

UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 1:20-CV-00737

**STIPULATION AND AGREEMENT OF SETTLEMENT**

Plaintiff Joshua J. Angel (“Plaintiff”) and Defendant the United States (“Defendant”) (each individually a “Party” and collectively, the “Parties”), through their respective counsel of record in the above-captioned litigation (the “Action”) pending in the United States Court of Federal Claims (the “Court”), hereby make and enter into this Stipulation and Agreement of Settlement (the “Settlement Agreement”).<sup>1</sup> The Parties intend that the Settlement Agreement fully, finally, and forever resolve, discharge, release and settle the Settled Plaintiff Claims (as defined below) and the Settled Defendant Claims (as defined below), upon and subject to the terms and conditions hereof and filing with the Court as an attachment to the Joint Status Report (defined below).

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<sup>1</sup> This Settlement Agreement does not require Court approval. However, because it purposefully confers certain substantial and valuable benefits to all present holders of junior preferred shares in Federal National Mortgage Association (“Fannie Mae”) and/or the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, the “GSEs”), and although the Settlement Agreement is made solely between Joshua J. Angel, on his own behalf, and Defendant on its behalf, the Parties to attach the Settlement Agreement as an Exhibit to the Joint Status Report rather than in a separate Court filing.

**WHEREAS:**

A. Plaintiff holds *non-cumulative* junior preferred shares (collectively, “Junior Preferred Shares”) of the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, the “GSEs”);

B. On June 12, 2020, Plaintiff, on behalf of himself and all others similarly situated, filed, *pro se*, a putative class action complaint against Defendant (the “Complaint”);

C. The Complaint alleges Defendant’s conduct and activities were instrumental in the creation of a general market perception of the GSEs’ debt and equity securities (collectively, including Junior Preferred Shares, “GSE Securities”) being risk free, by virtue, *inter alia*, of: (a) the GSEs’ government charters; (b) the GSE Securities’ exemption from regulation under the Securities Act of 1933 and the Securities Exchange Act of 1934, and the GSE Securities’ designation under those acts as

“government securities”<sup>2</sup>; and (c) a federal government’s general fostering of a public financial market understanding of a legally binding, federal government implicit guarantee of timely payment, for the GSE Securities (the “Implicit Guarantee”);

D. On September 6, 2008, the GSEs were placed into conservatorship, and the conservator, the Federal Housing Finance Agency (“FHFA”), on behalf of the GSEs, entered into identical Senior Preferred Stock Purchase Agreements (“SPSPAs”) with the United States Department of the Treasury (“Treasury”), pursuant to which the GSEs each issued their own Senior Preferred Shares (collectively, “Senior Preferred Shares”) to Treasury in exchange for Treasury cash infusions into the GSEs, totaling in time approximately \$189 billion;

E. At all times, the sole holder of Senior Preferred Shares was and is Treasury;

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<sup>2</sup> On September 7 and 11, 2008, Treasury officials issued a statement wherein, and whereby the Implicit Guarantee of GSEs securities payment was made explicit stating, “Contracts are respected in this country as a fundamental part of rule of law”). The federal government Implicit Guarantee of GSEs financial obligations was critical to the GSEs’ ability to market, and successfully sell, hundreds of billions of dollars of GSEs guaranteed mortgage backed securitized debt (“MBS”), and approximately \$22 billion of GSEs Junior Preferred Shares, as riskless perpetual capital suitable for financial institution as tier one capital in the pre-conservatorship period of less than one year, beginning late 2007 through May 2008. Fannie Mae’s ability, in May 2008, to sell \$4.8 billion of 8.75% mandatory convertible Junior Preferred shares, four months prior to the Company’s September 6, 2008 entry into conservatorship, was the undoubted result of market acceptance, and reliance on the government Implicit Guarantee of Junior Preferred Share payments. *See* W. Scott Frame, *The 2008 Federal Intervention to Stabilize Fannie Mae and Freddie Mac*, Federal Reserve Bank of Atlanta (2009); Tara Rice & Jonathan Rose, *When Good Investments Go Bad: The Contraction of Community Bank Lending After the 2008 GSE Takeover*, Board of Governors of the Fed. Res. Sys., Int’l Fin. Discussion Papers 1045 (2012); Comptroller of the Currency Administrator of National Banks Interpretive Letter #931, April 2002 <http://www.occ.gov/static/interpretations-and-precedents/apr02/int931.pdf>.

