

putative class representatives on behalf of a class of victims of the TelexFree pyramid scheme (the “Pyramid Scheme”) against, among others, the Fidelity Bank Defendants;

WHEREAS, TelexFree maintained deposit accounts at Fidelity Bank from August 2013 to January 2014;

WHEREAS, TelexFree Class Plaintiffs allege that they suffered ascertainable economic injury as a result of the Fidelity Bank Defendants’ alleged assistance and participation in the unlawful TelexFree Pyramid Scheme, as referenced in TelexFree Class Plaintiffs’ MDL 2566 Consolidated Amended Class Action Complaints (the “Complaints”), and the Fidelity Bank Defendants unequivocally deny the TelexFree Class Plaintiffs’ allegations;

WHEREAS, TelexFree Class Plaintiffs allege that as a result of its relationship to TelexFree as referenced throughout the Complaints and herein, Fidelity Bank, including certain of its officers, employees and outside consultants gained knowledge concerning TelexFree’s unlawful enterprise, and the Fidelity Bank Defendants unequivocally deny the TelexFree Class Plaintiffs’ allegations;

WHEREAS, the Court has granted in part and denied in part the Fidelity Bank Defendants’ motion to dismiss;

WHEREAS, the Fidelity Bank Defendants have undertaken a full due diligence inquiry and represent that the single insurance policy disclosed to date by Fidelity Bank is the only insurance policy, contested or uncontested, that might possibly under any interpretation, afford coverage to each and every one of the Releasees (as defined below), including Fidelity Bank, its officers, executives, and Board of Directors, and this includes personal excess policies, and the completeness and truthfulness of such information is a material term and condition to this

settlement, and all parties recognize that in reaching a settlement Plaintiffs are relying on the completeness and truthfulness of these representations;

WHEREAS, Settlement Class Counsel has received and reviewed Fidelity Bank's first quarter 2020 financial statements;

WHEREAS, the Fidelity Bank Defendants represent that, other than fees for services performed from 2012 through 2014, they received no benefit from TelexFree's unlawful Pyramid Scheme or related business operations and will not in the future receive benefit directly or indirectly from TelexFree's unlawful Pyramid Scheme or related business operations;

WHEREAS, each representation by the Fidelity Bank Defendants and the TelexFree Class Plaintiffs is a material term of the Settlement between the parties, including the full and unfettered disclosure and full payment of all available and all potentially available insurance;

WHEREAS, no payment or monies will be owed by the Fidelity Bank Defendants and the other Releasees in excess of the amount set forth below.

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for the Fidelity Bank Defendants, and this Agreement has been reached as a result of those negotiations;

WHEREAS, among other arm's length settlement negotiations, settlement negotiations occurred over several days under the guidance of professional mediator Jed Melnick of JAMS;

WHEREAS, TelexFree Class Plaintiffs have requested, and the Fidelity Bank Defendants have agreed to provide cooperation ("Full Cooperation" as defined below);

WHEREAS, TelexFree Class Plaintiffs have concluded that resolving the claims against the Fidelity Bank Defendants according to the terms set forth herein is in the best interests of TelexFree Plaintiffs Settlement Class (as defined below);

WHEREAS, the Fidelity Bank Defendants, specifically without admitting any liability, have agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against the Fidelity Bank Defendants and Releasees (as defined below) with respect to the TelexFree Pyramid Scheme based on the allegations in the Actions, as more particularly set out below;

WHEREAS, the Full Cooperation that the Fidelity Bank Defendants have agreed to provide to TelexFree Class Plaintiffs, if allowed by the Court, will aid TelexFree Class Plaintiffs, by reducing the substantial burden and expense in the ongoing prosecution of the Actions and also by providing cash settlement funds; and

WHEREAS, the Action will continue against Defendants that are not Releasees and this Agreement with the Fidelity Bank Defendants will not impair TelexFree Class Plaintiffs' ability to collect the damages from persons other than the Releasees to which they and the Settlement Class may be entitled in the Actions.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Actions be settled, compromised, and dismissed with prejudice as to the Releasees, and, except as hereinafter provided, without costs as to the TelexFree Class Plaintiffs, the Settlement Class, or the Fidelity Bank Defendants, subject to the approval of the Court, on the following terms and conditions:

AGREEMENT

A. Definitions.

1. “Cooperation” and “Full Cooperation” refer to the provisions set forth in Paragraphs 14 - 20 and to the material representations made relating to the Fidelity Bank financials and available and potential insurance.

