlement Classes on the terms and conditions stated herein, which Plaintiffs and Co-Lead Class Counsel believe are fair, reasonable, adequate, and beneficial to and in the best interests of the Settlement Class Members;

NOW THEREFORE, subject to approval by the Court pursuant to New York Civil Practice Law and Rules (CPLR) Article 9, the Parties hereby agree that, in consideration of the promises and mutual covenants set forth in this Agreement and upon occurrence of the Effective Date, the Action and the related claims of Plaintiffs and the Settlement Classes shall be settled, compromised, dismissed on the merits and with prejudice, and released as to Defendant on the following terms and conditions:

#### 1. **Definitions**

In addition to the terms defined at various points within this Agreement, the following defined terms shall apply throughout this Agreement:

- a. **"Action"** means the class action lawsuit captioned *Burdick, et al., v. Tonoga, Inc. (d/b/a Taconic)*, Index No. 00253835, New York State Supreme Court, Rensselaer County.
- b. **"Agreement"** means the Class Settlement Agreement between and among Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendant, including all exhibits and addenda thereto, and the supplemental agreement set forth in Section 17 herein.
- c. **"APFO"** means, for purposes of this Agreement only, ammonium perfluorooctanoate and all its chemical precursors and degradants. For purposes of this Agreement, the definition of "APFO" is intended to be as broad and inclusive as possible and includes, without limitation, all APFO-containing substances and all products manufactured with APFO, or which used APFO as a processing aid in connection with such manufacturing, their precursors, and their degradants.
- d. **"Claim Form"** means the form in substantially the same form as Exhibit 1 to this Agreement that must be completed by any Person seeking to receive payment and/or participate in the Medical Monitoring Program as a Settlement Class Member.<sup>1</sup>
- e. **"Claimant"** means any Person who submits a Claim Form to the General

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<sup>1</sup> All Exhibits to this Agreement are appended hereto in Appendix B.

Administrator.

- f. **“Class Counsel”** means:

Stephen G. Schwarz  
Hadley L. Matarazzo  
**FARACI LANGE, LLP**  
28 E. Main St., Suite 1100  
Rochester, New York 14614

James J. Bilsborrow  
**SEEGER WEISS LLP**  
55 Challenger Road  
Ridgefield Park, New Jersey 07660

as counsel for Plaintiffs and in their capacity as Class Counsel appointed by the Court pursuant to its July 3, 2018 Order, and the Parties’ Stipulation and Order dated May 10, 2021, and any other attorney or law firm that represents any of the Plaintiffs and seeks to receive any portion of the attorneys’ fees that may be awarded by the Court in connection with this Settlement.

- g. **“Class Notice”** means the notice of the Settlement that will be provided to prospective Settlement Class Members in accordance with Section 9 of this Agreement.
- h. **“Court”** means the New York State Supreme Court, Rensselaer County, the Honorable Patrick J. McGrath presiding.
- i. **“Defendant”** means Tonoga, Inc. (d/b/a Taconic).
- j. **“Effective Date”** means the date on which the last of the following has occurred: (1) twenty-one (21) days following the expiration of the deadline for appealing the Final Approval Order, if no timely appeal is filed; (2) if an appeal of the Final Approval Order is taken, the date upon which all appeals (including any requests for rehearing or other appellate review), as well as all further appeals therefrom, have been finally resolved without the Final Approval Order having been materially changed, reversed, vacated, or otherwise overturned in whole or in part, such that no future appeal is possible; or (3) such date as the Parties otherwise agree in writing.
- k. **“Eligible Property”** means any real property that either: (1) one or more Town Water Property Damage Class Members demonstrates that they owned as of February 20, 2016, and that the property obtained its drinking water from the Town Public Water System, in accordance with Section 3(b)(i); or (2) one or more Private Well Property Damage Class Members demonstrates that they owned at or around February 20, 2016 when the contamination was discovered, and that is in the Town of Petersburg, and obtained their drinking water from a private well contaminated with PFOA, in accordance with Section 3(b)(ii).

- l. **"Enrollment Period"** means the period within which potential Settlement Class Members must submit a Claim Form and any supporting documentation so that the General Administrator may determine whether they are eligible to receive payment or participate in the Medical Monitoring Program as Settlement Class Members. The Enrollment Period shall commence thirty (30) calendar days after Notice Approval and shall conclude one hundred and forty (140) days from the Notice Date. Claim Forms postmarked on the date the Enrollment Period closes shall be deemed timely submitted so long as received by the General Administrator within fourteen (14) days thereof.
- m. **"Escrow Account"** means the account established and administered by the General Administrator, into which the Total Settlement Payment, including the Preliminary Settlement Fund Payment, will be deposited as set forth in Section 2(b).
- n. **"Escrow Agent"** means the General Administrator.
- o. **"Excluded Persons"** means: (i) any Person who has timely and validly excluded themselves from the Settlement Classes, in accordance with Section 10 of this Agreement; (ii) any Person who has previously filed a claim against Defendant alleging a PFOA-related injury or illness, including without limitation a spousal derivative claim, or seeking medical monitoring, nuisance, or property damages, related to the presence of PFOA in the Town Public Water System, in private wells in the Town of Petersburg, on or at their property, and/or in their blood, except for the Action, that, as of thirty (30) days prior to the Final Approval Hearing; (a) has not been dismissed and/or a request to dismiss the claim pursuant to N.Y. CPLR § 3217(b) or Fed. R. Civ. P. 41(a)(2) is not pending; or (b) such Person has not filed an amended complaint or a motion for leave to file an amended complaint that does not assert against Defendant a nuisance claim, a request for medical monitoring relief, or property damages related to the presence of PFOA in the Town Public Water System, in private wells in the Town of Petersburg, on or at their property, and/or in their blood; (iii) the Defendant, any entity or division in which the Defendant has a controlling interest, its legal representatives in this Action, and its officers, directors, assigns and successors; (iv) the judge to whom this Action is assigned, any member of the judge's immediate family and the judge's staff, or any other judicial officer or judicial staff member assigned to this case; (v) any Class Counsel, including their partners, members, and shareholders, and any immediate family members of Class Counsel; (vi) any State, including without limitation the United States, or any of its agencies; and (vii) the Town of Petersburg.
- p. **"Execution Date"** means the date on which the last of Plaintiffs, Class Counsel, and Defendant executes this Agreement.
- q. **"Facility"** shall have the same meaning as set forth in 42 U.S.C. § 9601(9) and shall include but not be limited to the sites (and any improvements or modifications thereon) located at 136 Coonbrook Road, Petersburg, New York 12138.
- r. **"Final Approval"** means the date that the Court enters the Final Approval Order.



- s. **"Final Approval Hearing"** means the hearing at which the Court will consider whether to give final approval to the Settlement and make such other rulings as are contemplated in the Final Approval Order, including determining the amount of attorneys' fees and costs awarded to Class Counsel, any General Settlement Administration Costs, and the amount of any Service Awards to the Plaintiffs.
- t. **"Final Approval Order"** means the Court's order: (a) granting final approval to the Settlement; (b) directing that the Agreement be implemented in accordance with its terms; (c) dismissing the Action against Defendant with prejudice, and without costs; (d) determining that there is no just reason for delay and directing entry of a final judgment; (e) ruling that each of the Releasing Parties has expressly, intentionally, fully, finally, and forever released, waived, compromised, settled, and discharged all Released Claims; (f) barring each of the Releasing Parties from asserting any of the Released Claims against any of the Released Parties; (g) barring claims by any Person against the Released Parties for contribution or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise; (h) awarding any attorneys' fees, costs, and expenses payable in connection with the Settlement or the Action; (i) finding that the Class Notice complied with CPLR Article 9; (j) establishing and approving the Settlement Fund; and (k) reserving exclusive and continuing jurisdiction over the Settlement Fund and the interpretation, performance, implementation, administration, and enforcement of this Agreement and the Court's orders in the Action.
- u. **"General Administrator"** means KCC Class Action Services, the claims administrator for the Town Water Property Damage Class, Private Well Property Damage Class, and Private Well Nuisance Class, and who shall determine the eligibility of Medical Monitoring Settlement Class Members for the Medical Monitoring Program. The General Administrator will also be responsible for performing duties related to dissemination of Class Notice, administration of the Escrow Account, and administration of the Settlement Fund in accordance with this Agreement. Class Counsel and Defendant may, by agreement, substitute a different organization as General Administrator, subject to approval by the Court if the Court has previously entered the Notice Approval Order or Final Approval Order. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different organization as General Administrator, upon a showing that the responsibilities of the General Administrator have not been adequately executed by the incumbent.
- v. **"General Settlement Administration Costs"** means the costs and fees of the General Administrator to effectuate the Notice Program and to administer the Town Water Property Damage Class, Private Well Property Damage Class, and Private Well Nuisance Class, and to determine the eligibility of Medical Monitoring Settlement Class Members for the Medical Monitoring Program. The General Settlement Administration Costs includes the Preliminary Administrative Expenses.
- w. **"Medical Monitoring Administration Costs"** means the costs and fees of the

Medical Monitoring Administrator to administer the Medical Monitoring Program.

- x. **“Medical Monitoring Administrator”** means the administrator for the Medical Monitoring Program, Edgar C. Gentle III, Esq., whose responsibilities shall include those defined herein and in Appendix A to this Agreement.
- y. **“Medical Monitoring Disbursement”** means the total sum disbursed from the Medical Monitoring Allocation, as defined below, prior to the Program’s termination pursuant to Section 4(c)(ii).
- z. **“Medical Monitoring Participant”** or **“Participant”** means a Medical Monitoring Settlement Class Member who has demonstrated their eligibility, as determined by the General Administrator in accordance with Section 3(b)(iv), and participated in screening offered under the Medical Monitoring Program, including submission of an Informational Survey or receipt of a Consultation or Program Services as set forth in Appendix A.
- aa. **“Medical Monitoring Program”** or **“Program”** means the program described in Appendix A.
- bb. **“Medical Monitoring Remainder”** means the total amount of funds remaining in the Medical Monitoring Allocation when the Program terminates pursuant to Section 4(c)(ii).
- cc. **“Medical Monitoring Settlement Class”** or **“PFOA Invasion Injury Class”** means the class consisting of all individuals who have: (a) ingested water at a property that was supplied by the Town Public Water System or from a private well in the Town of Petersburg in which PFOA has been detected; and (b) underwent blood serum tests that detected a PFOA level in their blood above 1.86 µg/L; or any natural child (i) who was born to a female who meets and/or met the above criteria at the time of the child’s birth; and (ii) whose blood serum was tested after birth and detected a PFOA level above 1.86 µg/L; provided, however, that the “Medical Monitoring Settlement Class” shall not include Excluded Persons.
- dd. **“Medical Monitoring Settlement Class Member”** means any member of the Medical Monitoring Settlement Class who has not timely and validly excluded themselves in an individual or representative capacity, from the Medical Monitoring Settlement Class, in accordance with Section 10 of this Agreement.
- ee. **“Minor”** means a natural Person who is less than eighteen (18) years old.
- ff. **“Net Settlement Fund”** means the portion of the Settlement Fund available for payment to the Settlement Class Members (in accordance with this Agreement) after the payment of any General Settlement Administration Costs, attorneys’ fees, any tax-related expenses, any Court-approved Service Awards to the Plaintiffs, and other costs and expenses payable from the Settlement Fund.
- gg. **“Notice Date”** means the deadline set by the Court by which the General

Administrator must send the Class Notice or, if the Court sets no such deadline, thirty (30) calendar days after Notice Approval.