F. Section 5.1 of the SPSPAs require the GSEs' respective Board of Directors to obtain Treasury's "prior written consent" before the GSEs' respective Board of Directors may "declare or pay any dividend" (other than the Senior Preferred Dividend), and before the GSEs' Board of Directors "set aside any amount for any such purpose." In other words, under Section 5.1 of the SPSPAs, the GSEs' respective Board of Directors were still permitted each quarter to declare or pay any dividend on Junior Preferred Shares ("Junior Preferred Dividend") or set aside any funds to do so, with Treasury's prior written consent;

G. The SPSPAs, and the first and second amendments thereto (respectively the "First Amendment" and the "Second Amendment"), defined the dividend amount for Senior Preferred Shares (the "Senior Preferred Dividend") to mean ten percent of the then-current liquidation preference (i.e., 10% of par value);

H. On August 17, 2012, FHFA (on behalf of the GSEs) and Treasury entered into a third amendment to the SPSPAs (the "Third Amendment"). The Third Amendment included a so-called "Net Worth Sweep" provision, which set the Senior Preferred Dividend for each GSE as equal to each GSE's profit for the immediately preceding fiscal quarter;

I. The Third Amendment did not eliminate the GSEs' respective Board of Directors' power and obligation to declare Junior Preferred Dividends or set aside any funds to do so;

J. According to the Complaint, the GSEs' respective Board of Directors had a contractual duty under the GSEs' respective Junior Preferred Shares' certificates of

designation (“CODs”) to evaluate, on a quarterly basis, whether a Junior Preferred Dividend is warranted and, if so, in compliance with Section 5.1 of the SPSPAs, to seek Treasury’s consent to declare a Junior Preferred Dividend.

K. According to the Complaint, beginning with the January 2013 GSE fiscal quarter, and recurring each quarter to date thereafter, Treasury instructed the GSEs’ respective Board of Directors *not even to seek* Treasury’s prior written consent to declare a Junior Preferred Dividend;

L. The Complaint further alleges that each instance of the Treasury’s directing the GSEs’ directors not to seek Treasury prior written consent to declare a Junior Preferred Dividend is a separately actionable breach of the Defendant’s Implicit Guarantee of Junior Preferred Shares payments and the shares’ covenant of good faith and fair dealing as contained therein;

M. According to the Complaint, Treasury’s alleged quarterly breaches served to inflate the quarterly profit amount available for Net Worth Sweep and Senior Preferred Dividend payment by approximately \$18,000,000,000 from January 2013 through the Agreement “Effective Date” (defined below). The Complaint further alleges that holders of Junior Preferred Shares were damaged by approximately \$18,000,000,000 through the Effective Date in combination of undeclared Junior Preferred Dividends, together with interest, costs and attorney’s fees;

N. On August 18, 2020, Defendant filed a motion to dismiss the Complaint (“MTD”) asserting: (i) lack of subject matter jurisdiction based on Tucker Act statute of limitations provisions, and (ii) failure to state a claim for which relief may be

granted. Specifically Defendant contended that: (a) Plaintiff's claims are time-barred because they were not bought within six years of the enactment of the Third Amendment and (b) Plaintiff's lack of privity to state a claim for Defendant's breach of the Implicit Guarantee. In connection therewith, Defendant has also taken the position that the present Action is not a class action on the grounds that a class action may not be brought by a *pro se* plaintiff;<sup>3</sup>

O. On September 17, 2020, Plaintiff filed a motion for a stay of further briefing for Defendant's MTD (the "Motion for a Continuance") to permit Plaintiff to obtain jurisdictional and substantive discovery to refute Defendant's statute of limitations and lack of subject matter jurisdiction arguments and Defendant's argument that the Complaint fails to state an actionable claim based on the Implicit Guarantee.

