

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Settlement Agreement” or “Agreement”) is made and entered into by Plaintiffs Alabama Doe 1, Alabama Doe 2, Indiana Doe, Missouri Doe, and Florida Doe (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class defined below, and Defendant Gilead Sciences, Inc. (“Gilead”). Plaintiffs and Gilead are collectively referred to herein as the “Parties.”

### **RECITALS**

A. On September 1, 2020, Plaintiffs Alabama Doe 1, Indiana Doe, and Missouri Doe filed a Class Action Complaint captioned *Alabama Doe, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699, in the Superior Court of the State of California, for the County of San Mateo (the “Litigation”). Plaintiffs are represented by Berger Montague PC (“Berger Montague”), Langer, Grogan & Diver PC (“LGD”), and the AIDS Law Project of Pennsylvania (“AIDS Law Project”), a nonprofit legal organization whose mission is to represent and advocate for clients who are living with HIV and AIDS. Berger Montague, LGD, and AIDS Law Project are collectively referred to herein as “Co-Lead Class Counsel.”

B. Plaintiffs alleged in their Class Action Complaint that confidential medical information belonging to Plaintiffs and the Settlement Class Members was disclosed by Gilead to third parties through a mailing of an envelope with the words “HIV Prevention Team” on the face of the envelope in the return address (the “Mailer”). The Class Action Complaint further alleged that Gilead was responsible for all harm caused by the Mailer under various theories of liability.

C. On April 13 and 14, 2021, the Parties participated in two full-day mediation sessions conducted via Zoom by an experienced California mediator, Jill Sperber, Esq., to determine whether Plaintiffs’ claims could be resolved. Prior to and during the mediation process, Gilead produced documents and information requested by Co-Lead Class Counsel to ensure that any potential settlement would be informed by relevant discovery and based on an adequate factual record. In addition, Co-Lead Class Counsel continued to conduct their own independent factual and legal investigation of the case.

D. Gilead’s production of documents and information to Co-Lead Class Counsel for purposes of the mediation included, for example: (1) documents regarding the Mailer; (2) documents and data identifying the size and geographic location of all Settlement Class Members; (3) documents evidencing Gilead’s policies and procedures regarding printing/ mailing confidential medical information; (4) complaints received about the Mailer from recipients; and (5) iterations of the Advancing Access enrollment form.

E. The April 2021 mediation did not result in a settlement and the Parties resumed litigation and formal discovery efforts. On August 25, 2021, Plaintiffs filed a First Amended Complaint (the “Complaint”) that added Plaintiffs Alabama Doe 2 and Florida Doe, and added Lahlouh, Inc. as an additional defendant. On September 17, 2021, Gilead filed its General Denial and Affirmative Defenses to the Complaint. Plaintiffs subsequently agreed to

dismiss the claims against Lahlouh, Inc. without prejudice following Lahlouh's production of documents. The Court granted Plaintiffs' request to dismiss Lahlouh on February 23, 2022.

F. As part of the Parties' formal discovery efforts in the Litigation, Gilead and Plaintiffs each responded to written discovery requests and produced documents, including the production of thousands of documents by Gilead. Certain Plaintiffs were also deposed. The Parties also engaged in numerous meet-and-confer conferences to negotiate various discovery issues, and Gilead filed a motion to compel, which the Court granted.

G. In March 2022, following the above extensive discovery efforts, the Parties resumed their settlement discussions, and Plaintiffs, through their counsel, and Gilead, through its counsel, engaged in arm's-length settlement negotiations.

H. Gilead represents that it no longer uses the term "HIV Prevention Team" in the return addresses or otherwise on the face of the envelopes sent to individuals enrolled in Gilead's Advancing Access Program.

I. Gilead does not admit that it is liable to Plaintiffs and the Settlement Class for the claims, damages, harm, causes of action, costs, expenses, and attorneys' fees asserted in the Litigation and/or related to the sending of the Mailer; denies all allegations by Plaintiffs; and further has asserted numerous legal and factual defenses against Plaintiffs' claims. Nonetheless, Gilead has concluded, in light of the costs, risks, and burden of litigation, that this Settlement Agreement is in the interest of all parties.

J. Plaintiffs, through their undersigned counsel, represent that they have made a thorough and independent investigation of the facts and law relating to the allegations in the Complaint, including, without limitation: (1) interviews by Co-Lead Class Counsel of the Plaintiffs; (2) the review and analysis by Co-Lead Class Counsel of the documents, data, and information produced by Gilead as part of the Parties' mediation process and as part of formal discovery in the Litigation; (3) documents produced by Lahlouh, Inc.; (4) the depositions that were taken by Gilead of several Plaintiffs; and (5) extensive factual investigation and legal research by Co-Lead Class Counsel with respect to the claims and defenses in the Litigation. After careful consideration, Plaintiffs and their undersigned counsel represent that they have concluded that it is in the best interests of the Settlement Class to settle the Released Claims against the Released Parties for the consideration set forth in this Settlement Agreement, and this Settlement Agreement is the result of arm's-length negotiations including the mediation process described above. Plaintiffs and Co-Lead Class Counsel have also considered, among other things: (1) the complexity, expense and likely duration of the litigation if it was litigated through trial and appeals; (2) the stage of the litigation and amount of fact gathering completed; (3) Gilead's factual and legal arguments and defenses and the potential for Gilead to prevail on the merits with respect to class certification, liability, and/or damages; and (4) the range of possible recovery, and have determined that the proposed resolution of Plaintiffs' individual and class action claims as set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class. Plaintiffs and Co-Lead Counsel represent that they are not aware of any member of the Settlement Class that has expressed an interest in opting out of the settlement.