- hh. **“Notice Form”** means the form of notice that shall be posted on the Settlement Website created by the General Administrator and shall be provided by mail to Town Water Property Damage Class Members, Private Well Property Damage Class Members, Private Well Nuisance Class Members, and certain Medical Monitoring Settlement Class Members, as set forth in Section 9 of this Agreement. The Notice Form is attached hereto as Exhibit 2.
- ii. **“Notice Approval”** means the date that the Court enters the Notice Approval and Scheduling Order.
- jj. **“Notice Approval and Scheduling Order”** means the Court’s order: (i) approving the Class Notice; (ii) setting the Opt Out Deadline, the Objection Deadline, the date and time for the Final Approval Hearing, and other appropriate deadlines; which order will be proposed in substantially the same form as Exhibit 3 and as agreed upon by the Parties.
- kk. **“Notice Program”** means the methods provided for in Section 9 of this Agreement for giving notice to potential Settlement Class Members.
- ll. **“NYSDEC”** means the New York State Department of Environmental Conservation.
- mm. **“Objection”** means a challenge to the Settlement asserted by a Settlement Class Member pursuant to Section 11 of this Agreement.
- nn. **“Objection Deadline”** means the deadline to submit an Objection set by the Court or, if the Court sets no such deadline, one hundred and five (105) days after the Notice Date.
- oo. **“Opt Out”** means the choice of a Settlement Class Member to exclude themselves (in an individual or representative capacity, as appropriate) from the Settlement in accordance with Section 10 of this Agreement.
- pp. **“Opt Out Deadline”** means the deadline to Opt Out set by the Court or, if the Court sets no such deadline, one hundred and five (105) days after the Notice Date.
- qq. **“Party”** means any one of the Plaintiffs or Defendant.
- rr. **“Parties”** means all of the Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendant.
- ss. **“Person”** means a natural person, guardian, corporation, professional corporation, association, limited liability company, limited company, partnership, limited partnership, joint venture, affiliate, joint-stock company, estate, legal representative, trust, proprietorship, any other type of private entity, states, counties, municipalities, any other public or quasi-public entity, or their respective spouses, heirs,

predecessors, successors, executors, administrators, representatives, or assigns.

- tt. **"PFAS"** means, for purposes of this Agreement only, any fluorinated organic substance that contains one or more carbon atoms on which at least one of the hydrogen substituents has been replaced by a fluorine atom. For purposes of this Agreement, the definition of "PFAS" is intended to be as broad and inclusive as possible and includes, without limitation, all per- and poly-fluoroalkyl substances and their chemical precursors and degradants, including PFOA and APFO, as well as all products manufactured with or containing such substances, their precursors, or their degradants.
- uu. **"PFOA"** means, for purposes of this Agreement only, perfluorooctanoic acid and all its chemical precursors and degradants, including without limitation APFO. For purposes of this Agreement, the definition of "PFOA" is intended to be as broad and inclusive as possible and includes, without limitation, all PFOA-containing substances and all products manufactured with or containing such substances, their precursors, and their degradants.
- vv. **"Plaintiffs"** means any of Jay Burdick, Connie Plouffe, Emily Marpe, as parent and natural guardian of E.Y., an infant, and G.Y., an infant, Jacqueline Monette, William Sharpe, Edward Perrotti-Sousis, Mark Denué, and Megan Dunn.
- ww. **"POET"** means a point-of-entry treatment system.
- xx. **"Preliminary Administrative Expenses"** shall mean any expenses necessary to obtaining Final Approval of the Settlement after Notice Approval is granted, including, but not limited to, expenses associated with providing Class Notice, determining class member eligibility, processing Opt Out requests and Objections, and establishing a qualified settlement fund within the meaning of 26 C.F.R. § 1.468B-1(a) and (c).
- yy. **"Preliminary Settlement Fund"** means the common fund or account established to receive the Preliminary Settlement Fund Payment, and to make payments authorized by this Agreement. The fund shall become part of the Settlement Fund upon Final Approval of the Settlement, or, in the case of termination in accordance with Section 17, any unused portion, including interest accrued thereon, shall be returned to Defendant.
- zz. **"Preliminary Settlement Fund Payment"** means the payment by Defendant after Notice Approval is granted. The amount of the Preliminary Settlement Fund Payment shall be deducted from the Defendant's Total Settlement Payment.
- aaa. **"Private Well Nuisance Class"** means the class consisting of all Persons who are or were owners or renters of real property located in the Town of Petersburg within a seven (7) mile radius of the Defendant's Facility and who: (i) obtain or obtained their drinking water from a privately owned well contaminated with PFOA; and (ii) occupied that property at or around February 20, 2016 when the contamination was discovered, provided, however, that the "Private Well Nuisance Class" shall not



include Excluded Persons.

- bbb. **"Private Well Nuisance Class Member"** means any member of the Private Well Nuisance Class who has not timely and validly excluded themselves in an individual or representative capacity, from the Private Well Nuisance Class, in accordance with Section 10 of this Agreement.
- ccc. **"Private Well Nuisance Settlement Class Member Payment"** means the cash distribution that will be made from the Net Settlement Fund to each Private Well Nuisance Class Member pursuant to the allocation terms of the Settlement.
- ddd. **"Private Well Property Damage Class"** means the class consisting of all Persons who are or were owners of real property located in the Town of Petersburg within a seven (7) mile radius of Defendant's Facility and who: (i) obtain or obtained their drinking water from a privately owned well contaminated with PFOA; and (ii) owned that property at or around February 20, 2016 when the contamination was discovered; provided, however, that the "Private Well Property Damage Class" shall not include Excluded Persons or the Taconic Properties.
- eee. **"Property Settlement Class"** means, collectively, the Town Water Property Damage Class and the Private Well Property Damage Class.
- fff. **"Property Settlement Class Member"** means any member of either the Town Water Property Damage Class or the Private Well Property Damage Class who has not timely and validly excluded themselves in an individual or representative capacity, from the Town Water Property Damage Class or the Private Well Property Damage Class, respectively, in accordance with Section 10 of this Agreement.
- ggg. **"Property Settlement Class Member Payment"** means the cash distribution that will be made from the Net Settlement Fund to each Property Settlement Class Member pursuant to the allocation terms of the Settlement.
- hhh. **"Released Claims"** shall have the meaning set forth in Section 6 of this Agreement.
- iii. **"Released Parties"** means Defendant and its current, former, and future direct and indirect parents, subsidiaries, divisions, affiliates, affiliated business entities, joint ventures, successors, predecessors, including without limitation, any entity identified as a predecessor to Defendant in the Third Amended Complaint and/or for which the Third Amended Complaint alleges that Defendant has succeeded to liability on the basis of any legal theory; and all of its current, former, and future agents, employees, officers, directors, partners, shareholders, owners, members, promoters, representatives, distributors, trustees, attorneys, insurers, subrogees, and assigns, individually or in their corporate or personal capacity, and anyone acting on its behalf, including in a representative or derivative capacity.
- jjj. **"Releasing Parties"** means the Plaintiffs and all other Settlement Class Members and any Person or entity with the right, capacity, or obligation to assert any claim by, on behalf of, for the benefit of, or derived from any alleged damage or injury to the

Settlement Class Members, including without limitation any guardians, next friends, trusts, corporate parents, subsidiaries, divisions, affiliates, affiliated business entities, predecessors, successors, and all of their current or former agents, employees, officers, directors, partners, shareholders, owners, members, promoters, representatives, trustees, executors, heirs, attorneys, insurers, subrogees, and assigns, individually or in their corporate or personal capacity, and anyone acting on their behalf, including in a representative or derivative capacity. Notwithstanding that the United States government is excluded from the Settlement Classes, with respect to any Settlement Class Member that is a government entity, Releasing Parties includes any Settlement Class Member as to which the government entity has the legal right to release such claims.

- kkk. **“Taconic Properties”** means any real property located within the Town of Petersburg that, as of February 20, 2016, was owned in whole or in part by Defendant.
- lll. **“Service Award”** means any Court-approved payment to Plaintiffs for serving as class representatives, which is in addition to any Property Settlement Class Member Payment, Private Well Nuisance Class Member Payment, or payment due to them under this Agreement as members of the Medical Monitoring Settlement Class.
- mmm. **“Settlement”** means the settlement and compromise reflected in this Agreement.
- nnn. **“Settlement Administration Costs”** means all General Settlement Administration Costs and Medical Monitoring Administration Costs.
- ooo. **“Settlement Classes”** means all Persons who are members of the Town Water Property Damage Class, Private Well Property Damage Class, Private Well Nuisance Class, and/or Medical Monitoring Settlement Class.
- ppp. **“Settlement Class Member”** means a member of one or more of the Settlement Classes who has not timely and validly excluded themselves (in an individual or representative capacity, as appropriate) from the Settlement Classes, in accordance with Section 10 of this Agreement.
- qqq. **“Settlement Fund”** means the common fund or account established pursuant to and approved by an order of the Court to resolve and satisfy the Released Claims as a qualified settlement fund within the meaning of 26 C.F.R. § 1.468B-1(a) and (c), to receive the Total Settlement Payment, including any unused portion of the Preliminary Settlement Fund Payment, and to make payments authorized by this Agreement.
- rrr. **“Settlement Website”** means the website that the General Administrator will establish as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notice Form, the Third Amended Complaint, Plaintiffs’ motion seeking Notice Approval and Scheduling Order, Notice Approval and Scheduling Order, Plaintiffs’ motion seeking Final Approval, the Final Approval Order, and the



Claim Form, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website for at least six months after Final Approval. The Settlement Website's URL will be petersburghpfoasettlement.com.