P. On September 18, 2020, having considered the Motion for a Continuance, the Court issued an order suspending briefing on Defendant's MTD, pending further order;

Q. On September 30, 2020, Defendant filed an unopposed motion for an enlargement of time in which to reply to the Motion for a Continuance until October 30, 2020.

R. On October 27, 2020, Plaintiff filed an unopposed motion requesting the Court temporarily suspend briefing on the Motion for a Continuance (the "Suspension

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<sup>3</sup> For sake of clarity, Plaintiff is no longer proceeding *pro se*. As of December 22, 2020, Plaintiff hired Professor David G. Epstein, Lewis Kruger, Esq., and Jason A. D'Angelo of Herrick, Feinstein LLP (collectively, the "Counsel Group") to serve with him as counsel. On January 4, 2021, the Court entered a consensual order substituting Joshua J. Angel of Joshua J. Angel PLLC ("Angel PLLC") as Plaintiff's lead counsel ("Lead Counsel") in place of Joshua J. Angel *pro se*.

Motion”) until after Supreme Court of the United States (“SCOTUS”) issues its decision in the *Mnuchin v. Collins*, and *Collins v. Mnuchin* cases (collectively, “Collins”). *Collins* is one of several major cases filed in federal courts (the “Third Amendment Challenge Actions”) seeking the invalidation of the Third Amendment on the alleged basis that enactment of the Third Amendment itself was a breach of the FHFA statutory powers grant under the Housing and Economic Recovery Act of 2008 (“HERA”);

S. As set forth in the Suspension Motion, while the Plaintiff’s claims of government breach of Junior Preferred Shares contractual covenants are not based on the enactment of the Third Amendment, the Complaint and *Collins* are nevertheless tangentially linked by questions likely to be addressed by SCOTUS when it issues its decision in *Collins*;

T. On October 27, 2020, the Court granted the Suspension Motion and ordered the Parties to submit a joint status report (“Joint Status Report”) for further proceedings 30 days after SCOTUS issues its decision in *Collins*;

U. On June 22, 2021, the Supreme Court issued its decision in *Collins*. As expected, the decision was favorable to the government in that action and helpful to resolving certain issues in the present Action.

V. In another related case, *Fairholme v. United States* (“Fairholme”), the government requested that the Federal Circuit dismiss the plaintiff’s interlocutory appeal of a related CFC decision. In light of the fact that the anticipated government success in that action would also be helpful to resolving issues in the present Action,

on July 27, 2021, the Court, at the Parties request, further extended the time to file a Joint Status Report until 30 days after the Federal Circuit issues its decision regarding the interlocutory Fairholme Appeal. That appeal was heard on August 4, 2021.

W. Plaintiff and his counsel and Defendant and its counsel, diligently investigated the claims, defenses, and underlying events and transactions that are the subject of the Action. This process has included analyzing, among other things, publicly filed documents and records, investigative reports, and news stories; and reviewing and corroborating the allegations and developments;

X. Defendant denies and continues to deny that it has committed any act or omission giving rise to any liability and/or violation of law. Defendant has denied and continues to deny each and every one of the claims and allegations asserted in the Action, including all claims in the Complaint. Defendant also has denied and continues to deny that it made any material misstatements or omissions, that Plaintiff (or similarly situated Persons) have suffered any damages, or that Plaintiff (or similarly situated Persons) were harmed by any conduct alleged in the Action or that could have been alleged therein. Defendant has asserted and continues to assert that, at all times, it acted in good faith and in a manner it reasonably believed to be in accordance with applicable rules, regulations, and laws. This Settlement Agreement, whether or not consummated, nor any of its terms nor any proceedings relating thereto, shall not be construed as, or deemed to be evidence of, an admission or concession on the part of Defendant with respect to any claim of any fault or wrongdoing or damage whatsoever, or of any infirmity in any defense that Defendant



has or could have asserted. Defendant does not admit any liability or wrongdoing in connection with the allegations set forth in the Action, or any facts related thereto;

Y. Defendant has determined that, taking into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Action, it is desirable and beneficial to Defendant that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement to avoid the further expense, inconvenience, and burden of this Action, the distraction and diversion of personnel and resources, and to obtain the conclusive and final dismissal and/or release of this Action;