K. The Parties desire to settle, compromise, and resolve fully all Released Claims, and to seek the Court’s review and approval of the Settlement Agreement.

NOW, THEREFORE, the foregoing recitals are expressly incorporated into this Settlement Agreement, and in consideration of the agreements set forth in this Settlement Agreement, this Litigation shall be settled and compromised under the following terms and conditions.

**SECTION 1**  
**DEFINITIONS**

1.1 The following terms used in this Settlement Agreement shall have the meanings ascribed to them below for purposes of this Settlement Agreement:

A. “Claimant” means a Settlement Class Member who submits a Claim Form.

B. “Claimant Award” means the amount of money that is paid by the Settlement Administrator out of the available Net Settlement Fund to each Claimant who submits a valid and timely Claim Form.

C. “Claim Form” means the Claim Form attached as Exhibit A hereto that Settlement Class Members may complete to make a claim for harm they experienced as a result the Mailer in addition to the Base Payment defined in Paragraph 4.2(a) below.

D. “Claim Period” shall mean the time period of sixty (60) days after the date that notice of this Settlement is issued by the Settlement Administrator to submit a Claim Form.

E. “Class Representatives” or “Plaintiffs” mean Alabama Doe 1, Alabama Doe 2, Indiana Doe, Florida Doe, and Missouri Doe.

F. “Co-Lead Class Counsel” means Shanon J. Carson, John Albanese, and Sophia Rios of Berger Montague; John Grogan and Kevin Trainer of LGD, and Ronda B. Goldfein, Yolanda French Lollis, and Adrian Lowe of AIDS Law Project.

G. “Complaint” means the First Amended Complaint filed in the Litigation on August 25, 2021.

H. “Counsel for Gilead” means Kenneth L. Chernof, Angel Tang Nakamura, Stephanie N. Kang, Alexander S. Altman, David B. Schwartz, and Hannah R. Coleman of Arnold & Porter Kaye Scholer LLP.

I. “Court” means the Superior Court of the State of California, San Mateo County.

J. “Effective Date” means the day following the date of the Court’s Final Approval Order and Judgment approving the Settlement Agreement if there are no objectors, and

if there are any objectors, means (i) the day following the expiration of the deadline for appealing the entry by the Court of the Final Approval Order and Judgment approving the Settlement Agreement, if no appeal is filed; or (ii) if an appeal of the Final Approval Order and Judgment is filed, the date upon which all appellate courts with jurisdiction affirm such Final Approval Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

K. “Final Approval Hearing” means the hearing scheduled by the Court to consider the fairness, reasonableness, and adequacy of this Settlement Agreement, and to determine whether a Final Approval Order and Judgment should be entered.

L. “Final Approval Date” means the date on which the Court enters the Final Approval Order and Judgment.

M. “Final Approval Order” means the Final Approval Order and Judgment entered by the Court.

N. “Net Settlement Fund” means the amount of money remaining in the Settlement Fund after the following amounts are subtracted as approved by the Court in its Final Approval Order: (1) any service awards to the Class Representatives; (2) attorneys’ fees and costs to Co-Lead Class Counsel; and (3) reasonable fees and costs invoiced by the Settlement Administrator.

O. “Notice of Deficiency” means any written notice that the Settlement Administrator sends to any Claimant who submits a Claim Form that contains a deficiency that needs to be cured as determined by the Settlement Administrator. A form of Notice of Deficiency to be used by the Settlement Administrator is attached hereto as Exhibit B.

P. “Notice of Settlement” means the Notice of Class Action Settlement in the form of Exhibit C attached hereto, to be approved by the Court in its Preliminary Approval Order, which is to be provided by the Settlement Administrator to the Settlement Class Members to provide notice of this Settlement.

Q. “Preliminary Approval Order” means the Court’s Order preliminarily approving the Settlement Agreement and preliminarily certifying the Settlement Class.

R. “Released Claims” means the claims released as set forth in Section 6 below.

S. “Released Parties” means Gilead and each of its respective past, present or future successors, assigns, predecessors, parents, subsidiaries, sister companies, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions and groups, and each of their directors, officers, shareholders, employees, managers, agents, representatives, insurers, reinsurers, partners, accountants, consultants, legal representatives, administrators, contractors and subcontractors, and agents of and all persons acting under, by, through, or in concert with any of them, and each of them.

T. “Settlement Administrator” means Kroll Settlement Administration LLC, who will be presented to the Court for approval in the Preliminary Approval Order to perform all responsibilities assigned to the Settlement Administrator in this Settlement Agreement.