- sss. **"Third Amended Complaint"** or **"Complaint"** means the Third Amended Consolidated Complaint filed in the Action on September 14, 2021.
- ttt. **"Total Settlement Payment"** means the TWENTY-THREE MILLION FOUR HUNDRED SIXTY-FOUR THOUSAND THREE HUNDRED SIXTY-TWO DOLLARS (\$23,464,362) total cash payment that Defendant is obligated to make under the terms of this Settlement in accordance with Section 2 of this Agreement.
- uuu. **"Town Public Water System"** means the municipal water system for the Town of Petersburg, New York, including the sources of water for the system.
- vvv. **"Town Water Property Damage Class"** means the class consisting of all Persons who are or were owners of real property and who obtain or obtained their drinking water from the Town Public Water System and who purchased their property on or before February 20, 2016; provided, however, that the "Town Water Property Damage Class" shall not include Excluded Persons or Taconic Properties.

## 2. **Settlement Payment and Settlement Funds**

### a. Settlement Administration.

- i. In connection with the motion for Notice Approval and Scheduling Order, Class Counsel has selected and shall propose KCC (whose qualifications are set forth in Exhibit 4) to serve as an independent, third-party General Administrator, to administer the Settlement Fund. Defendant does not object to Class Counsel's proposal for the General Administrator.
- ii. In connection with the motion for Notice Approval and Scheduling Order, Class Counsel has selected and shall propose Edgar C. Gentile, III, Esq. (whose qualifications are set forth in Exhibit 5) to serve as an independent, third-party Medical Monitoring Administrator, to administer the Medical Monitoring Program. Defendant does not object to Class Counsel's proposal for the Medical Monitoring Administrator.

### b. Settlement Consideration.

- i. Within twenty (20) days of the issuance of the Notice Approval and Scheduling Order, Defendant shall pay TWO HUNDRED THOUSAND DOLLARS (\$200,000) in cash (the Preliminary Settlement Fund Payment) into the Escrow Account to create the Preliminary Settlement Fund for the benefit of the Settlement Class Members to pay Preliminary Administrative Expenses.

- ii. Within twenty-one (21) days of the Effective Date, Defendant shall pay the remaining TWENTY-THREE MILLION TWO HUNDRED SIXTY-FOUR THOUSAND THREE HUNDRED SIXTY-TWO DOLLARS (\$23,264,362) in cash (which combined with the Preliminary Settlement Fund Payment shall constitute the Total Settlement Payment) into the Escrow Account to create the Settlement Fund for the benefit of the Settlement Class Members. The Settlement Fund shall be used to pay Property Settlement Class Member Payments and Private Well Nuisance Settlement Class Member Payments; to fund the Medical Monitoring Program, including to pay incentive payments and distributions to Participants in the Medical Monitoring Program as provided in Sections 4(c)(iv) and (v) herein, as well as all Medical Monitoring Administration Costs; to pay any and all attorneys' fees and costs awarded to Class Counsel; to pay any Service Award to Plaintiffs; and to pay all General Settlement Administration Costs. All funds held by the General Administrator shall remain subject to the jurisdiction of the Court until distributed pursuant to this Agreement.
  - iii. All costs of the Notice Program and of other General Settlement Administration Costs shall be paid from the Settlement Fund. Prior to the Effective Date, any General Settlement Administration Costs must be approved by Class Counsel before incurred.
- c. No Liability for Distribution of Settlement Funds. Once the Total Settlement Payment is paid to the Escrow Account, Defendant shall have no liability arising from the allocation or distribution of the Settlement Funds to Settlement Class Members, the Medical Monitoring Program, or anyone else. In no event shall Defendant or its counsel have any liability for the administration of the Settlement Fund or for acts or omissions of the General Administrator or the Medical Monitoring Administrator. Payment of the Total Settlement Payment shall constitute Defendant's sole monetary obligation under the Settlement. In no circumstances shall the Defendant be required to pay anything more than the Total Settlement Payment in relation to this Agreement.
- d. Nature of the Settlement Payment and Settlement Funds.
- i. The Settlement Fund and Preliminary Settlement Fund at all times is intended to be a "qualified settlement fund" within the meaning of United States Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 and shall be established pursuant to an order of the Court and will be subject to the continuing jurisdiction of the Court for the life of the Settlement Fund. Neither the Parties nor the General Administrator shall take a position in any filing or before any tax authority that is inconsistent with such treatment. Defendant is a "transferor" within the meaning of United States Treasury Regulation § 1.468B-1(d)(1) to the Settlement Fund. The General Administrator shall be the "administrator" of the Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-2(k)(3) and, as the administrator, the General Administrator shall: (a) timely make or join in any and all filings or elections necessary to make the

Settlement Fund a qualified settlement fund at the earliest possible date (including, if requested by Defendant, a relation-back election within the meaning of United States Treasury Regulation § 1.468B-1(j)); (b) timely file all necessary or advisable tax returns, reports, or other documentation required to be filed by or with respect to the Settlement Fund; (c) timely pay any taxes (including any estimated taxes, and any interest or penalties) required to be paid by or with respect to the Settlement Fund; and (d) comply with any applicable information reporting or tax withholding requirements imposed by applicable law, in accordance with United States Treasury Regulation § 1.468B-2(l). Any such taxes, as well as all other costs incurred by the General Administrator in performing the obligations created by this subsection, shall be paid out of the Settlement Fund. Defendant shall have no responsibility or liability for paying such taxes and no responsibility to file tax returns with respect to the Settlement Fund or to comply with information-reporting or tax-withholding requirements with respect thereto. Defendant shall provide the General Administrator with the combined statement described in United States Treasury Regulation § 1.468B-3(c)(2)(ii).

- ii. Defendant makes no representations to Settlement Class Members concerning any tax consequences or treatment of any allocation or distribution of funds to Settlement Class Members pursuant to this Agreement.
- iii. The Total Settlement Payment, including the Preliminary Settlement Fund Payment, constitutes remediation (as defined in 26 U.S.C. § 162(f)) for the claims alleged by Plaintiffs on behalf of themselves and the Settlement Class Members. No portion of the Total Settlement Payment, including the Preliminary Settlement Fund Payment, constitutes a fine, penalty, punitive damages, disgorgement of profits, or reimbursement for investigation or litigation costs within the meaning of 26 U.S.C. § 162(f), or an amount paid in settlement of any claim for any of the foregoing; and if a determination were made to the contrary, the amounts paid would qualify under the exceptions in Subsections 162(f)(2) and (3).

### **3. Class Enrollment and Eligibility**

#### **a. Submission of Claim Form and Review.**

- i. To become eligible to receive Property Settlement Class Member Payments or Private Well Nuisance Settlement Class Member Payments and/or to participate in the Medical Monitoring Program pursuant to this Agreement, Claimants must submit a Claim Form and, if necessary, supporting documents, to the General Administrator during the Enrollment Period. The Claimant shall identify on the Claim Form the Settlement Classes to which he, she, or it, or in their capacity as a representative, purports to belong. The General Administrator shall review the Claim Form and any supporting documentation and determine whether the Claimant is an eligible Settlement Class Member of the Settlement Classes in which they, or in their capacity as a representative,

purports to belong. A Claim Form postmarked after the Enrollment Period concludes will be rejected by the General Administrator as untimely, and the Claimant submitting such Claim Form cannot qualify to receive payment, participate in the Medical Monitoring Program and/or otherwise qualify for Settlement benefits pursuant to this Agreement.

- ii. The Claim Form shall be in substantially the same form as Exhibit 1 attached hereto. The Claim Form shall be available on the Settlement Website. To become eligible to receive Property Settlement Class Member Payments or Private Well Nuisance Settlement Class Member Payments and/or to participate in the Medical Monitoring Program pursuant to this Agreement, Claimants may be required to submit certain qualifying documentary support, as set forth below. The General Administrator shall be entitled to verify the identity of any Claimant and any information required by the Claim Form.
- iii. If the General Administrator determines that a Claimant has submitted insufficient proof of eligibility, the General Administrator will provide an opportunity for the Claimant to cure the submission to the extent practicable.
- iv. Payments to Settlement Class Members who demonstrate eligibility as determined by the General Administrator and this Agreement shall be paid from the Settlement Fund as set forth in Section 4. The General Administrator shall use reasonable efforts to complete payment then due in accordance with Section 4 within 90 days of the Effective Date.

b. Eligibility Determination.

- i. Town Water Property Damage Class. To demonstrate eligibility to receive payment as a Town Water Property Damage Class Member, Claimants must complete the Claim Form and provide proof of ownership as of February 20, 2016 of real property that obtains or obtained its drinking water from the Town Public Water System. Proof of ownership may include a combination of the following: 1) a copy of the deed to the property; 2) a copy of a tax bill demonstrating ownership of the property as of February 20, 2016; and/or 3) any other form of proof deemed appropriate by the General Administrator. If the Claimant does not submit documentary proof of ownership, or does not submit documentary proof sufficient to show ownership as of February 20, 2016, the Claimant's eligibility may also be determined by the General Administrator's reference to public property records. Proof of water source may be provided by a copy of a Town Public Water System water bill (of any date) or any other form of proof deemed appropriate by the General Administrator. If the General Administrator is able to obtain public records that establish property ownership as of February 20, 2016, and/or water source of the property, the obligation of the Claimant to provide such proof may be waived by the General Administrator.



