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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION**

JUAN C. LOZANO, and his minor son AJL,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CODEMETRO, INC., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 37-2020-00022701-CU-MC-CTL

Assigned for All Purposes to:
Judge John S. Meyer
Dept. C-64

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement, entered into December 16, 2020, is made and entered into jointly by the following Settling Parties to the above-captioned action: Juan C. Lozano, individually and on behalf of his minor son AJL (the “Representative Plaintiff”), individually and as named class representative on behalf of the Settlement Class (as defined below), by and through Ben Barnow, Barnow and Associates, P.C., and Timothy G. Blood, Blood Hurst & O’Reardon LLP (together, “Co-Lead Settlement Class Counsel”); and (ii) CodeMetro, Inc. (“CodeMetro”), by and through its counsel of record, Mark C. Mao, Boies Schiller Flexner LLP. The Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On June 19, 2020, CodeMetro sent letters to Representative Plaintiff and others notifying them that CodeMetro suffered a ransomware attack on or about April 21, 2020, which was detected within hours of its deployment (the “Data Incident”). CodeMetro notified Representative Plaintiff and others that its investigation had found that prior to deploying the ransomware the criminals were able to access a database server and deploy tools to copy and remove some data. That data may have included confidential and protected health information (“PHI”) and personally identifiable information (“PII”) (collectively, “PHI/PII”). The patient information may have included: (1) information to identify and contact the patient (such as patient name, patient picture, parent/legal guardian name, guarantor name, address, email address, phone number, date of birth, gender, and ethnicity); (2) school information (such as school name, Individualized Education Program (IEP) start and review dates, assessment and psychological evaluation dates, and eligibility type (type of behavioral or developmental condition or impairment)); (3) health

insurance information (such as payer name, payer contract dates, policy information including type and deductible amount, and policy ID number); and (4) medical information (such as dates of enrollment with an ABA provider's services, authorized services, allotted time/number of sessions, diagnostic codes and modifiers, charge/reimbursement rates, outcomes, and provider names). For patients covered under TRICARE, the health insurance ID number may be a guarantor/legal guardian's Social Security number. CodeMetro contends that only approximately 10% of the database was actually exposed.

After receiving a letter from CodeMetro, Representative Plaintiff initiated a lawsuit asserting claims against CodeMetro relating to the Data Incident on July 1, 2020, *Lozano v. Codemetro, Inc.*, Civil Action No. 37-2020-00022701-CU-MC-CTL (Sup. Ct. of San Diego) (the "Complaint"). CodeMetro denies the allegations therein. On August 20, 2020, CodeMetro filed a demurrer and a motion to strike.

On August 27, 2020, the Parties participated in a day-long mediation before the Honorable Wayne R. Andersen (Ret.) of JAMS. After failing to reach agreement, they continued to negotiate with the assistance with Judge Andersen in the weeks that followed. The negotiations ultimately led to the Parties' agreement and execution of this Settlement Agreement.

Pursuant to the terms agreed to and as set out below, this Settlement Agreement resolves all actions, proceedings and claims against CodeMetro and its Related Persons that are asserted in, arise from, or relate to the matters referenced in the Complaint or any other actions by and on behalf of individuals or putative classes of consumers arising from the matters referenced in that Complaint, originating or that may originate in jurisdictions in the United States (collectively, the "Litigation").

II. CLAIMS OF REPRESENTATIVE PLAINTIFF AND BENEFITS OF THE SETTLEMENT

Representative Plaintiff believes that the claims asserted in the Litigation, as set forth in the Complaint, have merit. Representative Plaintiff and Representative Plaintiff's Counsel, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against CodeMetro, including through motion practice, trial, and potential appeals. Representative Plaintiff and his counsel also have taken into account the uncertain outcome and the risk of continued litigation, as well as the significant difficulties and potential delays inherent in such litigation. Representative Plaintiff and his counsel are also mindful of their burden of proof and possible defenses to the claims asserted in the Litigation. Representative Plaintiff and his counsel believe the settlement set forth in this Settlement Agreement confers substantial benefits upon the Settlement Class (as defined below), particularly when balanced against the risks and necessary timeline of continued litigation. Representative Plaintiff and his counsel have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

CodeMetro denies each and all of the claims and contentions alleged against it in the Litigation. Nonetheless, CodeMetro has concluded that further conduct of the Litigation could be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. CodeMetro has also taken into account the uncertainty and risks inherent in any litigation, and therefore determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiff, individually and on behalf of the Settlement Class, by and through Representative Plaintiff's Counsel, and CodeMetro that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to all Settling Parties, upon and subject to the terms and conditions of this Settlement Agreement, as follows.