U. “Settlement Agreement” or “Settlement” mean this Settlement Agreement and its Exhibits which are incorporated herein, including any subsequent amendments and subsequent exhibits that are agreed to by the Parties in writing and approved by the Court.

V. “Settlement Payment” means the total payment that each Settlement Class Member is entitled to receive pursuant to the terms of this Agreement as determined by the Settlement Administrator.

W. “Settlement Class” or “Settlement Class Members” mean all persons to whom a Mailer was sent by Gilead and that was not returned as undeliverable. Gilead has represented and produced data evidencing that there are 18,192 Settlement Class Members.

X. “Settlement Fund” means the non-reversionary cash amount of Four Million Dollars (\$4,000,000) which shall be the total amount from which the following will be paid, all subject to the approval of the Court: (1) all Settlement Payments to Settlement Class Members; (2) all reasonable settlement administration fees and costs; (3) Co-Lead Class Counsel’s attorneys’ fees and costs; and (4) all service awards to the Class Representatives.

Y. “Settlement Website” means the website regarding this Settlement that will be established by the Settlement Administrator following issuance by the Court of its Preliminary Approval Order.

## **SECTION 2**

### **BENEFITS FOR SETTLEMENT CLASS MEMBERS**

2.1 Consideration. In consideration of the Releases set forth in Section 6 below, Gilead shall pay, as further described in Section 4.1 below, the non-reversionary cash amount of Four Million Dollars (\$4,000,000.00) into the Settlement Fund, to be distributed as set forth herein and approved by the Court in its Final Approval Order. This payment is the total consideration provided by Gilead in connection with this Settlement Agreement, and under no circumstances will Gilead provide any additional payment.

## **SECTION 3**

### **SETTLEMENT ADMINISTRATOR AND**

### **NOTICE TO SETTLEMENT CLASS MEMBERS**

#### 3.1 Appointment of Settlement Administrator and Protection of Class List

3.1.1 Plaintiffs’ Motion for Preliminary Approval will request the Court to appoint Kroll Settlement Administration LLC to act as the Court-appointed independent Settlement Administrator and to implement all settlement administration tasks and duties set forth in this Settlement Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the

Settlement Administrator that could create a conflict of interest and the Parties jointly conducted a request for proposal/bidding process to four (4) potential companies to find and select the proposed Settlement Administrator.

3.1.2 The Settlement Administrator shall perform all tasks and duties ascribed to it in this Settlement Agreement and as the Court may direct. The Settlement Administrator shall prepare and submit written status reports and declarations to Co-Lead Class Counsel and/or Counsel for Gilead at any time upon written request.

3.1.3 The term “Class List” means the list of names and last known contact information, including last known mailing addresses (where available) and email addresses (where available), of the Settlement Class Members. After the Settlement Administrator is appointed by the Court and agrees to be bound by a Qualified Protective Order entered by the Court (which may be contained in the Preliminary Approval Order), and within five (5) business days following the issuance of the Court’s Preliminary Approval Order, Gilead will cause the Class List to be delivered to the Settlement Administrator as directed by the Preliminary Approval Order.

3.1.4 At no time shall the Settlement Administrator share the Class List or any information contained on the Class List, or any confidential medical information, with the Court, Co-Lead Class Counsel, Counsel for Gilead, or any other person or entity, without a Court Order or an authorization form that is signed by the Settlement Class Member whose information is to be disclosed (or by someone with legal authorization to sign on their behalf), except that the Settlement Administrator shall comply with any federal and state tax laws and required reporting and withholding with respect to this Settlement, and Gilead shall have no obligations relating to such matters.

3.2 Settlement Administrator Fees and Costs. The reasonable fees and costs of the Settlement Administrator incurred in administering this Settlement that are approved by the Court in its Final Approval Order will be paid out of the Settlement Fund.

3.3 Settlement Website. Within ten (10) days after the Preliminary Approval Order, the Settlement Administrator will cause to be established and maintained a Settlement Website containing relevant information about the Settlement, including, without limitation, downloadable .pdf copies of the Complaint, this Settlement Agreement and its Exhibits, the Notice of Settlement, the Claim Form, the Preliminary Approval Order, the Final Approval Order, and other case documents relevant to the Settlement, as well as a “Frequently Asked Questions” webpage. A draft of the Settlement Website shall be reviewed and approved by Co-Lead Class Counsel and Counsel for Gilead before it is made available to the public. The Settlement Website shall be owned and operated by the Settlement Administrator. The Settlement Administrator will post relevant information about the Settlement on the Settlement Website, including, as it becomes available, information about deadlines and methods to participate, and Claim Form requirements. Claim Forms may be submitted to the Settlement Administrator via the Settlement Website in a secure and private fashion and using Share File, a secure file transfer tool, or a suitable alternative. In addition, the Settlement Administrator shall implement reasonable measures designed to protect individual privacy rights and encourage

check-cashing including by allowing Settlement Class Members as part of the notice process to inform the Settlement Administrator of a direct method to issue payment other than checks, such as through Paypal, through their Claim Form.