- ii. Private Well Property Damage Class. To demonstrate eligibility to receive payment as a Private Well Property Damage Class Member, Claimants must complete the Claim Form and provide proof that they owned real property in the Town of Petersburg within a seven (7) mile radius of Defendant's Facility and who obtain or obtained their drinking water from a privately owned well contaminated with PFOA, and who owned that property at or around February 20, 2016 when the contamination was discovered. Proof of ownership may include a combination of the following: 1) a copy of the deed to the property; 2) a copy of a tax bill demonstrating ownership of the property; and/or 3) any other form of proof of ownership deemed appropriate by the General Administrator. If the Claimant does not submit documentary proof of ownership, the Claimant's eligibility may also be determined by the General Administrator's reference to public property records. Proof of detectable levels of PFOA in the property's private well water may be demonstrated by a copy of test results reporting a detectable level of PFOA in the property's private well water from a qualified laboratory or from the State of New York, or any other form of proof deemed appropriate by the General Administrator. Proof of residency on or after February 20, 2016 may be provided by a declaration of residency sworn to by the Claimant. If the General Administrator is able to obtain public records and/or confidential records and data provided by the New York State Department of Health and/or NYSDEC that establish property ownership at or around February 20, 2016, and/or PFOA contamination in the property's private well water, the obligation(s) of the Claimant to provide some or all such proof may be waived by the General Administrator.
- iii. Private Well Nuisance Class. To demonstrate eligibility to receive payment as a Private Well Nuisance Class Member, Claimants must complete the Claim Form and provide proof of ownership of, or leasehold interest in, real property in the Town of Petersburg within a seven (7) mile radius of Defendant's Facility and who: 1) obtain or obtained their drinking water from a privately owned well contaminated with PFOA; and 2) occupied that property at or around February 20, 2016 when the contamination was discovered. Proof of ownership or leasehold interest may include a combination of the following: 1) a copy of the deed to the property; 2) a copy of a tax bill demonstrating ownership of the property; 3) a copy of the lease for such property; 4) a sworn declaration confirming a leasehold interest at or around February 20, 2016 when the contamination was discovered; and/or 5) any other form of proof deemed appropriate by the General Administrator. Proof of detectable levels of PFOA in the property's private well water may be demonstrated by a copy of test results reporting a detectable level of PFOA in the property's private well water from a qualified laboratory or from the State of New York, or any other form of proof deemed appropriate by the General Administrator. Proof of residency at or around February 20, 2016 when the contamination was discovered may be provided by a declaration of residency sworn to by the Claimant. If the General Administrator is able to obtain public records and/or confidential records and data provided by the New York State Department of Health and/or NYSDEC that establish property ownership, residency at or around February 20, 2016

when the contamination was discovered, and/or PFOA contamination in the property's private well water, the obligation(s) of the Claimant to provide some or all such proof may be waived by the General Administrator.

- iv. Medical Monitoring Settlement Class. To demonstrate eligibility to participate in the Medical Monitoring Program as a Medical Monitoring Settlement Class Member, a Claimant must complete the Claim Form and provide proof that (a) they ingested water at a property that was supplied with drinking water by the Town Public Water System or a private well within a seven (7) mile radius of Defendant's Facility in the Town of Petersburg in which PFOA was detected; and (b) had a serum PFOA concentration of more than 1.86 µg/L. A Claimant may also establish eligibility by demonstrating that they are a natural child (i) born to a female who meets and/or met these criteria at the time of their birth and (ii) whose blood serum was tested after birth, disclosing a serum PFOA concentration of more than 1.86 µg/L. Proof of water consumption at a qualifying property may be provided by a sworn declaration. Proof that the property's drinking water was supplied by the Town Public Water System can be demonstrated through a copy of a water bill (of any date) for such residence or such other proof as the General Administrator deems appropriate. Proof that the property's drinking water was supplied by a private well in which PFOA was detected may be demonstrated by a copy of test results reporting a detectable level of PFOA in the property's private well water from a qualified laboratory or from the State of New York, or any other form of proof deemed appropriate by the General Administrator. The General Administrator may also obtain such information by reference to public records and/or confidential records and data provided by the New York State Department of Health and/or NYSDEC. Proof of a serum PFOA concentration above 1.86 µg/L may be demonstrated by a copy of a serum PFOA test result from a qualified laboratory or from the State of New York.

#### 4. **Calculation of Class Member Payments**

##### a. Property Settlement Classes

- i. Property Payment Allocation. The sum of FOUR MILLION FOUR HUNDRED TEN THOUSAND DOLLARS (\$4,410,000) shall be allocated from the Settlement Fund for distribution to Property Settlement Class Members who demonstrate eligibility in accordance with Section 3(b)(i) or (ii). This shall be referred to as the "Property Payment Allocation."
- ii. Calculation of Settlement Payment for Each Property. The General Administrator shall total the full market values of all Eligible Properties as determined by the 2015 County Assessment Roll for the Town of Petersburg, which will comprise the denominator of a fraction. For calculating the distribution for each Eligible Property, the full market value of that Eligible Property as determined by the 2015 County Assessment Roll for the Town of Petersburg shall comprise the numerator of this fraction, which will then be



multiplied by the Property Payment Allocation to yield the individual amount due to the Property Settlement Class Member(s) who owned the Eligible Property as of February 20, 2016 or when the contamination was discovered. The amount payable for each Eligible Property shall be based upon this fraction regardless of the number of owners of such property. If there are multiple Property Settlement Class Members who owned an individual Eligible Property as of February 20, 2016 or when the contamination was discovered and demonstrate eligibility in accordance with Section 3(b)(i) or (ii), the General Administrator shall pay this amount in equal shares to each such Property Settlement Class Member.

b. Private Well Nuisance Class

- i. Nuisance Payment Allocation. The sum of FOUR MILLION THIRTY-ONE THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$4,031,250) shall be allocated from the Settlement Fund for distribution to Private Well Nuisance Class Members who demonstrate eligibility in accordance with Section 3(b)(iii). This shall be referred to as the “Nuisance Payment Allocation.”
- ii. Calculation of Private Well Nuisance Settlement Class Member Payment. The Nuisance Payment Allocation shall be divided evenly by the General Administrator among all Private Well Nuisance Settlement Class Members who demonstrate eligibility in accordance with Section 3(b)(iii), and an equal share shall be paid to each Private Well Nuisance Class Member who demonstrates eligibility in accordance with Section 3(b)(iii).

c. Medical Monitoring Settlement Class

- i. Medical Monitoring Allocation. The sum of EIGHT MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$8,550,000) shall be allocated to the Medical Monitoring Program from the Settlement Fund. This shall be referred to as the “Medical Monitoring Allocation.” The Medical Monitoring Administrator shall establish an account into which the Medical Monitoring Allocation shall be deposited by the General Administrator, and the Medical Monitoring Allocation shall thereafter be used to pay all expenses related to the Medical Monitoring Program as further delineated in Appendix A, including payments to Participating and Non-Participating Physicians, laboratories, and all Medical Monitoring Administration Costs.
- ii. Term. The Medical Monitoring Program shall begin on the Effective Date and shall terminate at the earlier of: (a) when the Medical Monitoring Allocation has been expended; or (b) when all bills submitted to the Medical Monitoring Administrator for services under the Medical Monitoring Program rendered on or before the fifteen (15) year anniversary of the Effective Date are paid.
- iii. Medical Monitoring Program Provisions. The testing and services protocols under the Medical Monitoring Program, their frequency, and other details

concerning the operation of the Medical Monitoring Program are set forth in Appendix A, attached hereto and incorporated herein.

- iv. Incentive Payments. A maximum incentive payment of ONE HUNDRED DOLLARS (\$100) shall be paid to any Medical Monitoring Settlement Class Member who completes both the Initial Informational Survey and the Initial Screening Consultation as described in Appendix A within twelve (12) months of the Effective Date. No other incentive payments shall be made at any time for participation in the Medical Monitoring Program.
- v. Distribution of Remainder of Funds at Termination of the Medical Monitoring Program. The amount, if any, remaining of the Medical Monitoring Allocation when the Program terminates pursuant to Section 4(c)(ii) shall be distributed as follows:
  1. An amount equal to the Medical Monitoring Disbursement or to the Medical Monitoring Remainder, whichever is less, shall be distributed on a pro-rata basis to all Participants in the Medical Monitoring Program based on their level of participation during its term, as determined by the Medical Monitoring Administrator. For example, Participants who have participated in all services available to them under the Medical Monitoring Program as determined by the Medical Monitoring Administrator shall receive one pro-rata share, while Participants who have participated in 50% of services available to them under the Medical Monitoring Program shall receive one-half of a pro-rata share.
  2. In the event the Medical Monitoring Remainder is greater than the Medical Monitoring Disbursement, an amount equal to the difference between the Medical Monitoring Remainder and the Medical Monitoring Disbursement will be paid as a contribution to a not-for-profit organization that focuses on health and well-being of residents in or around the Town of Petersburg that serves the Town of Petersburg community. The Parties will work together to identify the appropriate recipient organization within 120 days of the Effective Date and thereafter seek Court approval of their selection. If the recipient organization identified by the Parties ceases to exist at any time after the Effective Date but before termination of the Medical Monitoring Program pursuant to Section 4(c)(ii), the Parties shall meet and confer in good faith to propose a reasonable substitute recipient organization and shall seek Court approval of their proposal.
  3. Nothing in this Agreement or in Appendix A shall be construed as Defendant's agreement with or endorsement of any oral or written statements made by or the selection of the General Administrator, the Medical Monitoring Administrator, an Overseeing Program Physician or a Program Physician (as those terms are defined in Appendix A), or the Medical Monitoring Program itself, including as to any purported health or environmental risks associated with PFOA (or PFAS).

- d. Excess Settlement Funds. To the extent that any amounts remain in the Settlement Fund after all payments have been made pursuant to Section 4(a)-(c) herein, and following disbursement of Court-approved attorneys' fees and costs, General Settlement Administration Costs, any tax-related expenses, and any Court-approved Service Awards, those remaining amounts shall be added to the Medical Monitoring Allocation.

**5. Attorneys' Fees, Costs, and Expenses**

- a. Class Counsels' Fees and Costs. Class Counsels' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund no later than twenty-eight (28) days after the Effective Date. Class Counsel shall apply for an award of attorneys' fees up to 25% of the Total Settlement Payment, or FIVE MILLION SIX HUNDRED SEVENTY-THREE THOUSAND ONE HUNDRED AND TWELVE DOLLARS (\$5,673,112), and reimbursement of reasonable litigation costs of up to FOUR HUNDRED THOUSAND DOLLARS (\$400,000), to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees and costs in those amounts. Defendant shall not be responsible for any attorneys' fees, expenses, or costs in this Action beyond the amounts allocated for these purposes in this paragraph.
- b. Service Awards. Subject to Court approval, each Plaintiff shall be entitled to receive a Service Award of up to \$25,000 each for their role as a class representative. The Service Awards shall not exceed \$200,000 in the aggregate and shall be paid from the Settlement Fund no later than twenty-eight (28) days from the Effective Date.
- c. Administrative Fees and Costs. The General Settlement Administration Costs shall be paid from the Preliminary Settlement Fund and, after Final Approval, the Settlement Fund within ten (10) days after invoicing to and written approval by Class Counsel. Total General Settlement Administration Costs, including Preliminary Administrative Expenses, shall not exceed \$200,000, except that, in the event of exceptional circumstances, an additional amount not to exceed \$50,000 may be paid from the Settlement Fund for General Settlement Administration Costs.
- d. Total Settlement Payment. When combined with the amounts set forth in Sections 4(a)(i), (b)(i), and (c)(i), the sum of amounts set forth in Sections 5(a)-(c) shall not exceed the Total Settlement Payment amount set forth in Section 1(ttt).