2. “Defendant(s),” for purposes of this Settlement Agreement means all Defendants named in the Fourth Consolidated Amended Complaint and all such other persons that may be further added as Defendants in this Action while it is pending.

3. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of this Agreement, Document shall include all foreign and English translations in the Fidelity Bank Defendants’ custody, possession or control as well as those appearing in another language.

4. “Releasees” means Fidelity Bank, John Merrill and their past, present and future employees, officers, directors, corporators, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, fiduciaries, partners, partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, principals, managing directors, members, managers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, consultants, brokers, dealers, lenders, attorneys, representatives, accountants, insurers, co-insurers, reinsurers, associates and their related parties. For purposes of clarity, Infinex and its past, present and future employees, officers, and directors are not Releasees; provided, however, that in the case of persons who are past, present or future dual employees of Fidelity Bank and

Infinex, such persons are Releasees only in their capacity as past, present or future employees of Fidelity Bank, but not in their capacity as past, present or future employees of Infinex.

5. “Releasers” shall refer jointly and severally, individually and collectively to the TelexFree Class Plaintiffs and the members of the putative Settlement Class, as well as each of their parents, subsidiaries, affiliates, divisions, predecessors, heirs, successors and assigns, and their respective past and present officers, directors and employees.

6. “Settlement Class” is defined as all persons who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012 to April 16, 2014. A “Net Loss” is defined as providing more funds into TelexFree than the total funds withdrawn from TelexFree.

7. “Settlement Class Counsel” shall refer to Interim Lead Counsel, members of Plaintiffs’ Interim Executive Committee, and the following Class Counsel:

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8. “Member” means each member of the Settlement Class who does not timely elect to be excluded from the Settlement Class.

9. “TelexFree” for purposes of this Settlement Agreement includes all TelexFree entities, including, but not limited to, Ympactus, Above and Beyond the Limit, LLC, TelexFree, Inc., TelexFree, LLC, TelexFree Financial, Inc., Telexelectric, LLLP, Telex Mobile, Holdings, Inc., TelexFree International, Inc., TelexFree, Ltd., Ympactus Comercial Ltda, P.L.I. TelexFree Rwanda, Ltd., JC REALTY , Sunwind, and Botafogo de Futebol e Regatas and those otherwise

as identified in good faith by the TelexFree Class Plaintiffs or Fidelity Bank Defendants or as contained in Fidelity Bank's business records or personnel files.

B. Settlement Amount

10. "Settlement Amount" means twenty-two million five hundred thousand dollars (USD \$22,500,000.00), inclusive of all attorneys' fees, court costs and other administrative costs.

11. In consideration for the dismissal with prejudice of all claims that were brought or could have been brought against the Fidelity Bank Defendants, the Settlement Amount shall be paid by or on behalf of the Fidelity Bank Defendants and their insurance carrier into the Escrow Account (as described herein) within thirty (30) calendar days of the Court granting preliminary approval of the settlement and receipt of payment instructions and a Form W-9. The Fidelity Bank Defendants shall have no monetary obligation whatsoever in excess of the Settlement Amount.

12. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, the Fidelity Bank Defendants and their insurers shall pay the "Settlement Amount" at the times and in the amounts set forth in Paragraph 10 of this Agreement into an escrow account to be administered in accordance with the provisions of Paragraph 13 of this Agreement (the "Escrow Account"). Nothing in this Paragraph shall relieve the Fidelity Bank Defendants from their Cooperation obligations as specified in Paragraphs 14 - 20, which obligations shall survive the payment of any and all financial consideration by the Fidelity Bank Defendants.

13. Escrow Account.

(a) An escrow account shall be maintained at the Century Bank (the “Escrow Account”). Such escrow shall be administered under the Court’s continuing supervision and jurisdiction.

(b) All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund.