1. Definitions.

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

1.1 "Claims" means known claims, actions, allegations, demands, rights, liabilities, and causes of action of every nature and description whatsoever, whether contingent or non-contingent, choate or inchoate, and whether at law or equity or under common law, civil law or statute.

1.2 "Co-Lead Settlement Class Counsel" means Ben Barnow, Barnow and Associates, P.C., and Timothy G. Blood, Blood Hurst & O'Reardon LLP.

1.3 "CodeMetro" means CodeMetro, Inc., a California corporation.

1.4 "Effective Date" means the earliest date by which all of the events and conditions specified in ¶ 1.6 hereof for the Judgment to become Final have occurred or have been met.

1.5 "Escrow Account" means an account or accounts designated by Co-Lead Settlement Class Counsel, with a bank or Settlement Administrator, as the case may be, serving as escrow agent ("Escrow Agent"), subject to escrow instructions as agreed by the Settling Parties. The Escrow Agent shall cause the funds deposited in the Escrow Account to be held in FDIC

insured accounts at one or more commercial banks with capital exceeding \$1,000,000,000 and an S&P rating of “A” or higher.

1.6 “Final Judgment” means the Judgment after the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved in final form by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment (by motion for an extension of time in which to file an appeal, or otherwise) has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, no order of the Court or modification or reversal or appeal of any order of the Court concerning the amount(s) of any attorneys’ fees, costs, or expenses requested by Co-Lead Settlement Class Counsel hereunder or awarded by the Court to Co-Lead Settlement Class Counsel hereunder shall affect whether the Judgment is “Final” as defined in the preceding sentence, or any other aspect of the Judgment.

1.7 “Judgment” means a judgment rendered by the Court, in the form attached hereto as Exhibit G, or a judgment substantially similar to such form in substance.

1.8 “Notice Program” means the settlement notice program as set forth in the addendum to this agreement.

1.9 “Opt-Out Date” means twenty-one (21) days prior to the date set in the Detailed Notice for the Final Fairness Hearing, which shall be the date by which members of the Settlement Class must mail their requests to be excluded from the Settlement Class in order for that request to be effective. The postmark date shall constitute the date of mailing for these purposes.

1.10 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, affiliates, attorneys, predecessors, successors, representatives, and/or assignees.

1.11 “Related Persons” means any past or present director, officer, employee, contractor, representative, attorney, or agent of CodeMetro who has not been charged with criminal activity related to the Data Incident.

1.12 “Released Claims” shall mean any and all Claims asserted against any of the Released Persons based on the allegations, facts, or circumstances alleged in the Litigation, including without limitation the Data Incident, and also all judgments, liens, indebtedness, losses, claims, liabilities, actions, demands, rights, suits, and causes of action of whatever kind or nature against the Released Persons, including damages, costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity directly or indirectly arising out of, relating to, or in any way connected with, the Data Incident, which have been asserted or which could have been asserted by Representative Plaintiff or any Settlement Class Member against any of the Released Persons based on, relating to, concerning, or arising out of the Data Incident or the allegations, facts, or circumstances described in the Litigation, whether in federal court, state court or any other forum. Released Claims shall include Unknown Claims, but shall not include the right of any Settlement Class Member or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Litigation, including, but not limited to, claims for personal injury.

1.13 “Released Persons” means CodeMetro, parent and successor entities, insurers and reinsurers, ABA providers and other business partners, and affiliates and sister companies doing business with CodeMetro involved in the Data Incident, and each of their respective Related Persons.

1.14 “Representative Plaintiff” means Juan C. Lozano for himself and on behalf of his minor son, AJL.

1.15 “Settlement Administration” means the processing of claims received from Settlement Class Members by the Settlement Administrator.