**6. Dismissal, Release of Claims, and Related Provisions**

- a. Dismissal. In the motion for final approval of the Settlement, Plaintiffs, on behalf of themselves and the Settlement Classes, shall request that the Final Approval Order dismiss the Action with prejudice and enter a final judgment.
- b. Release. Upon the Effective Date, the Releasing Parties shall have expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever released, relinquished, waived, compromised, settled, and discharged the Released Parties from each and every past, present, and future claim and cause of action, including

without limitation causes of action and/or relief created or enacted in the future—whether known or unknown, whether direct or indirect, individual or class, in constitutional, federal, state, local, statutory, civil, or common law or in equity, or based on any other law, rule, regulation, ordinance, directive, contract, or the law of any foreign jurisdiction, whether fixed or contingent, known or unknown, liquidated or unliquidated, suspected or unsuspected, asserted or unasserted, matured or unmatured, or for compensatory damages, consequential damages, incidental damages, statutory damages, punitive, special, multiple, treble, or exemplary damages, nominal damages, disgorgement, restitution, indemnity, contribution, penalties, injunctive relief, declaratory relief, attorneys’ fees, court costs, or expenses of any kind—that were or could have been asserted in the Action or any other forum, arising out of or related to, either directly or indirectly or in whole or in part: (i) the subject matter of any allegations contained in the Third Amended Complaint, any allegations otherwise asserted in the Action, or the subject matter of any discovery obtained in the Action; (ii) the alleged presence of PFAS (including PFOA) in drinking water or the environment (including but not limited to in air, groundwater, surface water, municipal water, private well water, or soil) within the Town of Petersburg; (iii) the sale, purchase, use, handling, transportation, release, discharge, migration, emission, spillage, or disposal of PFAS (including PFOA) to, at, or from a Facility in or near the Town of Petersburg, including any such PFAS (including PFOA) present as a result of disposal at or discharge to, directly or indirectly, any landfill, sewage system, water treatment facility, or any other location in and around the Town of Petersburg, and/or resulting in any alleged exposure of any Settlement Class Member to PFAS (including PFOA) through drinking water, inhalation, dermal contact, or otherwise; (iv) for any type of relief with respect to the acquisition, installation, maintenance, operation, or presence of, including the cost or purported inconvenience or loss of enjoyment of, property associated with whole-house filters, point-of-entry (POET) filters, point-of-use filters, municipal water, private well water, bottled water, alternative water supplies, or remediation; (v) for property damage or property-value diminution, including without limitation stigma, purportedly attributable to the alleged presence of PFAS (including PFOA) in the Town Public Water System or any private well, or in the air, groundwater, surface water, municipal water, private well water, or soil in or around the Town of Petersburg; and/or (vi) based on PFAS (including PFOA) in the blood or tissue of any Settlement Class Member (the “**Released Claims**”); provided, however, that the “Released Claims” do not include any individual claims of the Releasing Parties: (a) for any damages (including for screenings, tests, examinations, and/or diagnostic procedures) related to past, present, or future manifested bodily injuries that have resulted in a medically diagnosed condition; or (b) to enforce the terms of this Agreement or the Final Approval Order. For purposes of this Agreement, “manifested bodily injuries that have resulted in a medically diagnosed condition” do not include the detection or accumulation of PFAS (including PFOA) in blood or other bodily tissue.

- c. N.Y. Gen. Oblig. § 15-108: The releases set forth herein are given pursuant to New York law and shall be construed under New York law, including N.Y. General Obligations Law § 15-108, which bars claims for contribution by joint tortfeasors as



provided for in article fourteen of the New York Civil Practice Law and Rules, without regard to New York's conflict or choice of law principles. This Agreement is expressly intended to absolve the Released Party from any claims for contribution (however denominated) by any other Person that might be subsequently added or joined as a party in the Action, or any other Person sued or deemed responsible for any claim or damages arising out of or related to the Released Claims, in the manner and to the fullest extent permitted under the law of New York, including N.Y. General Obligations Law § 15-108, or of any other jurisdiction that might be construed or deemed to apply for claims of contribution (however denominated) against any Released Party. Notwithstanding the foregoing, should any court determine that any person or entity was legally entitled to any kind of contribution from the Defendant arising out of or related to Released Claims, the Releasing Parties agree that any money judgment subsequently obtained by the Releasing Parties against any other Person subsequently added or joined as a party in the Action shall be reduced to an amount such that, upon paying the entire amount, the Person subsequently sued would have no claim for contribution (however denominated) against the Released Party.

- d. Minor Plaintiffs: Each of the Plaintiffs who filed this Action as parent and natural guardian of a Minor will apply to the Court individually or jointly for approval of the settlement on behalf of the Minor class representatives and all absent Minor Settlement Class Members. It is contemplated by the Parties that the Notice Approval and Scheduling Order will provide authority under N.Y. CPLR § 1201 for parents and guardians of all named Minor Plaintiffs and absent Settlement Class Members to sign Claim Forms and releases on behalf of their Minor children and wards. It is further contemplated by the Parties that an Order from the Court finally approving the Settlement shall effectuate a settlement under N.Y. CPLR § 1207 for all named Minor Plaintiffs and absent Minor Settlement Class Members.
- e. Incompetent Absent Class Members: It is contemplated by the Parties that legal representatives of incompetent absent Settlement Class Members shall have authority to sign Claim Forms and releases on behalf of the absent Settlement Class Members they represent. Where a legal representative of an incompetent absent Settlement Class Member submits a Claim Form on that Settlement Class Member's behalf, that legal representative shall attest to their authority to act for the incompetent absent Settlement Class Member. It is contemplated by the Parties that the Notice Approval and Scheduling Order will provide authority under N.Y. CPLR § 1201 for such legal representatives to sign the Claim Forms and releases on behalf of the incompetent Settlement Class Members they represent. It is contemplated by the Parties that an Order from the Court finally approving the Settlement shall effectuate a settlement under N.Y. CPLR § 1207 for all absent incompetent Settlement Class Members.
- f. Deceased Absent Class Members: It is contemplated by the Parties that legal representatives of deceased absent Settlement Class Members shall have authority to sign Claim Forms and releases on behalf of the absent Settlement Class Members they represent. Where a legal representative of a deceased absent Settlement Class Member submits a Claim Form on that Settlement Class Member's behalf, that legal

representative shall attest to their authority to act for the deceased absent Settlement Class Member.

- g. No Waiver of Defenses: Defendant does not waive or forfeit any claims, defenses or arguments that they could assert, including as to any claims or causes of action that are outside the definition of "Released Claims."
- h. Exclusive Remedy: The relief provided for in this Agreement shall be the sole and exclusive remedy for all Releasing Parties with respect to any Released Claims, and the Released Party shall not be subject to liability or expense of any kind with respect to any Released Claims other than as set forth in this Agreement.
- i. Covenant Not To Sue: Each of the Releasing Parties shall forever refrain from instituting, maintaining, prosecuting, or continuing any suit, action, arbitration, or proceeding against the Released Party with respect to the Released Claims.
- j. Waiver of Statutory Rights: To the extent the provisions apply, the Releasing Parties expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

To the extent the provisions apply, the Releasing Parties likewise expressly, knowingly, and voluntarily waive the provisions of Section 20-7-11 of the South Dakota Codified Laws, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

To the extent the laws apply, the Releasing Parties expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, Section 1542 of the California Civil Code, Section 20-7-11 of the South Dakota Codified Laws, and all similar laws of other States, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Releasing Parties acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe to exist with respect to the Released Claims, but that it is their intention to accept and assume that risk and fully, finally, and forever release, waive, compromise, settle, and discharge all of the Released Claims against Released Persons. The release thus shall remain in effect notwithstanding the discovery or existence of any additional or different claims or facts.



- k. Full and Complete Defense: To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, arbitration, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement, or that asserts any Released Claims against the Released Party.

**7. No Admission of Wrongdoing or Liability**

- a. Defendant does not admit or concede any liability, fault, omission, or wrongdoing, acknowledge any validity to the allegations or claims asserted in the Action, admit, concede or acknowledge that the Medical Monitoring Program is medically necessary, or acknowledge any weakness in the defenses asserted in the Action, and nothing in this Agreement, the Notice Approval and Scheduling Order, or the Final Approval Order shall be interpreted to suggest anything to contrary.
- b. Nothing in this Agreement, any negotiations, statements, communications, proceedings, filings, or orders relating thereto, or the fact that the Parties entered the Agreement and settled the Action shall be construed, deemed, or offered as an admission or concession by any of the Parties, Settlement Class Members, or Defendant, or as evidentiary, impeachment, or other material available for use or subject to discovery in any suit, action, or proceeding (including this Action) before any civil or criminal court, administrative agency, arbitral body, or other tribunal, except: (i) as required or permitted to comply with or enforce the terms of this Agreement, the Notice Approval and Scheduling Order, or the Final Approval Order; or (ii) in connection with a defense based on *res judicata*, claim preclusion, collateral estoppel, issue preclusion, release, or other similar theory asserted by any of the Released Parties. The limitations described in this paragraph shall apply whether or not the Court enters the Notice Approval and Scheduling Order or the Final Approval Order, or any such order is affirmed, reversed, vacated, or overturned by an appellate court.

**8. Notice Approval and Scheduling**

- a. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for a Notice Approval and Scheduling Order. The proposed Notice Approval and Scheduling Order shall be attached to the motion, or otherwise filed with the Court, and shall be in a form attached hereto as Exhibit 3.
- b. The motion for Notice Approval and Scheduling Order shall, among other things, request that the Court: (1) appoint the General Administrator; (2) approve the Notice Program set forth herein and approve the form and content of the Class Notice; (3) approve the procedures set forth herein in Sections 10 and 11 for Settlement Class Members to Opt Out or object to the Settlement; (4) provide the requisite authority for parents and guardians of all named Minor Plaintiffs and absent Minor Settlement Class Members, and for legal representatives of absent incompetent Settlement Class Members, to sign Claim Forms and releases on behalf of the Settlement Class Members they represent; (5) stay further proceedings against Defendant in this

Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Defendant, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsels' application for attorneys' fees and costs and for a Service Award to Plaintiffs.