(c) All funds held in the Escrow Account shall be deemed and considered to be in legal custody of the MDL 2566 Court and shall remain subject to the jurisdiction of that Court, until such time as they are distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Fidelity Bank Defendants will not object to a proposed preliminary approval order providing that: (1) the funds in the Escrow Account may be used as provided herein for reasonable disbursements of expenses associated with providing notice of the settlement (“Class Notice” or “Notice”) to the Settlement Class and administrative (not legal) expenses for maintaining and administering the Settlement Fund, which may be paid without approval from the Court and shall not be refundable to the Fidelity Bank Defendants in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective for any reason; (2) the funds in the Escrow Account may be used for such purposes,

including, without limitation, validating or determining the identity of net losers and updated addresses of class members, or otherwise restoring or working with TelexFree's user information management system (referred to as the "SIG" system) to insure accuracy and completeness in an amount up to \$500,000.00, which Settlement Class Counsel shall deduct from the Settlement Fund. To preserve the cash component assets and otherwise serve the best interests of the putative class, and with the approval of the MDL 2566 Court, Notice for the settlement with the Fidelity Bank Defendants may be combined with Notice of settlement with any or all other defendants. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court. The Fidelity Bank Defendants shall have no further obligation to pay costs of Notice or the expense of maintaining and administering the Settlement Fund. Once the Court orders final approval to the Settlement Agreement, the Fidelity Bank Defendants shall have no further input or make any motion as to the disposition of the remainder of the Settlement Amount.

(e) The Escrow Account is intended by the Parties to be treated as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, and to that end the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of the Fidelity Bank Defendants, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the Parties shall take all actions as may be necessary or appropriate

to this end. At the direction of Settlement Class Counsel, with notice to the Fidelity Bank Defendants and without Court approval, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval as defined in paragraph 30 (“Final Approval”) has occurred. Except as set forth in this Paragraph, TelexFree Class Plaintiffs shall have no responsibility to make any tax filings related to the Settlement Fund or to pay any taxes with respect thereto, and neither the Releasees nor any Releasor nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters. For purposes of this Settlement, all proceeds and payments shall be considered to have occurred in 2020.

(f) If this Agreement does not receive Final Approval, including final approval of the Settlement Class as defined in this Agreement, or if the Actions are not certified as class actions for settlement purposes, then all amounts paid by the Fidelity Bank Defendants into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 13(d) and 36) shall be returned to the Fidelity Bank Defendants and their insurers from the Escrow Account along with any interest accrued thereon as soon as reasonably practicable but no later than thirty (30) calendar days following the Fidelity Bank Defendants’ request for same.

C. Agreement to Cooperate.

14. In addition to payment of the Settlement Amount set forth in Paragraph 10, the Fidelity Bank Defendants each agree to promptly, timely and fully provide Full Cooperation to

TelexFree Class Plaintiffs as set forth below at their own expense except as specifically articulated within this Settlement Agreement.

15. “Cooperation Materials” and “Full Cooperation” mean and include the following:

(a) Documents – Within seven (7) calendar days of the full execution of this Agreement, Settling Defendants shall produce all documents in their possession, custody or control that were created or that otherwise came into Settling Defendants’ possession as of January 1, 2010 through to this date relating to the allegations and claims in the TelexFree Litigation.

i) The Documents will include all non-privileged documents relating to allegations and claims in the TelexFree Litigation including, but not be limited to, all documents that the Fidelity Bank Defendants produced to the Chapter 11 Trustee for TelexFree or in response to any subpoena issued by any governmental or investigatory agency related to TelexFree’s unlawful Pyramid Scheme, its related business and businesses or individuals that interacted with them.

ii) John Merrill’s counsel will promptly seek to retrieve cloud based or data drive storage, emails and text messages and telephone call records from John Merrill’s providers at the time and shall review those and produce all documents for the period January 1, 2010 through to this date relating to the allegations and claims in the

TelexFree Litigation to the extent those documents have not already been produced.