3.4 Automated Telephone System. Within ten (10) days after the Preliminary Approval Order, the Settlement Administrator will cause to be established and maintained an automated telephone system using a toll-free number to provide information about the Settlement to the Settlement Class Members, utilizing an interactive voice response script approved by Co-Lead Class Counsel and Counsel for Gilead. The automated telephone system shall be operated by the Settlement Administrator. The automated telephone system shall permit Settlement Class Members to request and obtain copies of the Settlement Agreement, Notice of Settlement and Claim Form, and shall also provide the opportunity for Settlement Class Members to speak with a live operator during business hours for further information.

3.5 De-identified Information. The Settlement Administrator shall utilize a unique number identifier system so it can communicate with and about Settlement Class Members without including or identifying any confidential medical information or identifying their names, addresses, or other identifying information belonging to any Settlement Class Member. All Parties and all Counsel shall cooperate in good faith to respect the privacy and confidentiality of all Settlement Class Members' confidential medical information.

3.6 Notice of Settlement to Settlement Class Members. The notice shall include sending the Notice of Class Action Settlement attached hereto as Exhibit C to all Settlement Class Members (1) by U.S. first class mail where Gilead has the Settlement Class Members' physical mailing addresses; and (2) by email where Gilead does not have Settlement Class Members' physical mailing addresses but does have the Settlement Class Members' email addresses, using practices for the physical mailing and emailing, as applicable, intended to maintain the confidentiality of Settlement Class Members' confidential medical information, including, without limitation:

- (a) by using an opaque envelope of appropriate and sufficient stock and with no transparent window in order to obscure the contents of the envelope;
- (b) by using a return address on the outside of the envelope with no identifying information other than the name of the Settlement Administrator, a P.O. Box, City, State and Zip Code;
- (c) by including a statement on the front of the envelope stating that it contains "Confidential Legal Information – To Be Opened Only By The Addressee";
- (d) by using a protective cover page that folds around the Notice of Class Action Settlement and that identifies that the information being provided therein is confidential and solely for reading by the Settlement Class Member;
- (e) by using paper stock for the cover page that will protect the confidentiality of the contents of the envelope from being read through the envelope; and

(f) for emailed notice, by using the subject line “Confidential Legal Information – To Be Read Only By The Named Email Recipient.”

3.7 Other Notice Requirements. Prior to mailing the Notice of Class Action Settlement, the Settlement Administrator shall process the information in the Class List through the U.S. Postal Service’s National Change of Address database. The notice shall include: (a) direct notice by U.S. first-class mail as set forth above; (b) email notice to those Settlement Class Members for whom email addresses are available but for whom physical mailing addresses are not available; (c) notice through the Settlement Website (and utilizing the automated telephone system set forth above); (d) the issuance of press releases by both Gilead and Co-Lead Class Counsel, which each party will have the opportunity to review before they are finalized, following the issuance of the Preliminary Approval Order; and (e) an announcement to be included on the webpages dedicated to this litigation that are already maintained by Co-Lead Class Counsel. To the extent any Notice of Settlement sent as described in (a) is returned to the Settlement Administrator as undeliverable, Settlement Administrator shall then utilize postal service processes to identify any updated address information for any such individual and resend the notice accordingly. If no such updated address information is available or mail sent to the updated address is returned, Settlement Administrator shall send the Notice of Settlement as described in (b).

3.8 Compliance with all Regulatory and Other Requirements. The Class List delivered by Gilead to the Settlement Administrator and as ordered by the Court and any completed Claim Forms or other information submitted by Claimants to the Settlement Administrator, will be recorded by the Settlement Administrator in a computerized database that will be securely and confidentially maintained by the Settlement Administrator in accordance with all applicable federal, state, and local laws, regulations, and guidelines, including, without limitation, any laws concerning heightened privacy for confidential medical information. The Settlement Administrator must: (a) designate specifically-assigned employees to handle its administration of this Settlement; (b) train them concerning their legal duties and obligations arising out of this Settlement with respect to the information that they are provided; (c) ensure that all of the information it receives is used properly in accordance with all applicable federal, state and local laws and solely for the purpose of administering this Settlement; and (d) ensure that an orderly system of data management and maintenance is adopted and implemented, and that the information is retained under responsible custody until the conclusion of this litigation and the check-cashing period discussed below applicable to Settlement Class Members, at which time all of the information and data shall be destroyed by the Settlement Administrator. The Settlement Administrator will keep the database in a form that grants access for settlement administration use only and shall restrict access rights only to the least possible number of employees of the Settlement Administrator who are working directly on the administration of this Settlement. The Settlement Administrator shall immediately notify the Court, Co-Lead Class Counsel, and Counsel for Gilead in writing if there is any breach of applicable privacy laws in any respect.

3.9 Access to the Class List and Related Information. Only the Settlement Administrator shall have access to the Class List, Claim Forms, and any supporting information



submitted by Settlement Class Members. All information submitted by Settlement Class Members to the Settlement Administrator will be treated as highly confidential pursuant to the Court's Preliminary Approval Order and applicable protective orders, and the Settlement Administrator shall not share any such information with Co-Lead Class Counsel, Counsel for any Plaintiff, Gilead, Gilead's counsel, or any other person, except upon an Order of the Court or an authorization form that is signed by the Settlement Class Member whose information is to be disclosed (or by someone with legal authorization to sign on their behalf).