1.16 “Settlement Administrator” means Epiq Class Action & Claims Solutions, Inc., subject to the approval of Court.

1.17 “Settlement Class” means all persons for whom data was stored on the database server at issue in the Data Incident and whose PII/PHI therefore may have been involved in the Data Incident. Excluded from the Class are: (1) CodeMetro and its officers, directors, employees, principals, affiliated entities, controlling entities, agents, and other affiliates; (2) the Judge(s) assigned to this case and any members of their immediate families.

1.18 “Settlement Class Counsel” means Erich P. Schork and Anthony L. Parkhill, Barnow and Associates, P.C., and Leslie E. Hurst and Jennifer MacPherson of Blood, Hurst & O’Reardon LLP.

1.19 “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.20 “Settling Parties” means, collectively, CodeMetro and Representative Plaintiff, individually and on behalf of the Settlement Class.

1.21 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including any of Representative Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, Representative Plaintiff and CodeMetro stipulate and agree that upon the Effective Date and with respect to the Released Claims, Representative Plaintiff expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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.

Settlement Class Members, including Representative Plaintiff, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Representative Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Approval

Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims. Representative Plaintiff and CodeMetro acknowledge, and Settlement Class Members shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

2. Settlement Consideration

2.1 Within thirty (30) days after entry of the Court's Order granting preliminary approval of the Settlement or CodeMetro's receipt of the payment information (W9), whichever is later, CodeMetro shall pay a total of \$850,000 (the "Settlement Fund") into the Escrow Account. CodeMetro shall not be liable for any additional amounts to the Settling Parties as part of this Settlement.

2.2 The Settling Parties agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 and to refrain from taking any action inconsistent with such treatment. All taxes on the income of the Escrow Account shall timely be paid out of the Escrow Account without Order of the Court. For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent for the Escrow Account and shall promptly take all steps necessary so that amounts paid to the Escrow Account qualify as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B. These steps include, without limitation, the following: (i) the Escrow Agent shall timely and properly prepare a statement fulfilling the requirements of Treas. Reg. § 1.468B-3(e) on behalf of CodeMetro; and (ii) the Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement consideration (including without limitation

the returns described in Treas. Reg. § 1.468B-2(k)(1) and the information reporting and withholding requirements of Treas. Reg. § 1.468B-2(l)).

2.3 Settlement Class Members for whom a Social Security Number (“SSN”) was included in the data at issue in the Data Incident are entitled to claim and receive two-years of Protection Plan Option (see ¶ 2.4 below) (but only one additional year if CodeMetro’s prior one-year offer of credit monitoring was previously accepted by the Settlement Class Member) in addition to selecting either the Cash Option, Reimbursement of Expenses Option, or Reimbursement of Fraudulent and Unauthorized Charges Option. Class members whose SSNs were not included in the Breach may choose either the Cash Option, Reimbursement of Expenses Option, or Reimbursement of Fraudulent and Unauthorized Charges Option.

2.4 Protection Plan Option.

(a) Settlement Class Members whose Social Security Number was included in the Data Incident shall be entitled free-of-charge to a two-year subscription to CyberScout Package 3 (but only one additional year if CodeMetro’s prior one-year offer of credit monitoring was previously accepted by the Settlement Class Member) to include (i) single-bureau credit monitoring (ii) dark web monitoring; (iii) Proactive Fraud Assistance; (iv) \$1,000,000 insurance coverage for reimbursement of losses attributable to the Data Incident, which shall commence upon enrollment; and (v) Identity Theft and Fraud Resolution Services (the “Protection Plan”).

(b) The Protection Plan shall begin and run from the date the Settlement Class Member activates the Protection Plan.

(c) The activation code for the Protection Plan shall not expire until twelve (12) months after the date the Settlement Class Member receives the activation code.

(d) The subscription costs associated with providing the Protection Plan shall be paid from the Settlement Fund.