- iii) Fidelity Bank Defendants shall not produce documents protected by the attorney client privilege, attorney work product doctrine, joint defense privilege or subject to the bank examination privilege or SAR confidentiality. Settling Defendants shall provide a privilege log within five (5) business days of the production described above. Any disputes over privilege shall be submitted under seal to the Court for *ex parte* in camera review and resolution.
- iv) To the extent that the produced materials may involve confidential information concerning customers of the Fidelity Bank Defendants other than TelexFree or any other Defendant in this action, the Fidelity Bank Defendants may redact such information from their production.
- v) Authentication –
 - (1) With respect to all business records produced pursuant to the foregoing provisions, the Fidelity Bank Defendants agree to provide an affidavit, if requested, that the documents they produce were business records and that
 - (a) each record was made and kept in the course of regularly conducted business activity;

- (b) each record is one that is routinely made and kept in the course of business, in the business's usual practice;
 - (c) each record was made at or near the time of the event that it records; and
 - (d) each record was made by a person with knowledge, or from information transmitted by a person with knowledge, and who reported such knowledge in the regular course of business.
- vi) If the TelexFree Class Plaintiffs' counsel deems it necessary to have the Fidelity Bank Defendants authenticate one or more documents in connection with a motion for summary judgment or admission at trial, they shall identify those documents to the Fidelity Bank Defendants' counsel and the Fidelity Bank Defendants shall proffer one or more competent witnesses to appear at a deposition or to otherwise authenticate the identified documents. It is understood that any such witness will be qualified to so testify and will testify as to their best recollection.
- (b) Interviews –
- i) John Merrill and Fidelity Bank will each make themselves separately available in the presence of their counsel for telephonic or video conference interviews, as described herein.
 - ii) Settlement Class Counsel and Fidelity Bank shall cooperate to identify appropriate witnesses, which shall be limited to no more than five

(5) current bank employees, officers, and directors, in their capacity as such, and John Merrill. Fidelity Bank shall provide the last known phone number and address of former employees upon the reasonable request of Settlement Class Counsel.

iii) Interview time shall not exceed twenty-five (25) hours in the aggregate.

iv) All interviews shall be completed no later than sixty (60) days after the Court's hearing on preliminary approval of the settlement. If information is newly discovered after this period, Settlement Class Counsel shall have a right to request an interview of a reasonable time duration, which shall not be unreasonably denied.

v) All information provided by the Fidelity Bank Defendants and their designees during these interviews shall be deemed to have been provided pursuant to Fed. R. Evid. 408 and shall be confidential and inadmissible.

(c) Depositions –

i) Plaintiffs shall be entitled to depose up to five (5) of Fidelity Bank Defendant witnesses; provided, however, such depositions shall be in the city and state of the witness's selection and otherwise conducted pursuant to the Federal Rules of Civil Procedure. It is understood that any such witness will testify as to their best current recollection.

ii) If necessary to authenticate any documents that could not be authenticated by the five (5) witnesses identified above or by affidavit or

declaration, Fidelity Bank will additionally, make one (1) custodian of records witness available for deposition or to appear at trial if needed if requested by Settlement Class Counsel; provided, however, such a deposition shall be in the city and state of the witness's selection and otherwise conducted pursuant to the Federal Rules of Civil Procedure.

16. This Cooperation provision is a material term to this Agreement. If the Plaintiffs take the position that a Fidelity Bank Defendant is not cooperating as required under the terms of this Agreement (including, but not limited to, the withholding of any non-privileged materials, witnesses or information that is required to be provided by the Fidelity Bank Defendants under this Agreement), the TelexFree Class Plaintiffs shall provide the non-cooperating Fidelity Bank Defendant(s) with notice of the non-cooperation and a reasonable period to cure of no less than fifteen (15) business days. If a Fidelity Bank Defendant fails to cure within 15 days, the TelexFree Class Plaintiffs shall be entitled to request that the Court make a determination as to whether that Fidelity Bank Defendant has materially failed to adhere to the terms of this Agreement. In such event, the Settlement Agreement and any other supporting documents shall be filed under seal with the Court. Upon a finding by the Court that a Fidelity Bank Defendant has materially failed to adhere to a material term of the Settlement Agreement after the aforementioned proper notice and an opportunity to cure, the TelexFree Class Plaintiffs shall have the right to request that the Court terminate this Settlement Agreement as to the non-complying Fidelity Bank Defendant and authorize the TelexFree Class Plaintiffs to resume litigation of claims against said Fidelity Bank Defendant nunc pro tunc.

17. All Cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

18. Upon filing the notice described in Paragraph 25, the Fidelity Bank Defendants will withdraw from all Joint Defense Agreements relating to this matter, if any.

19. All exchanges prior to and relating to the execution of this Settlement Agreement, including proffers and meetings between counsel for the Parties, were expressly carried out as such and are entitled to the protections of Fed. R. Evid. 408. No Party shall disclose the contents of those discussions, proffers, and exchanges of documents with any person or entity for any reason.