Z. Based on their investigation and review of the claims, underlying events, and transactions alleged in this Action, Plaintiff and the Counsel Group believe that the claims asserted in the Action have merit. Nonetheless, Plaintiff and the Counsel Group recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant, including the inherent uncertainties and risks of any complex litigation, including discovery issues, enforcing a judgment and collecting from Defendant. Thus, after weighing the substantial and immediate benefits that Plaintiff will receive under this Settlement Agreement (and the substantial benefits that other holders of Junior Preferred Shares will receive as well), against the risks, costs and uncertainties of further litigation, Plaintiff and the Counsel Group believe that the terms and conditions of this Settlement Agreement are fair, reasonable and adequate, and are in Plaintiff's best

interest (and also inure to the substantial benefit of other holders of Junior Preferred Shares);

AA. On the date set forth below for signature execution, the Parties agreed to settle all claims in the Action, as set forth below;

**NOW THEREFORE**, without any admission or concession whatsoever on the part of Plaintiff of any lack of merit of the Action, and without any admission or concession whatsoever on the part of Defendant of any liability or wrongdoing on its part or of any lack of merit in its defenses, it is hereby STIPULATED AND AGREED, by and among the Parties to this Settlement Agreement, through their respective undersigned attorneys, and subject to approval of the Court that, in consideration of the immediate and substantial benefits flowing to the Parties hereto from the Settlement (and the substantial benefits flowing to holders of Junior Preferred Shares), all Settled Plaintiff Claims (as defined below) as against the Released Defendant Parties (as defined below) and all Settled Defendant Claims (as defined below) as against the Released Plaintiff Parties (as defined below) shall be compromised, settled, released, and dismissed with prejudice, and without costs, except for as agreed to herein, upon and subject to the below terms and conditions.

### **ADDITIONAL DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the following meanings:

- (a) “Person(s)” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, limited liability partnership, association,

joint stock company, limited liability company or corporation, variable interest entity, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, including his, her or its spouses, heirs, predecessors, successors, representatives, or assigns.

(b) “Released Defendant Parties” means the United States.

(c) “Released Plaintiff Parties” means Plaintiff and each and all of his past or present partners, insurers, co-insurers, reinsurers, attorneys, advisors, investment advisors, personal or legal representatives, agents, assigns, executors, estates, administrators, related or affiliated Persons or entities, predecessors, successors; Plaintiff’s immediate family members, spouses, children; and any trust of which Plaintiff is the settlor or which is for the benefit of any of his immediate family members.

(d) “Settled Defendant Claims” means all claims, debts, demands, rights, liabilities, sanctions, and causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether known or Unknown, whether based on federal, state, local, statutory, common or foreign law or any other law, rule or regulation, whether fixed or contingent, suspected or unsuspected, foreseen or unforeseen, ripened or unripened, accrued or unaccrued, liquidated or unliquidated, and whether matured or unmatured whether arising in equity or under the law of contract, tort, malpractice, statutory breach, or

any other legal right or duty, whether direct, class, individual representative, derivative, or in any other capacity, and to the fullest extent that the law permits their releases in this lawsuit that any Defendant may have against any Released Plaintiff Party that arise out of or relate in any way to the Action, the institution, prosecution, settlement or resolution of the Action or the Settled Defendant Claims. Defendant may hereafter discover facts other than or different from those which it now knows or believes to be true with respect to the subject matter of the Settled Defendant Claims. Nevertheless, Defendant shall expressly, fully, finally and forever settle and release, and upon the Effective Date, shall be deemed to have, and by operation of the Settlement Approval Order (defined below) shall have, fully, finally, and forever settled and released, any and all Settled Defendant Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Defendant acknowledges that the inclusion of Unknown claims in the definition of Settled Defendant Claims was separately bargained for and is a key element of the Settlement. Excluded from Settled Defendant Claims are claims based upon, relating to, or arising out of the interpretation or enforcement of the Settlement.