2.5 Cash Option.

(a) Settlement Class Members not choosing the Reimbursement of Expenses Option or Reimbursement of Fraudulent and Unauthorized Charges Option shall be entitled to a cash payment from the Settlement Fund. All payments under this paragraph shall be paid from the Settlement Fund and subject to ¶¶ 2.9–2.11. The Settlement Class Member who selects the Cash Option must designate the payment method on the Claim form, which will include the receipt of payment via check by mail, PayPal, Zelle, or such other electronic payment platform deemed efficient and appropriate by the Settlement Administrator. Claim Forms failing to clearly make a single designation will receive a check by mail to the last known address on file with the Settlement Administrator. In the event an electronic payment platform returns a payment to the Settlement Administrator, no later than 14 days after being notified of the return of such payment, the Settlement Administrator will mail a check to the Settlement Class Member's last known address on file with the Settlement Administrator.

(b) The value of Cash Option claims shall be determined as follows: after attorneys' fees, costs, and expenses, notice and administration costs, Representative Plaintiff service awards, costs associated with the Protection Plan option, and valid claims for the Reimbursement of Expenses Option and Reimbursement of Fraudulent and Unauthorized Charges Option are deducted from the Settlement Fund, the remaining amount shall be divided among Cash Option claimants such that claimants who reside in California receive an amount that is twice the amount received by claimants residing in other states and the fund is exhausted.

2.6 Reimbursement of Expenses Option.

(a) Settlement Class Members not choosing the Cash Option or Reimbursement of Fraudulent and Unauthorized Charges Option shall be entitled to receive up to \$250 as reimbursement of certain expenses actually incurred as a result of the Data Incident and not reimbursed by insurance or other third party. All payments under this paragraph shall be paid from the Settlement Fund and be subject to ¶¶ 2.6(d), 2.9–2.11.

(b) Reimbursement Expenses are allowed only if they fit within the categories of losses and expenses listed below and the Settlement Class member provides reasonable documentation of the costs incurred:

(i) Documented hours of time. The Settlement Administrator will require specific and detailed information regarding the visits, calls, such as entities involved, reasons for the time being spent, and quantity of time expended as to each. Time will be reimbursed at \$20 per hour, for a maximum of 4 hours. The required information will include who, when, where, and purpose of event resulting in the time expenditure required, as well as the individual amount of time of each such event.

(ii) Purchase of police reports.

(iii) Late charges or other fees paid because of the Data Incident, including overdraft fees.

(iv) And other similar expenses directly related to the Data Incident and expended in good faith, at the Settlement Administrator's discretion.

(c) If the Settlement Class Member has previous credit monitoring and identity theft protection services or other applicable insurance, the Settlement Class Member must make a claim under the insurance offered by that or those policies before submitting a claim under the

Reimbursement or Expenses Option. Prior enrollment in this service shall not otherwise affect a Settlement Class Member's eligibility for the Protection Plan Option, Cash Option, Reimbursement of Expenses Option, or Reimbursement of Fraudulent and Unauthorized Charges Option, except payment under the other coverage forecloses payment for the same amount under the settlement. There shall be no double payments.

(d) The Settlement Class Member who selects the Reimbursement of Expenses Option must designate the payment method on the Claim form, which will include the receipt of payment via check by mail, PayPal, Zelle, or such other electronic payment platform deemed efficient and appropriate by the Settlement Administrator. Claim Forms failing to clearly make a single designation will receive check by mail to the last known address on file with the Settlement Administrator. In the event an electronic payment platform returns a payment to the Settlement Administrator, no later than 14 days after being notified of the return of such payment, the Settlement Administrator will mail a check to the Settlement Class Member's last known address on file with the Settlement Administrator.

2.7 Reimbursement of Fraudulent and Unauthorized Charges Option.

(a) Settlement Class Members not choosing the Cash Option or the Reimbursement or Expenses Option shall be entitled to receive reimbursement of actual unreimbursed losses due to fraudulent activity or unauthorized losses due to fraudulent activity or unauthorized charges more likely than not caused by the Data Incident and not reimbursed by insurance or other third party, not to exceed \$3,500 per Settlement Class Member.

(b) Documentary Support and Attestation. In addition to the requirements set forth in ¶ 2.8, Settlement Class Members seeking reimbursement pursuant to ¶ 2.7(a) must attest in their Claim Form that to the best of the Settlement Class Members' knowledge and belief the claimed

losses were more likely than not caused by the Data Incident. The Settlement Class Member must also submit reasonable documentation in support of their claim showing that the claim was more likely than not caused by the Data Incident.