- c. In Plaintiffs' motion seeking entry of a Notice Approval and Scheduling Order, Plaintiffs shall request that the Court approve the Notice Form attached at Exhibit 2 and approve the Notice Program. The Court will ultimately determine and approve the content and form of the Notice Form to be distributed to the Settlement Class Members.
- d. The Parties further agree that in Plaintiffs' motion seeking Notice Approval and Scheduling Order, Plaintiffs will request that the Court enter the following schedule governing the Settlement: (1) deadline for commencing Class Notice (the Notice Date): thirty (30) days from Notice Approval; (2) Opt Out Deadline: one hundred and five (105) days from the Notice Date; (3) Objection Deadline: one hundred and five (105) days from the Notice Date; (4) deadline for filing motions for approval of Plaintiffs' Service Awards and attorneys' fees and costs awards: one-hundred fifty (150) days from Notice Approval; (5) deadline for filing motion for final approval: one-hundred fifty (150) days from Notice Approval; (6) Final Approval Hearing: one-hundred eighty (180) days from Notice Approval, or as soon thereafter as is mutually convenient.

9. **Class Notice**

- a. Provision of Information to the General Administrator. The proposed General Administrator shall execute an Affidavit attesting to comply with the Confidentiality Order entered in this Action on or before the filing of Plaintiffs' motion seeking Notice Approval and Scheduling Order. Within twenty (20) days of the General Administrator's execution of this Affidavit, Plaintiffs' counsel will provide the General Administrator with confidential private well testing data provided by the NYSDEC and/or the New York State Department of Health, including property addresses, from testing performed on properties within the Town of Petersburg since February 2016. The General Administrator shall use this information solely for the purposes of providing Class Notice and administering the Settlement, including making eligibility determinations, as described in Section 3.
- b. Within thirty (30) days of Notice Approval, or by the time specified by the Court, the General Administrator shall commence the Notice Program, including by mailing the Notice Form in such form as is approved by the Court. The General Administrator shall transmit the Notice Form via direct mail to all owners of real Properties that obtain drinking water from the Town Public Water System and owners and renters of real properties in the Town of Petersburg that obtain drinking water from private wells contaminated with PFOA.

- c. Commencing on the Notice Date, the General Administrator shall implement the Notice Program. As set forth in more detail in Exhibit 6, the Notice Program shall consist of direct mail; internet, national and social media impressions; a national press release; and a community outreach effort. As set forth in more detail in Exhibit 6, the Notice Program will feature a media campaign with the following features:
  - i. A digital media plan will achieve approximately 53.3 million impressions, targeting adults eighteen and over by geo-targeting New York State, Albany-Troy-Schenectady, and the Town of Petersburg on desktop and mobile devices via various websites and Facebook. A supplemental digital media plan will target adults eighteen and over nationwide via various websites and adults eighteen and over on Facebook and Instagram who have Bennington College listed as part of their education.
  - ii. A newspaper campaign will feature one quarter-page ad to be published in the Main News section of the Albany Times Union (on any one Monday through Saturday) and Eastwick Press (on any one Friday).
  - iii. A nationwide press release.
  - iv. A community outreach plan will work with prominent news organizations, agencies, and community organizations to disseminate notice of the Settlement to their audiences and networks.
- d. The General Administrator shall maintain a Settlement Website containing the Third Amended Complaint, this Agreement, the Notice Form, Plaintiffs' motion seeking Notice Approval and Scheduling Order, the Notice Approval and Scheduling Order, Plaintiffs' motion seeking Final Approval, the Final Approval Order, the Claim Form, and such other documents as the Parties agree to post or that the Court orders posted. These documents shall remain on the Settlement Website for at least six months after Final Approval. The Settlement Website's URL will be [petersburghpfoasettlement.com](http://petersburghpfoasettlement.com).
- e. The General Administrator shall send the Notice Form and Claim Form by mail to any potential Settlement Class Member who requests a copy. It will be conclusively presumed that the intended recipients received the Notice Form and Claim Form if the Notice Form and/or Claim Forms have not been returned to the General Administrator as undeliverable within fifteen (15) calendar days of mailing.
- f. The Parties may by mutual written consent make non-substantive changes to the Notice Form without Court approval after the Court's approval of the Notice Form.
- g. A Spanish-language translation of the Notice Form agreed upon by the Parties shall be available on the Settlement Website and will be provided to Settlement Class Members who request it from the General Administrator.

10. **Opt Outs**

- a. A Settlement Class Member may Opt Out by submitting to the General Administrator a timely and valid request that complies with the Opt Out procedure described in the Class Notice. To be timely and valid, an Opt Out request must have a verified submission date on or before the Opt Out Deadline and must include: (i) the full name, current address, and telephone number of the requestor; (ii) a statement of the facts that make the requestor a Settlement Class Member; (iii) a statement requesting exclusion from the Settlement Classes; and (iv) the signature of the requestor.
- b. Any Settlement Class Member that submits a timely and valid Opt Out request shall not: (i) be bound by any orders or judgments entered in the Action to implement and effectuate the Settlement and this Agreement; (ii) be entitled to any of the relief or other benefits provided under this Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to submit an Objection.
- c. Any Settlement Class Member that does not submit a timely and valid Opt Out request submits to the jurisdiction of the Court and shall be bound by the terms of this Agreement and by all orders and judgments in the Action to implement and effectuate the Settlement and this Agreement.
- d. If a Property Settlement Class Member submits a timely and valid Opt Out request, and that Settlement Class Member owns real property jointly with one or more other Property Settlement Class Members, all Settlement Class Members owning such property shall be deemed to have submitted a timely and valid Opt Out request.
- e. No “mass” or “class” Opt Out requests shall be valid, and no Settlement Class Member may submit an Opt Out request on behalf of any other Settlement Class Member; provided, however, that a Settlement Class Member who is the legal guardian of a Minor Settlement Class Member or the legal representative of an incompetent or deceased Settlement Class Member may submit an Opt Out request on behalf of that Settlement Class Member.
- f. Any Settlement Class Member that submits an Opt Out request may revoke the request by submitting to the General Administrator a statement of revocation with a verified submission date no later than forty (40) days before the Final Approval Hearing. Class Counsel and counsel for Defendant shall jointly have discretion to extend this deadline on a case by case basis.
- g. As soon as practicable and no later than thirty (35) days before the Final Approval Hearing, the General Administrator shall furnish the Parties with a final list of all timely and valid Opt Out requests that have been submitted and not revoked.

11. **Objections**

- a. A Settlement Class Member may make an Objection by serving on the Parties a timely and valid statement of Objection that complies with the Objection procedure described



in the Class Notice. Class Counsel shall file all such Objections with the Court at least twenty (20) days prior to the Final Approval Hearing.

- b. To be timely and valid, a statement of Objection must be postmarked or received on or before the Objection Deadline and must include: (i) the full name, current address, and telephone number of the objector; (ii) a statement of the facts that make the objector a Settlement Class Member; (iii) a statement describing all of the objector's challenges to this Agreement or the Settlement and the reasons for those challenges; (iv) all of the papers and evidence the objector intends to submit in support of those challenges; (v) a statement of whether the objector intends to appear at the Final Approval Hearing; (vi) the signature of the objector; (vii) a statement that the objector is willing to be deposed, upon request, on a mutually acceptable date at least ten (10) days before the Final Approval Hearing; (viii) the caption of each case in which the objector or counsel representing the objector have objected to a class action settlement within the preceding five years and a copy of all orders related to or ruling upon those objections; and (ix) all agreements that relate to the Objection, whether written or verbal, between or among the objector, counsel for the objector, and/or any other Person.
- c. No "mass" or "class" Objections shall be valid, and no Settlement Class Member may submit a statement of Objection on behalf of any other Settlement Class Member; provided, however, that a Settlement Class Member who is the legal guardian of a Minor Settlement Class Member or the legal representative of an incompetent or deceased Settlement Class Member may submit a statement of Objection on behalf of that Settlement Class Member.
- d. Unless the Court orders otherwise, only those Settlement Class Members whose statements of Objection express an intention to appear at the Final Approval Hearing shall have the right to present their Objections orally at the Final Approval Hearing.
- e. Plaintiffs and the Defendant shall have the right, but not the obligation, to respond to any timely-filed objection no later than seven (7) days prior to the Final Approval Hearing. Any Party who wishes to respond shall file a copy of the written response with the Court, and shall serve a copy, by hand or overnight delivery, to the objecting Settlement Class Member (or their counsel) and by email to counsel for Plaintiffs and/or the Defendant.
- f. A Settlement Class Member that does not submit a timely and valid Objection shall have waived, and shall be foreclosed from making, any challenge to this Agreement or the Settlement in the Action or any other proceeding.

## **12. Final Approval and Entry of Final Judgment**

- a. The Parties shall jointly seek a Final Approval Order and entry of final judgment from the Court that:
  - i. Approves the Settlement Agreement in its entirety pursuant to CPLR Article 9 as fair, reasonable, and adequate;



- ii. Confirms certification of the Settlement Classes as satisfying the requirements of CPLR 901 and 902;
  - iii. Confirms appointment of the General Administrator and Medical Monitoring Administrator;
  - iv. Confirms the appointment of Class Counsel;
  - v. Finds that the Class Notice has satisfied the requirements set forth in CPLR Article 9;
  - vi. Settles the claims of all named Minor Plaintiffs, absent Minor Settlement Class Members, and absent incompetent and deceased Settlement Class Members;
  - vii. Bars and enjoins each Settlement Class Member from commencing, asserting, and/or prosecuting any and all Released Claims against any Released Party;
  - viii. Dismisses with prejudice all claims in the Third Amended Complaint asserted against Defendant, without further costs, including claims for interest, penalties, costs, and attorneys' fees;
  - ix. Enters final judgment pursuant to CPLR Article 9;
  - x. Confirms that it retains continuing jurisdiction over the Medical Monitoring Program and the Settlement Fund; and
  - xi. Expressly incorporates the terms of this Agreement and provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members, and this Agreement, to interpret, implement, administer and enforce the Agreement in accordance with its terms.
- b. The motion for Final Approval of this Settlement shall include a request that the Court enter the Final Approval Order and, if the Court grants Final Approval of the Settlement and incorporates the Agreement into the final judgment, that the Court shall dismiss this Action with prejudice, and enter final judgment, subject to the Court's continuing jurisdiction to enforce the Agreement.