**SECTION 4**  
**MONETARY PAYMENTS FOR SETTLEMENT CLASS MEMBERS**  
**AND DISTRIBUTION OF NET SETTLEMENT FUND**

4.1 Consideration. As set forth above, Gilead shall pay the non-reversionary cash amount of \$4,000,000 into the Settlement Fund to be distributed in accordance with the Court's Final Approval Order. This payment is the total consideration provided by Gilead in connection with this Settlement Agreement, and under no circumstances will Gilead provide any additional payment. Gilead will provide the Settlement Administrator with an IRS Form 1099 for the lump sum payment made pursuant to this Settlement Agreement. Gilead shall wire the payment to an escrow account within fourteen (14) business days after the Effective Date and receipt by Gilead of wiring instructions to an escrow account at a bank selected by Co-Lead Class Counsel (which shall be established and maintained by the Settlement Administrator as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1) and a W-9 from the Settlement Administrator, whichever is later. The Settlement Administrator shall be responsible for all administrative, accounting, and tax compliance activities in connection with the Qualified Settlement Fund, including any filings necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Gilead shall provide to the Settlement Administrator any documentation necessary to facilitate obtaining Qualified Settlement Fund status.

4.2 Allocation and Distribution of Net Settlement Fund. The Net Settlement Fund will be distributed as follows.

a. First, every Settlement Class Member is automatically entitled to receive a base payment of One Hundred Dollars (\$100.00) without having to submit a Claim Form ("Base Payment").

b. Second, Settlement Class Members may include information on their Claim Form credibly alleging under oath that they incurred reasonable non-reimbursed out-of-pocket expenses that were directly caused by the Mailer, including, for example, any moving costs, medical or counseling costs, loss of income, or other non-reimbursed out-of-pocket expenses upon a showing of reasonable proof. The term "reasonable proof" means the submission to the Settlement Administrator by the Claimant of actual receipts, invoices, credit card statements, medical records, insurance records, copies of returned checks, and/or any other reasonable form of supporting written proof of non-reimbursed out-of-pocket expenses incurred as a direct result of the Mailer, which must be submitted with the Claim Form in support of any claimed economic damages. Reasonable non-reimbursed out-of-pocket expenses may be reimbursed up to \$2,000.

c. Third, Settlement Class Members may set forth information on their Claim Form credibly alleging under oath with details about (i) how the Settlement Class Member became aware of the Mailer, (ii) that they experienced non-economic harm constituting emotional distress, anxiety, or fear, as a direct result of the Mailer, and (iii) a description of that emotional distress, anxiety, or fear. If they make such a showing, the Settlement Administrator will determine if they will be eligible for an award of up to \$500.

d. If the Net Settlement Fund does not cover the total collective amount of all base payments and all Claimant Awards as set forth above and calculated by the Settlement Administrator, then each totaled Claimant Award (not including the base payment) shall be reduced *pro rata* to be paid out of the remaining amount in the Net Settlement Fund.

4.3 Mailing of Settlement Payments. The Settlement Administrator will distribute Settlement Payments to Settlement Class Members by U.S. first class mail or a direct method, such as through Paypal (if that method is selected by a Settlement Class Member on their Claim Form), no later than thirty (30) days after the Effective Date or as soon as reasonably practicable.

4.4 Review and Processing of Claim Forms. Within two weeks after receiving a Claim Form from a Claimant, the Settlement Administrator shall determine the sufficiency and completeness of the Claim Form and any required contents. The Settlement Administrator shall reject a Claim Form if it does not include all required content and supporting documentation, as applicable, subject to the cure provisions set forth below.

4.5 Deficiencies and Cure. For any rejected Claim Form, the Settlement Administrator shall send via U.S. mail, email, or secure message as indicated in the Claim Form, a Notice of Deficiency to the Settlement Class Member that contains a brief explanation of the deficiency(ies) at issue, and will, where necessary, request the additional information and/or documentation. The Notice of Deficiency will be sent no later than twenty-one (21) days from the date of receipt of the Claim Form by the Settlement Administrator. The Notice of Deficiency will provide that the deficiency must be cured within twenty-one (21) days from the date of mailing of the Notice of Deficiency. Any Claim Form that is not timely cured will be denied by the Settlement Administrator in writing. If the deficiency is later cured before such time as the Settlement Administrator determines and calculates all Claimant Awards, then the Settlement Administrator shall accept the cure.

4.6 Challenge to Approved Claims to Prevent Fraud. For every Claim approved, the Settlement Administrator shall provide the Claim Form and any supporting documentation to the Parties within seven (7) days of approving the Claim Form. Prior to providing the Claim Form and supporting information to the Parties, the Settlement Administrator shall remove any personally identifying information from the Claim Form and supporting documentation. Should any Party believe in good faith that the Claim should not have been approved, in whole or in part, the Party may challenge the Claim within seven (7) days of receiving the Claim Form and any supporting information by serving the Settlement Administrator and all Parties with a notice, not to exceed one page, as to why the Claim should not have been approved in whole or in part. Any party may respond to that notice within seven (7) days. The Settlement Administrator shall then consider the challenge and make a determination as to the merits of the challenge. The Settlement Administrator's decision shall be final and non-reviewable. The Parties agree that

challenges to approved Claims shall be limited to instances where one Party believes that a fraudulent claim has been approved.