(c) If the Settlement Class Member has previous credit monitoring and identity theft protection services or other applicable insurance, the Settlement Class Member must make a claim under the insurance offered by that or those policies before submitting a claim under the Reimbursement of Fraudulent and Unauthorized Charges Option. Prior enrollment in this service shall not otherwise affect a Settlement Class Member's eligibility for the Protection Plan Option, Cash Option, Reimbursement of Expenses Option, or Reimbursement of Fraudulent and Unauthorized Charges Option, except payment under the other coverage forecloses payment for the same amount under the settlement. There shall be no double payments.

(d) The Settlement Class Member who selects the Reimbursement of Fraudulent and Unauthorized Charges Option must designate the payment method on the Claim form, which will include the receipt of payment via check by mail, PayPal, Zelle, or such other electronic payment platform deemed efficient and appropriate by the Settlement Administrator. Claim Forms failing to clearly make a single designation will receive check by mail to the last known address on file with the Settlement Administrator. In the event an electronic payment platform returns a payment to the Settlement Administrator, no later than 14 days after being notified of the return of such payment, the Settlement Administrator will mail a check to the Settlement Class Member's last known address on file with the Settlement Administrator.

2.8 To receive any benefit under the Settlement, a Settlement Class Member must submit a completed Claim Form no later than sixty (60) calendar days after the date set in the Detailed Notice for the Final Fairness Hearing. Each Settlement Class Member is limited to the

submission of one Claim Form. In no event shall a Settlement Class Member be entitled receive a benefit under more than one Option under the Settlement.

2.9 The Settlement Fund shall be used to pay the following:

- (a) Costs for Notice and Settlement Administration as agreed by the Parties in the addendum to this agreement;
- (b) Representative Plaintiff service award, as approved by the Court;
- (c) The amounts of attorneys' fees, costs, expenses, as approved by the Court;
- (d) Payments of valid claims;
- (e) Cost of subscriptions to the Protection Plan.

2.10 After the Fund is distributed as described above, if amounts remain in the Fund because checks have expired as a result of not being deposited 6 months after the date of issuance, those unclaimed amounts will be distributed to an appropriate cy pres organization agreed upon by the Parties, with Court approval being required before any allocation or distribution of cy pres.

2.11 In no event shall any portion of the Settlement Fund revert back to CodeMetro.

2.12 The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the settlement is terminated or cancelled pursuant to the terms of this Settlement Agreement, then this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's position on the issue of class certification or on any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action including, without limitation, proceedings otherwise consolidated with the Litigation

in the above-captioned civil action, as to which all of their rights are specifically preserved. All costs of notice and administration incurred and contracted for shall come out of the Settlement Fund, it being understood that no such costs are chargeable to Representative Plaintiff and Representative Plaintiff's counsel.

3. Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing

3.1 No later than twenty-one (21) calendar days after the Settlement Agreement becomes fully executed and the addendum describing the details of notice and administration that which now remain to be agreed upon by the Parties becomes executed, Representative Plaintiff, by and through Co-Lead Settlement Class Counsel, shall file a motion for preliminary approval of the Settlement and apply for entry of an order (the "Order of Preliminary Approval" in the form attached hereto as Exhibit B) requesting, inter alia:

- (a) a finding that the Court is likely to certify the Settlement Class for settlement purposes only at the Final Fairness Hearing;
- (b) preliminary approval of the settlement as set forth herein;
- (c) approval of the Notice Program, as set forth in the declaration attached as Exhibit A hereto, to provide notice of the Settlement to the Settlement Class;
- (d) approval of the commencement of notice to the Settlement Class including the emailing of notice ("Email Notice") directly to Settlement Class Members for which CodeMetro provides an email address, in a form substantially similar to Exhibit C hereto, the mailing of postcards ("Postcard Notice") directly to those Settlement Class Members who CodeMetro is unable to locate an email address for in a form substantially similar to Exhibit D hereto, and a customary long form of notice ("Detailed Notice") in a form substantially similar to Exhibit E hereto, which together shall include a fair summary of the Parties' respective

litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims as contemplated herein, and the date, time, and place of the Final Fairness Hearing;

(e) appointment of the Settlement Administrator specified in the addendum to this agreement to provide Notice and settlement administrative services, as agreed to herein; and

(f) approval of the Claim Form in a form substantially similar Exhibit F hereto. The forms of Email Notice, Postcard Notice, Detailed Notice and Claim Form attached hereto as Exhibits C–F may be revised as agreed upon by the Settling Parties prior to such submission to the Court for approval.