**13. Representations and Warranties**

- a. Plaintiffs represent and warrant to Defendant as follows:
  - i. Each of the Plaintiffs is a Settlement Class Member.
  - ii. Each of the Plaintiffs has received legal advice from Class Counsel regarding the advisability of entering into this Agreement and the legal consequences of this Agreement.

- iii. No portion of any of the Released Claims possessed by any of the Plaintiffs and no portion of any relief under this Agreement to which any of the Plaintiffs may be entitled has been assigned, transferred, or conveyed by or for any of the Plaintiffs to any other Person, except pursuant to any contingency fee agreement with Class Counsel.
  - iv. None of the Plaintiffs is relying on any statement, representation, omission, inducement, or promise by the Defendant, its agents, or its representatives, except those expressly stated in this Agreement.
  - v. Each of the Plaintiffs, through Class Counsel, has investigated the law and facts pertaining to the Released Claims and the Settlement.
  - vi. Each of the Plaintiffs, or for named Minor Plaintiffs their legal guardians, or for incompetent or deceased Plaintiffs their legal representatives, has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having consulted with Class Counsel or other attorneys.
  - vii. Each of the Plaintiffs, or for named Minor Plaintiffs their legal guardians, or for incompetent or deceased Plaintiffs their legal representatives, has all necessary competence and authority to enter into this Agreement on their own behalf or on behalf of any named Minor Plaintiffs, incompetent plaintiffs, or deceased plaintiffs, and on behalf of the respective Settlement Classes they represent. Each of the Plaintiffs who filed this Action as parent and natural guardian of a Minor has complied, and for purposes of this Settlement will comply, with all applicable state and federal laws pertaining to Minors and legal representative and guardianship laws, and has the authority and capacity to bind the named Minor Plaintiff to this Agreement.
  - viii. None of the Plaintiffs will Opt Out or file an Objection.
- b. Class Counsel represents and warrants to Defendant as follows:
- i. Class Counsel believes the Settlement is fair, reasonable, adequate, and beneficial to each Settlement Class Member and that participation in the Settlement would be in the best interests of each Settlement Class Member.
  - ii. Class Counsel does not currently represent any client or clients that plan to, or are considering whether to, Opt Out, file an Objection, or otherwise challenge the Settlement or this Agreement.
  - iii. Class Counsel recognizes the risk that they could have a conflict of interest if they represented (directly or indirectly) any client in connection with an effort to Opt Out, file an Objection, or otherwise challenge the Settlement or this Agreement.

- iv. Because Class Counsel believes that the Settlement is in the best interests of each Settlement Class Member, Class Counsel will not solicit, or assist others in soliciting, Settlement Class Members to Opt Out, file an Objection, or otherwise challenge the Settlement or this Agreement.
  - v. Class Counsel has all necessary authority to enter into and execute this Agreement on behalf of Plaintiffs and the Settlement Classes.
  - vi. Each of the Plaintiffs, or for Minor Plaintiffs their legal guardians, has approved and agreed to be bound by this Agreement.
  - vii. The representations in Section 13(a) of this Agreement are true and correct to the best of Class Counsel's knowledge.
- c. Defendant represents and warrants to Plaintiffs as follows:
- i. Defendant has received legal advice from its attorneys regarding the advisability of entering into this Agreement and the legal consequences of this Agreement.
  - ii. Defendant is not relying on any statement, representation, omission, inducement, or promise by Plaintiffs, Settlement Class Members, or Class Counsel, except those expressly stated in this Agreement.
  - iii. Defendant, with the assistance of its attorneys, has investigated the law and facts pertaining to the Released Claims and the Settlement.
  - iv. Defendant has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having consulted with its attorneys.
  - v. Defendant has all necessary authority to enter into this Agreement, has authorized the execution and performance of this Agreement, and has authorized the Person signing this Agreement on its behalf to do so.

#### **14. Liens and Medicare Obligations**

- a. Any liens or subrogation interests as to any damage to real property or other property of a Settlement Class Member shall be the responsibility of that Settlement Class Member.
- b. Any liens or subrogation interests as to any costs, expenses, or fees incurred by a Settlement Class Member in connection with any alleged exposure to PFAS (including PFOA) shall be the responsibility of that Settlement Class Member.
- c. Nothing in this Agreement is intended to create or give rise to any liens or subrogation claims not otherwise provided by law or contract.

- d. Due to the nature of the claims at issue in the Action and the Released Claims, the Parties agree that the Settlement does not give rise to any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, and therefore that no Party will make any such report.
- e. The Parties have sought to draft this Settlement to avoid any impacts to the rights of any public or private program (e.g. Medicare) or to Settlement Class Members' rights thereunder. However, by choosing not to Opt Out, Settlement Class Members acknowledge that: (i) the Settlement could impact, limit, or preclude their rights to receive certain future Medicare benefits arising out of the allegations in this lawsuit; and (ii) they want to proceed with the Settlement and voluntarily waive any and all claims against Defendant for denial of Medicare benefits related to the Settlement. It is understood that the intent of this Agreement is that the Releasing Parties will protect, defend, and hold the Released Party harmless from any future or further payments or exposure with regard to claims for reimbursement of public or private medical insurance benefits paid on behalf of the Releasing Parties. The Releasing Parties voluntarily waive any and all claims of any nature against Defendant related to any effort by Medicare or a Medicare Advantage Organization to demand payment of covered medical expenses that are asserted to be related to this Settlement, including but not limited to a private cause of action under 42 U.S.C. § 1395y(b)(3)(A).
- f. The Parties have considered Medicare's interest in any potential Medicare-covered medical expenses occurring before or after the Effective Date. The Parties are satisfied that no allocation for expenses to protect Medicare's interest now or in the future is necessary and will not allocate any amount of the proceeds of this Settlement for past or future medical expenses, but reserve the right to do so in the future if necessary and appropriate in the sole discretion of the Medical Monitoring Administrator.

**15. Amendment of Agreement**

- a. The Parties may agree to amend this Agreement for any reason at any time.
- b. Prior to entry of the Final Approval Order, this Agreement may be amended only by a writing executed by all Parties.
- c. After entry of the Final Approval Order, this Agreement may be amended only by a writing executed by all Parties and approved by the Court.

**16. Termination Rights and Effect of Termination**

- a. Any of the Parties may terminate this Agreement if any of the following events happen: (i) the Court declines to approve any part of the Settlement; (ii) the Court declines to approve or changes a material term of the requested Notice Approval and Scheduling Order or the requested Final Approval Order; (iii) an appellate court reverses, vacates, or otherwise overturns the Final Approval Order in whole or in part; (iv) another of the Parties materially breaches this Agreement before the Effective Date and fails to promptly cure the breach after receiving written notice of the breach; or (v) the Effective Date otherwise does not come to pass; provided, however, that

none of the Parties may terminate this Agreement because the Court or any appellate court awards less than the requested amount of attorneys' fees, costs, and expenses.

- b. After receipt of the final Opt Out list provided by the General Administrator pursuant to Section 10 of this Agreement, Defendant may terminate this Agreement based on the number of Settlement Class Members who Opt Out, pursuant to the Supplemental Agreement Regarding Settlement Termination Rights discussed in Section 17.
- c. To exercise a right to terminate this Agreement, a Party must deliver written notice of termination to counsel for all other Parties within ten (10) days after the later of the event creating the right to terminate or the Party learning of the event creating the right to terminate, unless that deadline is extended by written consent of counsel for all Parties.
- d. If a Party exercises a right to terminate this Agreement: (i) the Parties shall have thirty (30) days to resume settlement negotiations and determine if the Parties can reach an amended agreement, including without limitation with the assistance of a mediator; (ii) all deadlines under this Agreement shall be stayed for the duration of the negotiations; (iii) the Parties shall jointly request a stay of all Court deadlines for the duration of the negotiations; and (iv) the Parties shall jointly advise the Court of the status of this Agreement or any amendment to this Agreement within seven (7) days after the conclusion of the thirty-day negotiation period.
- e. Unless the Parties agree otherwise in writing, thirty-one (31) days after a Party exercises a right to terminate this Agreement:
  - i. The Agreement (except for Sections 7(a), 7(b), 16 (a)-(f), 18(a), 18(c), 19 (a), 19(b) shall become null and void and of no further force and effect.
  - ii. Any unused portion of the Preliminary Settlement Fund Payment, including interest accrued thereon, shall be returned to Defendant.
  - iii. The Action shall resume as if the Parties never entered into the Agreement.
  - iv. The Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective legal claims and defenses preserved as they existed on that date.
  - v. The Parties shall jointly move to vacate any orders entered in connection with the Settlement.
  - vi. The Parties shall jointly move for the entry of a scheduling order establishing procedures and deadlines for, among other things, a trial on Plaintiffs' claims.
  - vii. No Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each



Party reserves the right to prosecute or defend this Action in the event that this Agreement does not become final and binding.

- f. If a Party breaches the Agreement after the Effective Date, none of the Parties may terminate the Agreement and any aggrieved Parties may seek relief only from the breaching Party. In no event shall any non-breaching Party have any liability arising out of or related to a breach of the Agreement by any other Party.

**17. Supplemental Agreements**

- a. In addition to the provisions contained in Section 16, Defendant shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement pursuant to the Supplemental Agreement Regarding Settlement Termination Rights to be executed by the Parties contemporaneously with the execution of this Agreement. This Supplemental Agreement shall not be submitted to the Court except in the event of a dispute thereunder, in which case the Parties shall seek to file it only under seal. The Supplemental Agreement Regarding Settlement Termination Rights is expressly incorporated into this Agreement.

**18. Publicity and Confidentiality**

- a. The Parties, Class Counsel, counsel for Defendant, the General Administrator, and the Medical Monitoring Administrator shall keep strictly confidential and not disclose to any third party any non-public information received during litigation of the Action or negotiation or implementation of the Settlement. All agreements made and orders entered during the course of the Action relating to the confidentiality of information will survive this Settlement Agreement.
- b. Within one hundred eighty (180) days after the latest of: (i) the Effective Date; (ii) any final judgment in the Action; (iii) expiration or exhaustion of opportunities for appellate review of any final judgment without the final judgment having been reversed, vacated, or otherwise overturned in whole or in part; or (iv) entry of final judgment or an order of dismissal in the last-related action filed in New York State Supreme Court, Rensselaer County against Defendant for exposure to PFOA or other PFAS compounds released from its facility in Petersburg, New York, Class Counsel, on behalf of Plaintiffs and the Settlement Classes, the General Administrator, and the Medical Monitoring Administrator shall return or destroy (and certify in writing that they have destroyed upon a request to so certify) the Defendant's confidential documents produced in connection with the Action, settlement discussions, or the negotiation or performance of this Agreement.
- c. Recognizing that all Parties negotiated in good faith to reach an arms-length settlement, the Parties and their counsel agree that their public statements will not disparage the Settlement Agreement, or any Party's motivations, reasons, or decision to enter into the Settlement Agreement.