4.7 Use of Settlement Fund Prior to the Effective Date. If the Settlement does not become final and effective for any reason, then Gilead will not owe the payment of the Settlement Fund except for any amounts reasonably incurred and billed by the Settlement Administrator, which shall be Gilead's responsibility.

4.8 Check Cashing. All settlement checks to Settlement Class Members will remain negotiable for 180 days from the date they are issued and shall be accompanied by the cover letter attached hereto as Exhibit D when they are sent by the Settlement Administrator. If payment is made through electronic means, an email message shall be sent to the Settlement Class Member. Any mailed checks shall be mailed using the same protections and mailing procedures as set forth in Paragraph 3.6 above. At any point in the check-cashing period, the Settlement Administrator shall have the authority to stop payment on a lost check and issue a new check or other form of payment to an eligible Settlement Class Member upon reasonable request, and after the Settlement Class Member has executed and sent to the Settlement Administrator an affidavit or declaration of lost check. Sixty (60) days prior to the expiration of the check-cashing period, the Settlement Administrator will send a reminder letter or email, the content of which shall be subject to the Parties' approval, to any Settlement Class Members who have not yet cashed their settlement check.

4.9 Remaining Funds from Net Settlement Fund and Uncashed Checks. Ninety (90) days following the 180-day check negotiation period, the Settlement Administrator shall distribute any remaining amounts in the Net Settlement Fund, subject to the approval of the Court pursuant to Cal. Code. Civ. P. § 384, to Positive Women's Network-USA, a non-profit *cy pres* recipient chosen by the Parties, subject to approval by the Court in its Final Approval Order.

## **SECTION 5** **PRELIMINARY APPROVAL, FINAL APPROVAL, OPT-OUTS, AND OBJECTIONS**

5.1 Motion for Preliminary Approval. Promptly after this Settlement Agreement is executed, Co-Lead Class Counsel shall file a Motion for Preliminary Approval of Class Action Settlement, which shall include a copy of this Settlement Agreement and its Exhibits. The Motion shall request that the Court schedule a Final Approval Hearing approximately two weeks after the conclusion of the Claim Period.

5.2 Stay of Proceedings. The Parties shall request that the Preliminary Approval Order stay the Litigation during the pendency of the Court's approval process regarding this Settlement Agreement.

5.3 Stipulation to Certification of Settlement Class. The Parties stipulate and agree to certification of the Settlement Class pursuant to Cal. Code Civ. P. § 382 and Cal. Rule of Court 3.769. The Parties agree that this stipulation is for settlement purposes only. The Parties do not waive or concede any position or arguments they have for or against certification of any class for any other purpose in any action or proceeding. The Parties agree that the Court's certification of the Settlement Class for purposes of this Settlement does not constitute an admission by Gilead

that the claims of the Settlement Class would be appropriate for class treatment if the claims were contested in this or any other forum.

5.4 Opt Outs. The Notice of Settlement attached hereto as Exhibit C provides detailed instructions to Settlement Class Members regarding the procedures that must be followed to opt out of the Settlement Class. To validly request exclusion from the Settlement Class, a Settlement Class Member must submit a written request to opt out to the Settlement Administrator stating “I wish to exclude myself from the Settlement Class in *Alabama Doe I, et al. v. Gilead Sciences, Inc.*, No. 20-CIV-03699 (Cal. Sup. Ct., San Mateo Cty.) (or substantially similar clear and unambiguous language), no later than sixty (60) days after the Notice of Settlement is sent to Settlement Class Members by the Settlement Administrator (the “Opt-Out Date”). That written request shall contain the Settlement Class Member’s printed name, address, telephone number, email address, and date of birth. A written request for exclusion must contain the actual written signature of the Settlement Class Member seeking to exclude himself or herself from the Settlement Class and requests for exclusion cannot be made on a group or class basis. The Settlement Administrator will provide redacted and de-identified copies of all requests for exclusion to Co-Lead Class Counsel and Counsel for Gilead as they are received, and only redacted and de-identified copies shall be filed with the Court. All Settlement Class Members who do not timely and properly request exclusion from the Settlement Class will in all respects be bound by all terms of this Settlement Agreement and the Court’s Final Approval Order, and upon the Effective Date, will be entitled to all benefits described in this Settlement Agreement. Settlement Class Members who opt out can withdraw their request for exclusion before the Final Approval Hearing by submitting a written request stating their desire to revoke their request for exclusion along with their written signature. In the event that more than one percent (1%) of the Settlement Class Members timely and validly opt out, Gilead may, by notifying Co-Lead Class Counsel and the Court in writing within ten (10) days of the Opt-Out deadline, void this Settlement Agreement, in which case the Parties shall return to their respective positions before this Agreement was executed.