3.2 The Settlement Administrator shall be responsible for development and implementation of the Notice Program to provide notice to the Settlement Class in accordance with the Order of Preliminary Approval and Notice of a Final Fairness Hearing, which such Notice Program shall be approved in writing by both CodeMetro and Co-Lead Settlement Class Counsel prior to submission to the Court. Subject to the limitations of ¶ 2.9(a), costs of Notice will be paid by the Settlement Administrator, using amounts deposited by CodeMetro into the Settlement Fund, as required by the Settlement Administrator. Notice shall be provided to Settlement Class Members by U.S. mail and email to the extent CodeMetro possesses such information or is reasonably practicable to obtain. The Settlement Administrator shall establish a dedicated settlement website and toll-free number and shall maintain and update the website throughout the Claim Period, with the forms of Summary Notice, Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. The Settlement Administrator also will provide copies of

the forms of Summary Notice, Notice, and Claim Forms approved by the Court, as well as this Settlement Agreement, upon request to any Settlement Class Member. Prior to the Final Fairness Hearing, Co-Lead Settlement Class Counsel shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice. The forms of Summary Notice, Notice and Claim Form approved by the Court may be adjusted by the Settling Parties, or by the Settlement Administrator respectively (in consultation and agreement with the Settling Parties), as may be reasonable and not inconsistent with such approval.

3.3 Co-Lead Settlement Class Counsel and CodeMetro shall request that after notice is given, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval of the settlement set forth herein.

4. Opt-Out Procedures

4.1 Each Person wishing to opt out of the Settlement Class shall sign (individually, or, if the Person opting out is less than 18 years of age, through the signature of a parent, legal guardian or other legal representative) and timely mail written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest an intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall neither receive any benefits of nor be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the settlement shall submit a timely written notice of his or her objection. Such notice shall state: (i) the objector's full name, address, telephone number, and email address; (ii) information identifying the objector as a Settlement Class Member, including proof that they are a member of the Settlement Class, (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection; (iv) the identity of all counsel representing the objector; (v) the identity of all counsel representing the objector who may appear at the Final Fairness Hearing; (vi) all other cases in which the objector (directly or through counsel) or the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement, has been a named plaintiff in any class action, or has served as lead plaintiff class counsel, including the case name, court, and docket number for each; (vii) a certificate of good standing from the highest court of the state in which objector's counsel is admitted to practice law; (viii) documents sufficient to show the results of any sanctions, investigations, or disciplinary proceedings against objector's counsel (ix) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (x) a statement confirming whether the objector intends to personally appear or testify at the Final Fairness Hearing; and (xi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). To be timely, written notice of an objection in appropriate form must be filed with the Clerk of the Superior Court of the State of California, County of San Diego, Central Division, at the address where filings are accepted by the Clerk, twenty-one (21) days prior to the date set in the Detailed Notice for the Final Fairness Hearing, and served concurrently therewith upon (a) Co-Lead Settlement Class Counsel Ben Barnow, Barnow and Associates, P.C.,

205 W. Randolph St., Ste. 1630, Chicago, IL 60606 and also (b) Mark Mao, Boies Schiller Flexner LLP, 44 Montgomery Street, 41st Floor, San Francisco, CA 94104, counsel for CodeMetro.

6. Releases & Waiver

6.1 Upon the Effective Date, each Settlement Class Member, including Representative Plaintiff, for themselves and their respective beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors, successors, current and former employees, officers, agents, directors, attorneys, administrators, legal representatives, assigns, affiliates, partners, associates, co-owners, devisees, assignees, spouses, children, representatives of any kind, and with respect to minors, parents and guardians, in consideration of the benefit set forth in this Settlement, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in, any claim or action in this or any other forum (other than participation in the settlement as provided herein) in which any of any Released Claim(s) is/are asserted.