(e) “Settled Plaintiff Claims” means any and all claims, debts, demands, rights, liabilities, and causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages) interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever, whether known or Unknown (as defined below), whether based on federal, state, local, statutory, common or foreign law or any other law, rule or regulation, whether fixed or

contingent, suspected or unsuspected, foreseen or unforeseen, ripened or unripened, accrued or un-accrued, liquidated or unliquidated, and whether matured or unmatured whether arising at law or in equity or under the law of contract, tort, malpractice, statutory breach, or any other legal right or duty, whether direct, class, individual representative, derivative, or in any other capacity, and to the fullest extent that the law permits their releases in this lawsuit that Plaintiff (i) asserted in the Complaint, or (ii) could have asserted in the Action or any other forum against any of the Released Defendant Parties, which arise out of, or are based upon or related in any way to, the allegations, transactions, facts, reports, communications, matters or occurrences, representations or omissions involved in the Complaint. Plaintiff may hereafter discover facts other than or different from those which he now knows or believes to be true with respect to the subject matter of the Settled Plaintiff Claims. Nevertheless, Plaintiff shall expressly, fully, finally and forever settle and release, and upon the Effective Date, shall be deemed to have, and by operation of the Settlement Approval Order shall have, fully, finally, and forever settled and released, any and all Settled Plaintiff Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff acknowledges that the inclusion of Unknown claims in the definition of Settled Plaintiff Claims was separately bargained for and is a key element of the Settlement. Excluded from Settled Plaintiff Claims are claims based upon, relating to, or arising out of the interpretation or enforcement of the Settlement.

(f) “Settlement” means settlement of the Action on the terms set forth in this Settlement Agreement.

(g) “Approval Order” means the entry of an order by the United States Court of Federal Claims approving the dismissal of the Action.

(h) “Settlement Consideration” means the settlement consideration set forth in numbered paragraph 6 of the Settlement Agreement.

(i) “Unknown” means, as used in connection with claims, any and all Settled Plaintiff Claims against the Released Defendant Parties, which any Released Plaintiff Party does not know or suspect to exist in his, her or its favor as of the Effective Date (defined below), and any Settled Defendant Claims against the Released Plaintiff Parties, which any Released Defendant Party does not know or suspect to exist in his, her, or its favor as of the Effective Date, which if known by the Released Plaintiff Party or Released Defendant Party might have affected his, her, or its decision(s) with respect to the Settlement.

### **EFFECTIVE DATE OF SETTLEMENT**

1. Except as otherwise provided in numbered paragraph 2 of this Settlement Agreement, the effective date of Settlement Agreement (“Effective Date”), shall be the date on which the Parties file this fully executed Settlement Agreement, as an attachment to the Joint Status Report.

2. The terms and conditions of this Settlement Agreement are to remain confidential between the Parties and shall not be disclosed to anyone or any entity until filed in Court by the Parties as an Exhibit to the Joint Status Report.

3. In the event the Effective Date, as defined in numbered paragraphs 1 or 2 of this Settlement Agreement, fails to occur for any reason, the Parties shall be deemed to have reverted to their respective litigation positions in the Action as of the execution date of this Settlement Agreement and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered. In such event, this Settlement Agreement, and any aspect of the discussions or negotiations leading to this Settlement Agreement shall not be admissible in this Action and shall not be used against or to the prejudice of Defendant or against or to the prejudice of Plaintiff or any putative or certified class, in any court filing, deposition, at trial, or otherwise.

#### **SCOPE AND EFFECT OF SETTLEMENT**

4. The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (a) the Action against Defendant, (b) any and all Settled Plaintiff Claims, and (c) any and all Settled Defendant Claims.

5. (a) Upon the Effective Date, Plaintiff: (i) shall be deemed to have, and by operation of their consensual filing of the Settlement Agreement with the Court to have fully, finally, and forever waived, released, relinquished, and discharged all Settled Plaintiff Claims; (ii) shall forever be enjoined from prosecuting any Settled

Plaintiff Claims against any of the Released Defendant Parties; and (iii) agrees and covenants not to sue any of the Released Defendant Parties on the basis of any Settled Plaintiff Claims, or, unless required by subpoena or other operation of law, to assist any third party in commencing or maintaining any suit against the Released Defendant Parties related to any Settled Plaintiff Claims.