20. The TelexFree Class Plaintiffs and Settlement Class Counsel agree that they and their experts will not use the information provided by the Fidelity Bank Defendants, in compliance with the Protective Order entered by the MDL 2566 Court on February 26, 2020 (Dkt. 885), beyond what is reasonably necessary for the prosecution of the TelexFree Class Plaintiffs' claims in the Actions or as otherwise required by law. While TelexFree Class Plaintiffs may employ knowledge that they have obtained from the Fidelity Bank Defendants' Cooperation under this Agreement in prosecuting their claims in the Actions, the TelexFree Class Plaintiffs, Settlement Class Counsel and their experts shall treat all documents, testimony and statements provided pursuant to this Agreement in accordance with the protections of the Protective Order.

D. Release, Discharge, and Covenant Not to Sue.

21. Upon final approval by the Court of this settlement, and in consideration of payment of the Settlement Amount and Cooperation, as specified in Paragraphs 11 and 14 - 20, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known

and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating to TelexFree, including (a) any conduct alleged in the Complaints, (b) any act or omission of the Releasees (or any of them) alleged in the Complaints concerning the conduct of the Fidelity Bank Defendants as relates to TelexFree, or (c) any conduct alleged and causes of action asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Actions (the “Released Claims”).

22. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement is, for any reason, not finally approved or is rescinded or otherwise fails to become effective, including if the Court terminates this Settlement pursuant to the process described in Paragraph 16 of this Agreement.

23. In addition to the provisions of Paragraph 21 - 22 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims and upon this Agreement becoming final, any and all provisions, rights, and benefits, conferred by § 1542 of the California Civil Code, which states:

**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
FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.**

Releasors further expressly waive and release, solely with respect to the Released Claims and upon this Agreement becoming final, any and all provisions, rights, and benefits, conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code.

E. Approval of this Agreement and Dismissal of Claims against the Fidelity Bank Defendants.

24. The TelexFree Class Plaintiffs and the Fidelity Bank Defendants shall use their best efforts to effectuate this Agreement, including cooperatively seeking the Court's approval for the establishment of procedures, including the giving of class notice under Federal Rule of Civil Procedure 23(e) electronically, to secure the complete and final dismissal with prejudice of the Actions as to the Releasees only.

25. Within twenty-four (24) hours after the execution of this Agreement, TelexFree Class Plaintiffs shall notify the Court of the fact that the TelexFree Class Plaintiffs and the Fidelity Bank Defendants have reached an agreement to settle all claims relating to Fidelity Bank and John Merrill, and shall file a motion requesting that this Action be stayed as to the Fidelity Bank Defendants. The Fidelity Bank Defendants shall draft and the TelexFree Class Plaintiffs shall approve the Joint Notice and Motion for Stay. Other than as contemplated by terms of this Agreement, neither the Fidelity Bank Defendants nor TelexFree Class Plaintiffs shall file motions against the other in this Action during the pendency of the Agreement.

26. Within thirty (30) days after the execution of this Agreement, the TelexFree Class Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement. The Motion shall include the proposed form of an order preliminarily approving this Agreement, a proposed form of the electronic notice, and a request for a final approval hearing as soon as reasonably practicable. No less than five (5) business days before filing, the TelexFree Class Plaintiffs shall submit a draft of the Motion to the Fidelity Bank Defendants for approval consistent with the terms of this Settlement Agreement, which shall not be unreasonably withheld.

27. The TelexFree Class Plaintiffs shall seek authorization to electronically disseminate notice of the proposed settlement to the Settlement Class.

28. TelexFree Class Plaintiffs shall seek, and the Fidelity Bank Defendants will not object unreasonably to, the entry of an order and final judgment approving the settlement.

29. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:

- (a) Certification of the Settlement Class described in Paragraph 6 of this Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement;
- (b) As to the Actions, final approval of this settlement and its terms as being a fair, reasonable and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and direction of its consummation according to its terms;
- (c) As to Class Notice, approval of electronic notice as satisfying the requirements of Rule 23 because it is the “best notice that is practicable under the circumstances.” The sole use of Electronic Notice, without publication in printed materials including mail, is a material term of this agreement. The parties have taken into account that TelexFree was an e-based operation;
- (d) That all claims against the Fidelity Bank Defendants for contribution or indemnification arising under or in any way related to the TelexFree Pyramid Scheme shall be barred, including pursuant to M.G.L. c. 231B, §4, which bars contribution actions against joint tortfeasors who settle in good faith, without regard to the principles of conflicts of law;

- (e) As to the Fidelity Bank Defendants, a directive that the Actions be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- (f) Reservation of exclusive jurisdiction to the United States District Court for the District of Massachusetts over the settlement and this Agreement, including the administration and consummation of this settlement, as well as over the Fidelity Bank Defendants for the duration this Agreement;
- (g) Determination under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and a directive that the judgment of dismissal as to the Fidelity Bank Defendants shall be final; and
- (h) The terms of this Agreement shall remain binding on the parties following dismissal and that the MDL 2566 court shall retain continuing jurisdiction.

30. This settlement shall become final when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 6 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a separate and final judgment dismissing the Fidelity Bank Defendants from the above-captioned Actions with prejudice as to all Settlement Class Members and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a separate and final judgment as to the Fidelity Bank Defendants described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to the Fidelity Bank Defendants has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

31. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that TelexFree Class Plaintiffs and the Fidelity Bank Defendants have executed this Agreement, TelexFree Class Plaintiffs and the Fidelity Bank Defendants shall be bound by its terms and this Agreement shall not be rescinded except in accordance with the terms of this Agreement.

F. Exclusions and Opt Outs

32. Within thirty (30) business days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel shall cause copies of requests for exclusion from the Settlement Class to be provided to counsel for the Fidelity Bank Defendants and placed on file. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, the Fidelity Bank Defendants reserve all of their legal rights and defenses.

33. If 50 or more of the Settlement Class Members or any number of Settlement Class Member alleging a Net Loss of \$500,000.00 or more opt out of the settlement with the Fidelity Bank Defendants, then the Fidelity Bank Defendants shall have the option, in their sole and absolute discretion, to declare that the Agreement is null and void. The Fidelity Bank Defendants shall be deemed to waive their right to declare this Agreement null and void if they fail to notify the TelexFree Class Plaintiffs' counsel of such an election within 10 days of receiving notice that 50 or more of the Settlement Class Members or any number of Settlement Class Member alleging a Net Loss of \$500,000.00 or more have opted out. In such event, all information provided by the Fidelity Bank Defendants and their designees pursuant to the cooperation provisions of this agreement shall be deemed to have been provided pursuant to Fed. R. Evid. 408 and shall be confidential and inadmissible.

G. Electronic Notice to The Class

34. The Fidelity Bank Defendants agree to permit use of a maximum of \$500,000.00 of the Settlement Fund monies paid by them for notice to the Class and the costs of administration of the Settlement Fund. This shall include without limitation validating or determining the identity of net losers and updated addresses of class members, or otherwise restoring or working with the SIG system to ensure accuracy and completeness, as described in Paragraph 13(d).

35. It is agreed to by the Parties that electronic notice is the best possible method of notice to this unique class. The use of electronic notice only, rather than mail or publication, is a material term to this Settlement Agreement, and should the Court not approve this term the Parties have the right to terminate the agreement subject to Paragraph 39 below, which provides a period during which they shall be afforded the option of presenting the Court with an alternative form of Notice.

36. The aforementioned notice, administration and other expenses identified in Paragraph 13(d) up to the maximum of \$500,000.00 from the Fidelity Bank Defendants and payable from the Settlement Fund are not recoverable if this settlement does not become final or is rescinded or otherwise fails to become effective to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs.

37. Other than through the funds paid associated with providing notice of this settlement and administration of the Settlement Fund, the Fidelity Bank Defendants shall not be liable for any other of the TelexFree Class Plaintiffs' costs or expenses in litigating the Actions, including attorneys' fees, fees and expenses of expert witnesses and consultants, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

38. If Settlement Class Counsel enter into any other settlements on behalf of a class of TelexFree Class Plaintiffs in the MDL 2566 Litigation after the Execution Date, but before notice of this Agreement is given to the Settlement Class, Settlement Class Counsel shall use reasonable efforts to provide a single notice to prospective Settlement Class members of all such settlements, and the administrative costs associated with providing notice and administration of the settlement fund shall be allocated proportionately among the Fidelity Bank Defendants, but in no event shall the Fidelity Bank Defendants payments exceed the \$500,000 cap on such payments.