5.5 Objections. Any Settlement Class Member who does not submit a written request for exclusion may present a written objection to the Settlement explaining why he or she believes that the Settlement Agreement should not be approved by the Court as fair, reasonable, and adequate. A Settlement Class Member who wishes to object to any aspect of the Settlement must submit to the Settlement Administrator a written statement of the objection no later than sixty (60) days after the Notice of Settlement is sent to Settlement Class Members. The written statement must include a detailed statement of the Settlement Class Member’s objection(s), as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court’s attention. That written statement shall contain the Settlement Class Member’s printed name, address, telephone number, and date of birth, and any other supporting papers, materials, or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection. A written objection must contain the actual written signature of the Settlement Class Member making the objection. The Settlement Administrator shall provide Co-Lead Class Counsel and Counsel for Gilead with copies of any objections as they are received. The names of any objectors who affirmatively state in writing that they wish to use a pseudonym shall be held in strict confidence by Co-Lead Class Counsel and Counsel for Gilead and shall not be disclosed on the public record without the objector’s written permission. The parties may file responses to any Settlement Class Member’s

written objection to the Settlement.

5.6 Representation. A Settlement Class Member may object on his or her own behalf or through an attorney, however, even if represented, the Settlement Class Member must sign the objection and all attorneys who are involved in any way asserting objections on behalf of a Settlement Class Member must file a notice of appearance with the Court at the time when the objection is submitted, or as the Court may otherwise direct.

5.7 Final Approval Hearing. A Settlement Class Member (or counsel representing him or her, if any) seeking to make an appearance at the Final Approval Hearing must file with the Court, by twenty-one (21) days prior to the Final Approval Hearing, a written notice of his or her intention to appear at the Final Approval Hearing, including a statement of any evidence or exhibits that will be presented.

5.8 Motion for Final Approval and Final Approval Order. No later than fourteen (14) days prior to the Final Approval Hearing or at such other time as ordered by the Court, Plaintiffs shall file a Motion for Final Approval of Class Action Settlement to request a Final Approval Order and Judgment from the Court, the approval and entry of which shall be a condition of this Settlement Agreement, that: (1) approves the Settlement Agreement as fair, reasonable, and adequate; (2) confirms the final certification of the Settlement Class; (3) confirms the appointments of the Class Representatives and of Co-Lead Class Counsel; (4) finds that the Notice Plan is acceptable to the Court; (5) states that all notices and communications described herein are approved of by the Court as compliant with applicable laws, including but not limited to privacy laws; (6) permanently bars, enjoins and restrains the Releasers (and each of them) from commencing, filing, initiating, prosecuting, asserting, and/or maintaining any and all Released Claims against the Released Parties; (7) dismisses with prejudice the operative Complaint pursuant to the terms of the Settlement Agreement; (8) confirms the appointment of the Settlement Administrator; and (9) provides that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms and conditions.

## **SECTION 6** **RELEASES**

6.1 In consideration of the benefits provided to Settlement Class Members by Gilead as described in this Settlement Agreement, upon the Effective Date, each Settlement Class Member, on his or her own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is or will be entitled to assert any claim on behalf of any Settlement Class Member (the “Releasers”), hereby waive and release, forever discharge and hold harmless the Released Parties, and each of them, of and from any and all past, present and future claims, counterclaims, actions, rights, causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys’ fees and costs), accounts, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or

unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether patent or latent, concealed or overt, direct, representative, class or individual in nature, in any forum (“Claims”) that the Releasors, and each of them, had, has, or may have in the future arising out of, in any way relating to, or in connection with, the Mailer or the allegations, transactions, facts, matters, occurrences, representations or omissions involved, that are or could have been alleged or set forth in, referred to, or relate to the Complaint and/or the Mailer (collectively the “Released Claims,” or the “Releases”).

6.2 California Civil Code Section 1542. Plaintiffs and each Settlement Class Member may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist. As of the Effective Date, Plaintiffs and each Settlement Class Member shall further be deemed to have waived and released any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code to the extent applicable or similar laws of any other state or jurisdiction.

Section 1542 of the California Civil Code reads:

**“CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

6.3 Nothing in the Releases will preclude any action to enforce the terms of this Settlement Agreement in the Court.

6.4 The Parties represent and warrant that no promise or inducement has been offered or made for the Releases contained in this Article except as set forth in this Settlement Agreement and that the Releases are executed without reliance on any statements or any representations not contained in this Settlement Agreement.

## **SECTION 7** **ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS**

7.1 Attorneys’ Fees and Costs. Co-Lead Class Counsel will file a Motion for Attorneys’ Fees, Costs, and Service Awards with the Court fourteen (14) days before the deadline for objections for a payment of attorneys’ fees and reimbursement of Co-Lead Class Counsel’s out-of-pocket costs from the Settlement Fund, and which will be posted on the Settlement Website. The Parties agree that the amount for attorneys’ fees shall not exceed one-third of the \$4 million Settlement Fund (*i.e.*, \$1,333,333.33). In addition, Co-Lead Class Counsel’s out-of-pocket costs shall not exceed \$60,000. Should the Court decline to approve any requested payment, the Settlement shall remain effective. The Settlement Administrator shall wire the Court-approved attorneys’ fees and costs to Berger Montague after the Effective Date. Gilead shall bear its own costs of litigation and attorneys’ fees incurred in connection with the Action and this Settlement Agreement.

7.2 Class Representative Service Awards. In recognition of their service to the Settlement Class, the Motion for Fees, Costs, and Service Awards may request the Court to approve service awards of \$5,000 each to the Class Representatives subject to the approval of the Court. Gilead will take no position on the Motion for Attorneys' Fees, Costs, and Service Awards as long as the requested amounts are consistent with this and the preceding paragraph. The service awards shall be paid from the Settlement Fund at the same time as Settlement Payments are made to Settlement Class Members. Should the Court reduce or decline to approve any requested service awards, the Settlement shall remain effective.

## **SECTION 8** **MISCELLANEOUS PROVISIONS**

8.1 Continuing Jurisdiction. The Court will retain continuing and exclusive jurisdiction over the interpretation, implementation, administration, and enforcement of this Settlement Agreement. The Parties and the Settlement Class are hereby deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement.

8.2 Authority. Each of the undersigned signatories represent and warrant that they have authority to enter and sign this Settlement Agreement and fulfill its terms as set forth herein.

8.3 No Admission of Liability. It is understood and agreed that this Settlement Agreement is a compromise of disputed claims and that any consideration given is not to be construed as an admission of liability by the Parties. Gilead denies any liability and nothing in this Settlement Agreement is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

8.4 No Liability for Actions in Accordance with Agreement. Plaintiffs and Gilead, as well as Co-Lead Class Counsel, Counsel for any Plaintiff, and Counsel for Gilead, shall not be liable for any acts undertaken in conformance with this Settlement Agreement and the Court's Preliminary Approval Order and Final Approval Order. Plaintiffs and the Settlement Class shall hold harmless the Released Parties from any acts undertaken in conformance with this Settlement Agreement, including acts that result in disclosure of any information, including, but not limited to, confidential medical information.

8.5 Non-Disparagement. The Parties and their counsel agree not to make any public statements, written or verbal, or cause or encourage others to make any public statements, written or verbal, that defame, disparage, or in any way criticize the personal or business reputation, practices, or conduct of the Parties, their affiliates, employees, directors, officers, or attorneys based upon the facts alleged in the Litigation.

8.6 Choice of Law. This Settlement Agreement will be interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

8.7 Cooperation. The Parties will cooperate, assist and undertake all reasonable actions to accomplish all steps contemplated by this Settlement Agreement and to implement the Settlement Agreement on the terms and conditions provided herein. The Parties and all of their counsel agree to support the final approval and implementation of this Settlement Agreement. Neither the Parties nor their counsel, directly or indirectly, will encourage any person to object to the Settlement or assist them in doing so.

8.8 Integration. This Settlement Agreement and its exhibits shall constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

8.9 Severability. If any provision or any part of any provision of this Settlement Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute, and/or ordinance, that provision may be severed from the Settlement Agreement and the remainder of the Settlement Agreement shall remain valid and enforceable as if the invalid, unenforceable, or illegal provision or part of any provision had not been contained herein.

8.10 Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Settlement Agreement shall be resolved in favor of the text.

8.11 Incorporation of Exhibits. All of the exhibits to this Settlement Agreement are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any exhibits hereto will be resolved in favor of this Settlement Agreement.

8.12 Amendment. Subject to the approval of the Court, the Parties may agree in a writing executed by Co-Lead Class Counsel and Counsel for Gilead to amend this Settlement Agreement or to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. Any amendment modifying the Settlement must be filed with the Court and is subject to the Court's approval.

8.13 Mutual Preparation. The Parties negotiated this Settlement Agreement at arm's-length and following a mediation process overseen by an experienced mediator, Jill Sperber, Esq. Neither the Settlement Class Members nor Gilead, nor any one of them, nor any of their counsel, will be considered to be the sole drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement. This



Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

8.14 Independent Advice of Counsel. The Parties represent and declare that in executing this Settlement Agreement, each relied upon the advice and recommendations of their own independently selected counsel. Further, the Parties represent that each has had sufficient opportunity to consult with their respective attorneys about the terms and conditions of this Settlement Agreement prior to its execution. Each Party has read and fully understands the full contents and effect of this Settlement Agreement, and consciously and voluntarily contracts and agrees as provided herein.

8.15 Extensions of Time. Co-Lead Class Counsel and Counsel for Gilead may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

8.16 Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and an emailed, or electronic signature, for example, via DocuSign, shall be deemed an original signature for purposes of this Settlement Agreement.

8.17 Issuance of Notices. In any instance in which this Settlement Agreement requires the issuance of any notice to the Parties and/or to Co-Lead Class Counsel and Counsel for Gilead, such notice must be issued by issuing written notice to Co-Lead Class Counsel and to Counsel for Gilead as defined above.

**AGREED TO AS OF THIS 7th DAY OF OCTOBER, 2022**

DocuSigned by:



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