(b) Upon the Effective Date, Defendant: (i) shall be deemed to have, and by operation of their consensual filing of the Settlement Agreement with the Court to have fully, finally, and forever waived, released, relinquished, and discharged each all Settled Defendant Claims, (ii) shall forever be enjoined from prosecuting the Settled Defendant Claims against any of the Released Plaintiff Parties; and (iii) agrees and covenants not to sue any of the Released Plaintiff Parties on the basis of any Settled Defendant Claims or, unless required by subpoena or other operation of law, to assist any third party in commencing or maintaining any suit against the Released Plaintiff Parties related to any Settled Defendant Claims.

### **THE SETTLEMENT CONSIDERATION**

6. In consideration of the releases provided herein, and in full settlement of the Settled Plaintiff Claims, Defendant:

a. shall, as soon as practicable after the Effective Date, cause each GSE's respective Board of Directors to make a declaration of a Junior Preferred Dividend equal to the respective GSE's total appropriate dividends that were either undeclared or by agreement subject to being declared in regular course between January 1, 2013 and the Effective Date (respectively, the "Fannie Mae Dividend Declaration Amount")



and the “Freddie Mac Dividend Declaration Amount,” and collectively, the “Total Dividend Declaration Amount”);

b. shall, as soon as practicable following the Effective Date cause: (i) Fannie Mae as of December 31, 2021 to transfer balance sheet capital reserve amounts, with all future legal entitlements inherent therein, from Fannie Mae Senior Preferred Shares to Fannie Mae Junior Preferred Shares in an amount exactly equal to the Fannie Mae Dividend Declaration Amount, and (ii) Freddie Mac as of December 31, 2021 to transfer balance sheet capital reserve amounts, with all future legal entitlements inherent therein, from Freddie Mac Senior Preferred Shares to Freddie Mac Junior Preferred Shares in an amount exactly equal to the Freddie Mac Dividend Declaration Amount; and

c. shall pay attorney’s fees to Joshua J. Angel PLLC equal to two percent (2%) of the Total Dividend Declaration Amount (“Attorney’s Fees”), as soon as practicable after the Effective Date. To be clear, the Attorney’s Fees are separate and apart from Defendant’s obligations set forth in subparagraphs (a) – (b) of this numbered paragraph 6 of the Settlement Agreement and shall not offset, reduce or otherwise impact Defendant’s obligations set forth in subparagraphs (a) – (b) of this numbered paragraph 6 of the Settlement Agreement. The Attorney’s Fees shall be distributed among Joshua J. Angel PLLC and the Counsel Group in accordance with their separate agreement dated December 22, 2020 and any addendums thereto. Defendant bears no responsibility for the distribution of the Attorney’s Fees among counsel for Plaintiff after they have been received by Joshua J. Angel PLLC. Once

paid, the respective GSE payment shall be reflected on the payee's books and records in exact expense reduction of the New Worth Sweep payment otherwise due for the fiscal quarter in which it was rendered.

7. In consideration of the releases provided herein, and in full settlement of the Settled Defendant Claims, Plaintiff shall, within 2 business days after the Effective Date, request the voluntary dismissal of the Action, with prejudice, by Court order pursuant to RCFC 41(a)(2).

8. In further consideration of the releases provided herein, and in full settlement of the Settled Plaintiff Claims and the Settled Defendant Claims, the Parties agree to jointly request that the Court retain jurisdiction over the Settlement Agreement upon the voluntary dismissal of the Action by the Court pursuant to RCFC 41(a)(2).

9. The Parties agree that this Settlement Agreement shall not be deemed to be modified or amended, nor any of its provisions waived, except by a further writing signed by the Parties or their respective successors.