39. If the Court does not approve electronic notice as the sole notice to the class, the Parties shall have the option of formulating and agreeing to propose to the Court a mutually agreeable alternative notice program within fourteen (14) days.

H. The Settlement Fund.

40. Releasors shall look solely to the Settlement Fund and Full Cooperation for satisfaction against the Releasees of all Released Claims and shall have no other recovery against the Fidelity Bank Defendants or any Releasee.

41. After this settlement becomes final within the meaning of Paragraphs 29 and 30, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, with the exception of the provisions set forth in Paragraph 13(d) of this Agreement.

I. Settlement Class Counsel's Attorneys' Fees, Payment of Costs and Expenses, and Incentive Awards for Class Representatives.

42. Subject to Court approval, the TelexFree Class Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs and expenses and any award of attorneys' fees after this Agreement becomes final within the meaning of Paragraph 30. Incentive awards to any of the TelexFree Class Plaintiffs, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund.

43. Neither the Fidelity Bank Defendants nor any Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel of any fee or cost and expense award in the Actions and shall take no position on the proposed distribution of the funds it pays or the use of the evidence it provides.

44. In addition, neither the Fidelity Bank Defendants nor any Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, or any other person who may assert some claim thereto, of any fee or cost and expense award that the Court may make in the Actions.

J. Rescission If this Agreement Is Not Approved or Final Judgment Is Not Entered.

45. If the Court refuses to approve this Agreement or any material term herein or if the Court does not certify a settlement class in accordance with the specific Settlement Class definition set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraphs 29 and 30 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then the Fidelity Bank Defendants and the TelexFree Class

Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

46. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraphs 65. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees or costs and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

47. In the event that this Agreement or the settlement described herein does not become final, or this Agreement otherwise is terminated pursuant to Paragraph 16, then this Agreement shall be of no force or effect, and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to the Fidelity Bank Defendants less only disbursements made, or obligations incurred in accordance with Paragraphs 36 of this Agreement. In the event that this Agreement is terminated as to one, but not both of the Fidelity Bank Defendants, pursuant to Paragraph 16, then the Court shall make a determination of the allocation of the Settlement Amount as among the Fidelity Bank Defendants for purposes of returning funds pursuant to this paragraph.

48. In the event that this Agreement or the settlement described herein is rendered null and void, the Fidelity Bank Defendants reserve the right to oppose certification of any class in this or any other proceeding, and TelexFree Class Plaintiffs and their counsel agree that Fidelity Bank Defendants' consent to certification for purposes of this Settlement (a) shall not be deemed to constitute an admission by Fidelity Bank Defendants with respect to class certification for any other purpose or in any other case or context, (b) shall not be deemed to constitute a waiver by Fidelity Bank Defendants of any rights to oppose any other request for class certification, (c) shall not be cited or mentioned in support of, or in connection with, any other request for class

certification, and (d) shall have no prejudicial, precedential or preclusive effect whatsoever with respect to any subsequent opposition by Fidelity Bank Defendants to any other request for class certification.

49. The fact of and provisions contained in this Agreement, and all negotiations, discussions, actions and proceedings in connection with this Stipulation shall not be deemed or constitute a presumption, concession or an admission by any Party, any signatory hereto or any Releasee of any fault, liability or wrongdoing or lack of any fault, liability or wrongdoing, as to any facts or claims alleged or asserted in the Action or any other actions or proceedings, and shall not be interpreted, construed, deemed, involved, invoked, offered or received in evidence or otherwise used by any person in the Action or any other action or proceeding, whether civil, criminal or administrative, except in connection with any proceeding to enforce the terms of this Agreement. All negotiations, discussions, actions and proceedings leading up to the execution of this Agreement are confidential. The fact of and provisions contained in this Agreement, and all negotiations, discussions, actions and proceedings leading up to the execution of this Stipulation, are intended for settlement discussions only.

K. Miscellaneous.

50. Nothing in this Agreement shall prevent the TelexFree Class Plaintiffs from using documents produced by the Fidelity Bank Defendants in connection with its Cooperation pursuant to this Agreement against any other Defendant for any purpose in the MDL-2566 Litigation as long as the advance notice provisions in this Settlement Agreement and the Protective Order are complied with.