6.2 Upon the Effective Date, CodeMetro and Related Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all claims arising out of or relating to the institution, prosecution, settlement, or resolution of the Litigation, provided however, that this release, relinquishment, and discharge shall not include claims by the Parties or Settlement Class Members to enforce the terms of the Settlement or Settlement Agreement.

7. Representative Plaintiff Service Awards and Attorneys' Fees, Costs, and Expenses

7.1 The Settling Parties did not discuss the Representative Plaintiff service award or attorneys' fees, costs, and expenses as provided for in ¶¶ 7.2–7.3, until after the substantive elements of the settlement had been agreed upon.

7.2 CodeMetro agrees not to object to Representative Plaintiff's request for a service award in the amount of \$2,500 for bringing the Litigation and time spent in connection with the Litigation. The Representative Plaintiff service award, as approved by the Court, shall be paid from the Settlement Fund.

7.3 CodeMetro has agreed not to object to Co-Lead Settlement Class Counsel's request of up to \$283,333 in attorneys' fees and, additionally, reimbursement of reasonable costs and expenses incurred in furtherance of the Litigation. All awards of attorneys' fees, costs, and expenses as approved by the Court shall be paid from the Settlement Fund.

7.4 Co-Lead Settlement Class Counsel, in their sole discretion, to be exercised reasonably, shall allocate and distribute the amounts of attorneys' fees, costs, and expenses awarded by the Court amongst themselves.

7.5 Within fourteen (14) calendar days after the Effective Date, the Settlement Administrator shall pay from the Settlement Fund the Representative Plaintiff service award and attorneys' fees, costs, and expenses awarded by the Court to an account established by Co-Lead Settlement Class Counsel or as otherwise directed by them. Thereafter, Co-Lead Settlement Class Counsel shall distribute the Representative Plaintiff service award to Representative Plaintiff and the award of attorneys' fees, costs, and expenses amongst themselves.

7.6 The attorneys' fees, costs, and expenses paid from the Settlement Fund as provided for in this Agreement shall be allocated by Co-Lead Settlement Class Counsel amongst themselves

in good faith. The amount(s) of any Representative Plaintiff Award and award of attorneys' fees, costs, and expenses is intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court or modification or reversal or appeal of any order of the Court concerning the amount(s) of any attorneys' fees, costs, or expenses requested by Co-Lead Settlement Class Counsel hereunder or awarded by the Court to Co-Lead Settlement Class Counsel hereunder shall affect whether judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 All claims for benefits under the Settlement Agreement must be submitted to the Settlement Administrator no later than (60) calendar days after the date set in the Detailed Notice for the Final Fairness Hearing. All claims shall be submitted online or by mail on a written Claim Form to be available as an electronic download that can be printed out and filled in by the claimant, and shall be submitted along with such further documentation that may be required for the claim. On the Claim Form, the claimant must provide the name and address of the claimant and such additional information identified on the Claim Form for the processing and determination of the validity of the claim. All information provided to the Settlement Administrator shall be deemed confidential by the Settlement Administrator.

8.2 All claims reviewed by the Settlement Administrator shall include reasonable safeguards against fraudulent claims. CodeMetro and Co-Lead Settlement Class Counsel shall both have the right to monitor the claims process and its administration.

8.3 The Settlement Administrator shall determine whether a claimant's Claim Form, along with supporting materials, are sufficient to support a Claim and the amount of such Claim.

Before 21 calendar days after the deadline to submit Claims set forth in ¶ 8.1, the Settlement Administrator shall send a written notice to Settlement Class Members whose Claims for Reimbursement were not accepted in whole or in part, stating the reasons for denial, specifying the amounts that were claimed and not approved, and, in the case of Reimbursement Option claims, informing them of the option to select the Protection Plan Option or Cash Option in lieu of the Reimbursement Option. Settlement Class Members have 21 calendar days from the postmark date on the Settlement Administrator's notice to respond, supplement their documentation, correct deficiencies identified by the Settlement Administrator, or select the Protection Plan Option or Cash Option in lieu of any Reimbursement Option amount.

8.4 The Settlement Administrator shall administer and calculate (as may be necessary) the claims submitted by Settlement Class Members hereunder. Co-Lead Settlement Class Counsel and CodeMetro shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's determination of the validity or invalidity of any such claims shall be binding.

8.5 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frame set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein, and the Judgment.

8.6 No Person shall have any claim against the Settlement Administrator, CodeMetro, or Co-Lead Settlement Class Counsel based on distributions of benefits made substantially in

accordance with the Settlement Agreement and the settlement contained herein, or further order(s) of the Court.

8.7 All payments and distributions of benefits hereunder shall be distributed within 180 days after the Effective Date. The Settlement Administrator shall send to each valid Protection Plan Option claimant an email or letter containing an activation code and the link to the website where the activation code can be input to activate the Protection Plan. The Settlement Administrator shall distribute payments to valid Cash Option and Reimbursement Option claimants by their selected method of payment, or by check if no selection was made.

9. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

9.1 This settlement shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing;

(b) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and

(c) the Judgment has become Final, as defined in ¶ 1.6.

(d) the Parties have agreed to and executed an addendum identifying the Settlement Administrator and the details of notice and settlement administration.

9.2 If any one of the conditions specified in ¶ 9.1 is not satisfied, then the Settlement Agreement shall be canceled and terminated subject to ¶ 9.3 hereof, unless Co-Lead Settlement Class Counsel and counsel for CodeMetro mutually agree in writing to proceed with the Settlement Agreement.

9.3 In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (a) the Settling Parties shall be restored to their respective positions in the Litigation, and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court, (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc, and (c) the Settlement Fund shall be returned to CodeMetro. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amounts of attorneys' fees, costs, and expenses awarded to Co-Lead Settlement Class Counsel shall constitute grounds for cancellation or termination of the Settlement Agreement.

10. Miscellaneous Provisions

10.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 All Exhibits hereto shall be mutually agreed upon by the Settling Parties, subsequent to the execution hereof, and, upon such mutual agreement, shall be deemed to be the Exhibits referenced herein as attached hereto.

10.3 The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation and with regard to the Released Parties. The

settlement compromises contested claims and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

10.4 Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.5 Representative Plaintiff shall be entitled to reasonable confirmatory discovery from CodeMetro or request reasonable confirmatory declarations to confirm the nature and scope of the Data Incident, the size of the Settlement Class, the nature of information at issue with the Data Incident, CodeMetro's applicable insurance policies and the amount of payments made under such policies, and the financial condition of CodeMetro (consisting of a summary balance sheet of CodeMetro). The period for confirmatory discovery shall begin no sooner than the date of

preliminary approval of the settlement and be completed within ninety (90) days. CodeMetro shall cooperate in good faith to make such confirmatory discovery possible.

10.6 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.7 This Settlement Agreement, together with the Exhibits attached hereto, constitutes the entire agreement among the parties hereto, and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs.

10.8 Co-Lead Settlement Class Counsel, on behalf of the Settlement Class, are expressly authorized by Representative Plaintiff to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate.

10.9 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.10 The 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. A complete set of original executed counterparts shall be filed with the Court.

10.11 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

10.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the

Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

10.13 This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State's choice of law principles.

10.14 As used herein, "he" means "he, she, or it;" "his" means "his, hers, or its," and "him" means "him, her, or it."

10.15 All dollar amounts are in United States dollars.

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

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

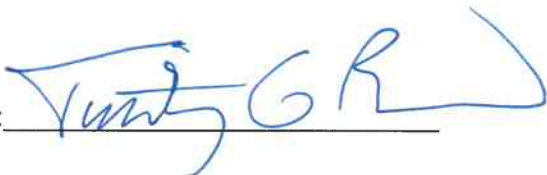
By:  _____

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Attorney for Defendant CodeMetro, Inc.

By: *Ben Barnow* _____

Ben Barnow
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By:  _____

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San Diego, CA 92101

Proposed Co-Lead Settlement Class Counsel

Juan C. Lozano, individually and on behalf of
his minor son, AJL



Juan C. Lozano