**NO ADMISSION OF WRONGDOING**

10. Defendant denies that it has committed any act or omission giving rise to any liability and/or violation of law, and states that it is entering into this Settlement to eliminate the burden and expense of further litigation. This Settlement Agreement, whether or not consummated, including any and all of its terms, provisions, exhibits, and prior drafts, and any negotiations or proceedings related or taken pursuant to it:

(a) shall not be offered or received against Defendant as evidence of a presumption, concession, or admission by Defendant with respect to the truth of any fact alleged by Plaintiff or the validity of any claim that has been or could have been asserted in the Action or any litigation; or the deficiency of any defense that has been or could have been asserted in the Action or any litigation;

(b) shall not be offered or received against Defendant as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court and becomes effective pursuant to its terms, Defendant may refer to it to effectuate the liability protection granted them hereunder;

(c) shall not be construed as or received in evidence as an admission, concession, or presumption against Plaintiff or any putative or certified class that any of their claims are without merit, or that any defenses asserted by Defendant have any merit, or that damages recoverable under the Complaint would not have exceeded the Settlement Consideration; and

(d) notwithstanding the foregoing, Defendant, Plaintiff and/or the Counsel Group may file the Settlement Agreement in any action that may be brought against Defendant, Plaintiff and/or the Counsel Group to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,

judgment bar or reduction, offset or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **MISCELLANEOUS PROVISIONS**

11. The Parties to this Settlement Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiff against the Released Defendant Parties with respect to the Action and the Settled Plaintiff Claims, and of all disputes asserted or which could be asserted by Defendant against the Released Plaintiff Parties with respect to the Action and the Settled Defendant Claims. Accordingly, Plaintiff and Defendant agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant in bad faith or without a reasonable basis. The Parties and their respective counsel hereto further agree that each has complied fully with Rule 11 of the Rules of the United States Court of Federal Claims (and all similar federal, state, local or court rules), and agree not to assert in any judicial proceeding that any Party or their respective counsel violated Rule 11 of the Rules of the United States Court of Federal Claims (and all similar federal, state, local or court rules), in connection with the commencement, maintenance, defense, litigation, and/or resolution of the Action. The Parties agree that the Settlement Consideration and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties and their respective counsel and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

12. This Settlement Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties hereto or their respective successors.

13. The headings herein are used for the purpose of convenience only and are not intended to have and do not have any legal effect.

14. The Court shall retain jurisdiction for the purpose of entering orders relating to the implementation and the enforcement of the terms of this Settlement Agreement.

15. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other breach of this Settlement Agreement.

16. This Settlement Agreement constitutes the entire agreement among the Parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any Party hereto concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized herein.

17. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts. Signatures sent by facsimile or pdf via email by any member of the Counsel Group or Defendant's counsel shall be deemed originals.

18. Plaintiff represents and warrants that it has not assigned, pledged, loaned, hypothecated, conveyed, or otherwise transferred, voluntarily or involuntarily, to any other person or entity the Settled Plaintiff Claims, or any interest in or part or portion thereof, specifically including any rights arising out of the Settled Plaintiff Claims.

19. Defendant represents and warrants that it has not assigned, pledged, loaned, hypothecated, conveyed, or otherwise transferred, voluntarily or involuntarily, to any other person or entity the Settled Defendant Claims, or any interest in or part or portion thereof, specifically including any rights arising out of the Settled Defendant Claims.

20. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, heirs, and legal representatives of the Parties hereto. No assignment shall relieve any Party hereto of obligations owed hereunder.

21. The Parties may agree, in writing, to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

22. The construction, interpretation, operation, effect, and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the federal laws of the United States.

23. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of

arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

24. Each counsel and each other person executing this Settlement Agreement or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

25. The Counsel Group and Defendant's counsel agree to cooperate fully with one another in seeking Court approval of the Settlement Agreement, and of the Settlement, and in consummating the Settlement in accordance with its terms, and further agree to promptly agree upon and execute all such other documentation as may be reasonably required do so.

26. All proceedings in this Action shall be stayed and all statutes of limitations tolled until the Settlement Agreement has been filed with the Court as an Exhibit to the Joint Status Report.

27. Except as otherwise provided herein, each Party shall bear its own costs.

28. By entering into this Settlement Agreement, Defendant waives any potential defenses relating to service of process in connection with the effectuation of this Settlement of this Action.

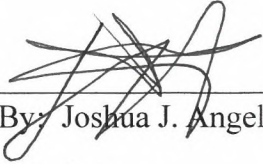
Dated As Of : January \_\_, 2022  
District of Columbia

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