51. The Settlement Class Counsel will make no public statements regarding the settlement or claims relating to the Fidelity Bank Defendants prior to the filing of a motion for

preliminary approval of this settlement except as required to obtain preliminary and final approval of this settlement. Each Settlement Class Counsel shall refrain from any disparagement of the Fidelity Bank Defendants or of any current or former employee, officer, or director of Fidelity Bank. This non-disparagement obligation does not apply to any statement by Settlement Class Counsel to the Court, at trial, or to any Putative Class Representative.

52. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement in exchange for the payment of the Settlement Amount and Cooperation by the Fidelity Bank Defendants. The fact of and provisions contained in this Agreement shall not be deemed or constitute a presumption, concession or an admission by any Party, any signatory hereto, any Releasee, or any Releasor of any fault, liability or wrongdoing or lack of any fault, liability or wrongdoing, as to any facts or claims alleged or asserted in the Actions or any other actions or proceedings.

53. Fidelity Bank's counsel shall determine in good faith all materials reasonably required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"). The Fidelity Bank Defendants will prepare all notices required under CAFA and shall mail the CAFA notices. No part of this clause shall violate the express terms of CAFA or its interpretive cases.

54. This Agreement does not settle or compromise any claim by the TelexFree Class Plaintiffs, or any other Settlement Class Member asserted in the Complaints or, if amended, any subsequent Complaint, against any Defendant or alleged co-conspirator other than the Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by the TelexFree Class Plaintiffs and the Settlement Class.

55. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than the Releasees for their involvement with TelexFree and others' alleged illegal conduct, are specifically reserved by TelexFree Class Plaintiffs and Settlement Class Members.

56. Fidelity Bank Defendants' alleged involvement with TelexFree and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a potential basis for liability and damage claims against persons or entities other than the Fidelity Bank Defendants and the Releasees and may be part of any joint and several liability claims against other current or future Defendants in the Actions or other persons or entities other than the Releasees.

57. The Court presiding over this Action shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by the TelexFree Class Plaintiffs and the Fidelity Bank Defendants.

58. Nothing shall prohibit the parties from mutually agreeing to have disputes arising under this Agreement submitted to binding arbitration.

59. All persons and entities making claims under this Settlement Agreement shall be deemed to and voluntarily submit to the jurisdiction of the MDL 2655 Court.

60. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Massachusetts without regard to its choice of law or conflict of laws principles. The Fidelity Bank Defendants will not object to complying with the provisions set forth in this Agreement on the basis of jurisdiction.

61. This Agreement constitutes the entire, complete and integrated agreement among the TelexFree Class Plaintiffs and the Fidelity Bank Defendants pertaining to the settlement of the Actions against the Fidelity Bank Defendants, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between the TelexFree Class Plaintiffs and the Fidelity Bank Defendants in connection herewith. This Agreement may not be modified or amended except in writing executed by the TelexFree Class Plaintiffs and the Fidelity Bank Defendants and approved by the Court.

62. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the TelexFree Class Plaintiffs and the Fidelity Bank Defendants. Without limiting the generality of the foregoing, upon final approval of this Agreement each and every covenant and agreement made herein by the TelexFree Class Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members, Releasers and Releasees. The Releasees (other than the Fidelity Bank Defendants which are parties hereto) are third-party beneficiaries of this Agreement who are bound by this agreement and are otherwise authorized to enforce its terms applicable to them.

63. This Agreement may be executed in counterparts by the TelexFree Class Plaintiffs and the Fidelity Bank Defendants, and a facsimile or imaged signature shall be deemed an original signature for purposes of executing this Agreement.

64. Neither the TelexFree Class Plaintiffs nor the Fidelity Bank Defendants shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

65. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication or document shall be provided by facsimile, or electronic mail (provided that no notice of rejection or non-delivery of email is received), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

66. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement.

Dated: July 7, 2020

[SIGNATURE PAGE FOLLOWS]

THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND CONDITIONS


Fidelity Bank
By its attorneys,

TELEXFREE CLASS PLAINTIFFS
By their attorneys,

Ian D Roffman

John Merrill
By his attorneys,

Michael Pineault



Robert J. Bonsignore
MDL 2566 Interim Lead Counsel

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