19. **Miscellaneous**

- a. Jurisdiction and Venue. New York State Supreme Court, Rensselaer County shall retain jurisdiction over the Parties and Settlement Class Members to interpret, implement, administer, and enforce the terms of this Agreement and resolve any dispute regarding this Agreement, the Settlement, the Notice Approval and Scheduling Order, or the Final Approval Order. All proceedings related to this Agreement, the Settlement, the Notice Approval and Scheduling Order, or the Final Approval Order shall be initiated and maintained in New York State Supreme Court, Rensselaer County.
- b. Governing Law. The Agreement shall be governed by and construed in accordance with the law of the State of New York without regard for choice-of-law or conflict-of-laws principles.
- c. All Reasonable Efforts. The Parties agree to cooperate with one another and use all reasonable efforts to support, promote, and obtain court approval and finality, and to exercise reasonable efforts to accomplish the terms and conditions of this Agreement.
- d. Voluntary Settlement: The Parties and their counsel agree that, in consideration of all the circumstances, and after significant, adversarial arm's-length settlement negotiations among counsel and with the assistance of a mediator, the proposed Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Classes, and was reached voluntarily after consultation with competent legal counsel.
- e. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class Members, and their respective agents, employees, representatives, heirs, executors, administrators, successors, and assigns.
- f. Mistake. Each of the Parties to the Agreement has investigated the facts pertaining to it to the extent each Party deems necessary. In entering into this Agreement, each Party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.
- g. Finality. This Agreement is intended to be final and binding among the Parties, and is further intended to be a full and final accord and satisfaction between and among each of them. Defendant and Plaintiffs rely on the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.
- h. Authorization to Settle. Each of the Parties (or, for Minor Plaintiffs, their legal guardians or for incompetent or deceased Plaintiffs their, representatives) has all necessary authority to enter into this Agreement, has authorized the execution and performance of this Agreement, and has authorized the Person signing this Agreement on its behalf to do so.
- i. Claim-Splitting Defense Waiver. In the event any plaintiff in an individually filed action against Defendant chooses to amend their complaint to dismiss claims for

property damage, nuisance and/or medical monitoring in order to participate in this Class Action Settlement and continue such action only for personal injury or a spousal derivative claim, Defendant hereby waives and agrees not to assert a defense of claim-splitting in such individual action.

- j. Construction. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any of the Parties based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by one of the Parties. The Parties agree that the language in all parts of this Agreement shall be construed as a whole, according to its fair meaning. Any captions, titles, headings, or subheadings in this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- k. Execution. This Agreement may be executed in counterparts, including via electronic signature, and shall be binding once all Parties have executed the Agreement. The Parties further agree that signatures provided by portable document format (PDF) or other electronic transmission shall have the same force and effect as original signatures.
- l. Dispute Resolution. The Parties will attempt to resolve any disputes regarding this Agreement in good faith. If unable to so resolve a dispute, the Parties will refer the matter to the New York State Supreme Court, Rensselaer County for resolution.
- m. No Liability. No Person shall have any claim against any Plaintiffs, Settlement Class Members, Class Counsel, Released Parties, counsel for Defendant, the General Administrator, or the Medical Monitoring Administrator based on actions that any Plaintiffs, Settlement Class Members, Class Counsel, Released Parties, counsel for Defendant, the General Administrator, or the Medical Monitoring Administrator were required or permitted to take under this Agreement, the Notice Approval and Scheduling Order, or the Final Approval Order. No Person shall have any claim against any Released Parties or counsel for Defendant related to administration of the Settlement, including the Medical Monitoring Program or the allocation or distribution of the Settlement Funds. No Person shall have any claim against Plaintiffs, Class Counsel, the General Administrator, or the Medical Monitoring Administrator related to the administration of the Settlement (including making payments to Settlement Class Members), except for in the presence of proven willful misconduct. No Person shall have any claim against Class Counsel, the General Administrator, the Medical Monitoring Administrator, the Released Parties, or counsel for Defendant related to representations made by a parent or guardian pursuant to Section 15(a) or by a parent, guardian, or legal representative on the Claim Form regarding a Minor, incompetent, or deceased Settlement Class Member, including without limitation purported inaccuracies or misstatements regarding the parent's, guardian's, or legal representative's legal relationship to and authority relative to that Settlement Class Member.
- n. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter thereof, and it supersedes all prior and contemporaneous

oral and written agreements and discussions among them on that subject matter. The Settlement is not subject to any condition, representation, warranty, or inducement not expressly provided for herein, and, except as identified in Section 17, there exist no collateral or oral agreements, promises, conditions, representations, warranties, or inducements among any of the Parties, Class Counsel, Defendant, or counsel for Defendant relating to the subject matter of the Agreement that supersede or supplement the Agreement.

- o. Deadlines. If the last date for the performance of any action required or permitted by this Agreement falls on a Saturday, Sunday, or Court or public holiday, that action may be performed on the next business day as if it had been performed within the time period provided for performance of the action.
- p. Reasonable Extensions. Unless the Court orders otherwise, the Parties may agree in writing to any reasonable extensions of time to carry out any of the provisions of this Agreement.
- q. Notices. Any notice, demand, or other communication under this Agreement (other than the Class Notice) shall be in writing and shall be deemed duly given if it is addressed to the intended recipient as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed email, or delivered by reputable express overnight courier:

To Plaintiffs or Settlement Class Members:

Stephen G. Schwarz  
Faraci Lange, LLP  
28 E. Main Street, Suite 1100  
Rochester, NY 14614  
[sschwarz@faraci.com](mailto:sschwarz@faraci.com)

James J. Bilsborrow  
Seeger Weiss LLP  
55 Challenger Road  
Ridgefield Park, NJ 07660  
[jbilsborrow@seegerweiss.com](mailto:jbilsborrow@seegerweiss.com)

To Defendant:

Ann Marie Duffy  
Hollingsworth LLP  
1350 I Street, NW  
Washington, DC 20005  
(202) 898-5800  
[aduffy@hollingsworthllp.com](mailto:aduffy@hollingsworthllp.com)

Corporate Counsel  
Taconic  
136 Coonbrook Road  
Petersburgh, NY 12138  
(518) 658-3202

Any notice required to be sent to the General Administrator shall be delivered to his, her, or its official business address.


- r. Waiver. The provisions of this Agreement may be waived only by written agreement signed by the waiving party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach of this Agreement.
- s. Materiality of Appendices and Exhibits. All of the Appendices and Exhibits to the Settlement Agreement are material and integral parts hereof.
- t. Severability. The provisions of this Agreement are not severable, except as provided in the Agreement.
- u. Third-Party Beneficiaries. This Agreement does not create any third-party beneficiaries, except Settlement Class Members and the Released Parties other than Defendant, who are intended third-party beneficiaries.
- v. Force Majeure. The failure of any Party to perform any of its obligations hereunder shall not subject any Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by Acts of God, fires, accidents, pandemics, other natural disasters, interruptions or delays in communications or transportation, labor disputes or shortages, shortages of material or supplies, governmental laws, rules or regulations of other governmental bodies or tribunals, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

[SIGNATURES ON NEXT PAGE]



**APPROVED AND AGREED TO:**

**Plaintiff Jay Burdick,**

  
Date: 9/27/21

**Plaintiff Emily Marpe, as parent and  
natural guardian of ~~CH~~, infant**  
*E.Y. and G.Y. 4w*

 9/27/21  
Date: \_\_\_\_\_

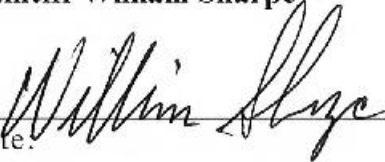
**Plaintiff Connie Plouffe**

\_\_\_\_\_  
Date: \_\_\_\_\_

**Plaintiff Jacqueline Monette,**

  
Date: \_\_\_\_\_

**Plaintiff William Sharpe**

 9/27/21  
Date: \_\_\_\_\_

**Plaintiff Edward Perrotti-Sousis**

\_\_\_\_\_  
Date: \_\_\_\_\_

**Plaintiff Mark Denué**

\_\_\_\_\_  
Date: \_\_\_\_\_

**Plaintiff Megan Dunn**

\_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AND AGREED TO:**

**Plaintiff Jay Burdick,**

\_\_\_\_\_  
Date:

**Plaintiff Emily Marpe, as parent and  
natural guardian of O.H., infant**

\_\_\_\_\_  
Date:

**Plaintiff William Sharpe**

\_\_\_\_\_  
Date:

**Plaintiff Mark Denué**

*Mark Denué*  
\_\_\_\_\_  
Date:

*9-30-2021*

**Plaintiff Connie Plouffe**

*Constance J. Plouffe*  
\_\_\_\_\_  
Date:

*9/27/2021*

**Plaintiff Jacqueline Monette,**

\_\_\_\_\_  
Date:

**Plaintiff Edward Perrotti-Sousis**

*Edward Perrotti-Sousis*  
\_\_\_\_\_  
Date:

*9/27/21*

**Plaintiff Megan Dunn**

*Megan J. Dunn*  
\_\_\_\_\_  
Date:

*9/30/2021*


**Class Counsel**

\_\_\_\_\_  
By: **Stephen G. Schwarz**

Date:

\_\_\_\_\_  
By: **Hadley Lundback Matarazzo**

Date:

  
\_\_\_\_\_  
By: **James J. Bilsborrow**

Date: *10/1/2021*

**Defendant Tonoga, Inc. (d/b/a Taconic)**

\_\_\_\_\_  
By: **Timothy Kosto**

Position:

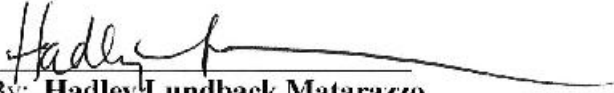
Date:

**Class Counsel**



By: **Stephen G. Schwarz**

Date: 9/27/2021



By: **Hadley Lundback Matarazzo**

Date:

By: **James J. Bilsborrow**

Date:

**Defendant Tonoga, Inc. (d/b/a Taconic)**

By: Timothy Kosto

Position:

Date:

