

AGREEMENT

This Agreement ("Agreement") is made and entered into this 10th day of February, 2017, by and among Defendants U.S. Gas & Electric, Inc. and Energy Services Providers, Inc. (collectively, "USGE" or "Defendants"), and the Settlement Class (as defined below), acting by and through Plaintiffs Patricia Vitale and Vincent Vitale, husband and wife (together, "Plaintiffs," and together with Defendants, the "Parties"). This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims (as defined below), subject to the approval of the Court and the terms and conditions set forth below.

BACKGROUND

On or about June 9, 2014, Plaintiffs filed an action captioned Patricia Vitale and Vincent Vitale, on behalf of themselves and all other similarly situated, v. U.S. Gas & Electric, Inc., d/b/a N.J. Gas & Electric (the "State Court Action"). The State Court Action was filed in the Superior Court of New Jersey, Law Division, Bergen County, and was assigned Docket No. BER-L-5468-14.

On or about July 15, 2014, Defendants filed a notice of removal that removed the State Court Action to the United States District Court for the District of New Jersey. The matter (the "Action") then proceeded in federal court, under Civil Action No.: 2:14-cv-4464-KM-MAH.

Thereafter, Plaintiffs filed an Amended Complaint, on or about September 18, 2014, ECF No. 6, and a Second Amended Complaint, on or about October 16, 2014, ECF No. 10. Among other things, the Second Amended Complaint deleted the "d/b/a" from the name of Defendant U.S. Gas & Electric, Inc. and added as Defendants Energy Services Providers, Inc. and John Doe Corporations #1-25.

On or about October 30, 2014, Defendants filed a motion to dismiss the Second

Amended Complaint. ECF Nos. 13, 14. On or about December 1, 2014, Plaintiffs filed a brief in opposition to that motion. ECF No. 19. Thereafter, the Parties submitted letters presenting and responding to supplemental authorities relating to the pending motion. ECF Nos. 20-24.

On or about March 16, 2016, the Court (Hon. Kevin A. McNulty, U.S.D.J.) issued a Memorandum Opinion and Order that denied, in its entirety, Defendants' motion to dismiss the Second Amended Complaint. ECF No. 25. Defendants then filed an Answer to the Second Amended Complaint, which included numerous Separate Defenses, on or about March 30, 2016. ECF No. 27.

On or about April 12, 2016, Defendants filed a motion for summary judgment. ECF Nos. 28-32. The Court (Hon. Michael A. Hammer, U.S.M.J.) terminated that motion, without prejudice, as premature, on or about April 15, 2016. ECF No. 33.

Judge Hammer set an initial conference for May 23, 2016. ECF No. 37. The Parties thereafter requested that that conference be adjourned so that the Parties could pursue a settlement mediation, and Judge Hammer granted that request. ECF Nos. 42-43.

The Parties engaged Hon. Joel B. Rosen, U.S.M.J. (Ret.) to conduct the settlement mediation. After the Parties submitted written mediation statements, Judge Rosen conducted an all-day settlement mediation on August 23, 2016. The Parties thereafter engaged in further discussions under the auspices of Judge Rosen. As a result of those extensive, contentious, and arms-length negotiations, the Parties have reached the settlement that is embodied in this Agreement.

USGE and the other Releasees (as defined below) have at all times denied, and continue to deny, any wrongdoing of any kind whatsoever. Without admitting liability, they nevertheless

have agreed to enter into this Agreement to avoid further expense, as well as the burdens and risks of litigation.

Plaintiffs have agreed to serve as representatives of the Settlement Class. They have been informed by their counsel of the duties and obligations of a class representative, are familiar with the pleadings and discovery in the Action and the results of the factual investigation undertaken by their counsel, and have been fully advised by their counsel as to the terms and effects of this Agreement, including the nature of the claims released, the potential for success if the Action were to be litigated to its conclusion, and the relief obtained by the settlement.

In evaluating the settlement set forth in this Agreement, Plaintiffs' counsel Lite DePalma Greenberg, LLC and Poulos LoPiccolo P.C. (together "Plaintiffs' Counsel"), have concluded that the benefits provided to the Settlement Class under this Agreement make a settlement with USGE and the other Releasees pursuant to such terms and conditions in the best interests of the Settlement Class. Plaintiffs' Counsel reached that conclusion in light of, among other considerations: (1) the substantial benefits afforded to the Settlement Class under the terms of this Agreement; (2) the attendant risks and uncertainties of litigation, especially in complex litigation such as this Action; (3) the expense and length of time necessary to prosecute these actions through trial; and (4) the desirability of consummating this Agreement promptly to provide effective monetary and other relief to the Settlement Classes (as defined below).

The Parties desire to compromise and settle all issues and claims relating to the allegations made in the Action or that could have been made under the facts alleged in the Action, by or on behalf of all persons included in the Settlement Class. The Parties, and their respective counsel, believe that the terms of the settlement set forth in this Agreement are fair,

reasonable and adequate, and the Parties desire and intend to seek Court approval of the settlement as set forth in this Agreement.

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Agreement and the entry by the Court of a Final Approval Order and Judgment (as defined below), the Action shall be settled and compromised on the terms and conditions set forth below. It is further agreed that each of the recitals stated above is true and accurate, and is hereby made a part of this Agreement.

I. DEFINITIONS

In addition to any definitions contained above, the following definitions shall apply:

- A. “Administration Expenses” means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator and any third parties perform in furtherance of the administration of the Settlement, including: (1) preparation and distribution of the Summary Notice and Settlement Notice; and (2) preparation of status reports to the Parties and the Court.
- B. “Application” means the application to be filed by Class Counsel to the Court by which they will seek an award of reasonable attorneys’ fees and reimbursement of costs they incurred prosecuting the State Court Action and the Action, as well as an award to be paid to Plaintiffs in the Action.
- C. “Class Counsel” means the law firms of Lite DePalma Greenberg, LLC, and Poulos LoPiccolo P.C.
- D. “Court” means the United States District Court for the District of New Jersey.
- E. “Defendants” means U.S. Gas & Electric, Inc., Energy Services Providers, Inc., and related entities (including parents, subsidiaries, divisions, and affiliates) of either of them.

F. “Effective Date” means the first date after all the following have occurred: (i) this Agreement has been fully executed by the Parties and their counsel; (ii) the Court has entered an order certifying a Settlement Class and granting final approval of the Settlement in accordance with the terms of this Agreement; (iii) the time for any challenge to the Court’s orders relating to the Settlement, both in the Court and on appeal, has elapsed; and (iv) the Settlement has become Final as defined herein.

G. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Settlement Class in accordance with this Agreement and as directed by the Court: (1) to consider the fairness, reasonableness, and adequacy of the proposed Settlement and to determine whether to grant final approval to (a) the certification of the Settlement Class, (b) the designation of Plaintiffs as the representatives of the Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the Settlement; (2) to rule on Class Counsel’s Application for an award of reasonable attorneys’ fees and reimbursement of costs and for awards to Plaintiffs; and (3) to consider whether to enter the Final Approval Order.

H. “Final” when referring to a judgment or order means that: (1) the judgment is a final, appealable judgment; and (2) either: (a) no appeal has been taken from the judgment relating to the merits of the Settlement (as opposed to any appeals relating solely to the Application, which will not affect finality as defined herein) as of the date on which all times to appeal therefrom have expired; or (b) an appeal or other review proceeding of the judgment relating to the merits of the Settlement having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or

otherwise, and such appeal or other review has been finally resolved in a manner that affirms the judgment in all material respects.

I. “Final Approval Order and Judgment” means the proposed Order Granting Final Approval of the Class Action Agreement and Entry of Final Judgment, to be entered by the Court with the provisions and in the form of Exhibit B attached to this Agreement.

J. “Parties” means Plaintiffs and Defendants in the Action.

K. “Plaintiffs” means Plaintiffs Patricia Vitale and Vincent Vitale, husband and wife.

L. “Plaintiffs’ Counsel” means Lite DePalma Greenberg, LLC and Poulos LoPiccolo P.C.

M. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court with the terms and substantially in the form of Exhibit A attached to this Agreement.

N. “Released Claims” means any and all claims, actions, causes of action, administrative claims, demands, debts, liens, offsets or liabilities, damages, costs, attorney’s fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, other than claims for personal injury, that Plaintiffs or any member of the Settlement Class now have or, absent this Agreement, may in the future have, against Releasees, or any of them, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred at any time up to and including the entry of the Preliminary Approval Order, that: (a) has been alleged in the Action; or (b) could have been alleged in the Action and relates (i) to the rates charged to customers by Defendants in connection with their gas or electric supply plans, or (ii) to any alleged act, omission, damage, matter, cause, or event

whatsoever arising out of or related to the initiation, defense, or settlement of the Action or the claims or defenses asserted or that could have been asserted in the Action.

O. "Releasees" means: (a) Defendants, together with their respective predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; and (b) each of their respective past, present, and future owners, shareholders, officers, directors, agents, representatives, employees, attorneys, and insurers.

P. "Settlement" means the settlement provided for in this Agreement.

Q. "Settlement Administrator" means Epiq Class Action & Claims Solutions, Inc., the entity selected by the Parties to administer the Settlement.

R. "Settlement Class" means all persons or entities in the States of New Jersey, Connecticut, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Ohio, and the District of Columbia who, from January 1, 2008 to the date of execution of this Settlement Agreement, entered into a gas or electric supply service plan with Defendants or either of them, as well as all persons or entities in the State of Pennsylvania who, during that same time period, entered into a gas supply service plan with Defendants or either of them. Excluded from the Settlement Class are all judges to whom the Action is assigned, and the staff of those judges, the officers, directors and counsel of record of Defendants, and all employees of Defendants, any putative Settlement Class Members who properly and timely exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Preliminary Approval Order, and any Settlement Class Members who have already had adjudicated in legal proceedings other than this Action the same or similar claims as those alleged in this Action. For the avoidance of doubt, all persons or entities in the State of New York, and all persons or entities in the State of Pennsylvania who entered into an electric service supply plan with

Defendants or either of them are not included within the Settlement Class even though such persons or entities were included in the proposed class definition contained in Plaintiffs' operative pleading.

S. "Settlement Class Members" means all persons or entities who are members of the Settlement Class and do not properly and timely exclude themselves from the Settlement in the manner and time prescribed by the Court in the Preliminary Approval Order.

T. "Settlement Notice" means the proposed form of written notice attached to the Preliminary Approval Order as Exhibit 1, to be approved by the Court and to be posted on the Settlement Website.

U. "Settlement Website" means www.usgesettlement.com, which Settlement Class Members can visit to read or request additional information regarding the Settlement.

V. "Summary Notice" means the proposed form of written notice attached to the Preliminary Approval Order as Exhibit 2, to be approved by the Court and to be sent to Settlement Class Members by either email or by first-class as a pre-printed postcard.

II. TERMS OF AGREEMENT

1. **Non-Admission of Liability.** This Agreement is made for settlement purposes only, and neither the fact of, nor any specific provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged by Plaintiffs or by any Settlement Class Member of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants. Defendants have denied and continue to deny all of the claims alleged by Plaintiffs in the Action, as well as all allegations made by Plaintiffs that Defendants violated any statutes, breached any agreements or engaged in any other actionable wrongdoing. Nonetheless, Defendants have concluded that further conduct

of the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. This Agreement therefore constitutes a compromise pursuant to Fed. R. Evid. 408(a) and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable. It shall not be offered or be admissible, either in whole or in part, as evidence against Defendants, except in any action or proceeding to enforce its terms.

2. **Preliminary Approval**. No later than twenty one (21) days from the date of full execution of this Agreement (unless such time is extended by mutual agreement of the Parties), Plaintiffs shall present this Agreement to the Court by way of unopposed motion, seeking (a) certification of Settlement Class and (b) preliminary approval of this Agreement (the "Submission for Preliminary Approval"). Defendants shall either expressly join in or refuse to oppose the Submission for Preliminary Approval. In connection with the Submission for Preliminary Approval, Plaintiffs shall apply for a Preliminary Approval Order substantially in the form of Exhibit A to this Agreement. More specifically, the Submission for Preliminary Approval shall request:

- a. Preliminary approval of this Agreement;
- b. Certification for settlement purposes only of the Settlement Class, pursuant to Fed. R. Civ. P. 23(b)(3);
- c. Appointment of Plaintiffs' Counsel as counsel for the Settlement Class;
- d. Appointment of Plaintiffs Patricia Vitale and Vincent Vitale as class representatives for the Settlement Class; and
- e. Approval of the notices proposed in this Agreement in forms substantially similar to those attached to the Preliminary Approval Order as Exhibits 1 and 2.

3. **Notice to Settlement Class.** No later than twenty one (21) days after the entry of the Preliminary Approval Order (unless otherwise specifically modified below), Defendants shall cause notice to be disseminated to the Settlement Class as directed in the Preliminary Approval Order as follows:

a. Defendants will provide, through the Settlement Administrator, direct notice to the member of the Settlement Class. For that purpose, Defendants shall provide to the Settlement Administrator a complete list of email addresses and mailing addresses for all member of the Settlement Class. The Settlement Administrator shall send the Summary Notice, as approved by the Court in its Preliminary Approval Order, by email to those members of the Settlement Class for whom Defendants have an email address and by first-class mail as a pre-printed postcard to all other members of the Settlement Class.

b. The Settlement Administrator shall establish and maintain the Settlement Website, which (among other things) shall initially contain Plaintiffs' Second Amended Complaint, the Settlement Notice (as approved by the Court in its Preliminary Approval Order), and this Agreement. The Settlement Administrator shall update the Settlement Website periodically to include the Submission for Preliminary Approval, any Order granting preliminary or final settlement approval, and such other documents as the Parties may agree upon, in order to fully inform the Settlement Class of the status of this matter. Defendants shall provide copies of all such documents to the Settlement Administrator promptly after such documents are filed.

c. The Parties agree that the methods of notice set forth in this Section constitute the best form of notice to the Settlement Class that is practicable under the circumstances, and that such methods of notice otherwise satisfy due process and the Federal Rules of Civil Procedure. Defendants shall pay all costs associated with Settlement

administration or for dissemination of the Summary Notice and Settlement Notice and all associated expenses, including but not limited to any payments for the services of the Settlement Administrator, which payment of notice and administration costs shall be in addition to and not deducted from the settlement consideration described in Section II-5 below or the amount of attorneys' fees and expenses described in Section II-11 below.

4. Final Approval

a. The Parties shall request that the Court hold a Fairness Hearing no later than seventy five (75) days from entry of the Preliminary Approval Order. Prior to the Fairness Hearing, the Parties shall file a joint motion for final approval of this Agreement, final certification of the Settlement Class, and other relief stated in this paragraph. At the Fairness Hearing, the Parties shall jointly request that the Court enter an order and judgment pursuant to Fed. R. Civ. P. 54(a) substantially in the form of the Final Approval Order and Judgment attached to this Agreement as Exhibit B, which shall finally certify the Settlement Class, approve the terms of this Agreement, dismiss the Action, discharge the Releasees of and from all further liability to Plaintiffs and Settlement Class Members with respect to the Released Claims (but not as to any obligations created or owed pursuant to this Agreement), and permanently bar and enjoin Plaintiffs and Settlement Class Members from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, assisting in any way, formally or informally, except as required by law, or receiving any benefits from, any other lawsuit, arbitration, or other proceeding or cause of action in law or equity that asserts, arises from, concerns, or is in any way related to the Released Claims. The actual form of Final Approval Order and Judgment entered by the Court may include additional provisions as to which the Parties may subsequently agree, or which the Court may direct, that are not

inconsistent with any of the express terms or conditions of this Agreement. Without limiting the releases provided herein, and without waiving any defenses that Defendants may have to any future action, nothing in this Section shall be construed to prohibit Settlement Class Members from participating in or receiving benefits from an governmental or regulatory enforcement action if in any such action it is finally determined that the governmental or regulatory agency may seek such benefits on behalf of a group that includes Settlement Class Members.

b. The Parties and their counsel will cooperate and take all reasonable actions to accomplish the above. If the Court fails or refuses to enter either the Preliminary Approval Order or the Final Approval Order and Judgment, substantially in the forms attached to this Agreement, the Parties and their counsel will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order and the Final Approval Order and Judgment, the Parties will return to their prior positions in the Action as though this Agreement had not been reached.

c. Notwithstanding anything in this Agreement, each Party retains the right to seek enforcement of or compliance with the terms of this Agreement, or the intervention of the Court to compel any default by any other Party to be cured.

5. Settlement Consideration. In consideration for the dismissal of the Action under the terms of this Agreement, the Parties agree as follows.

a. Within twenty (20) business days of the entry of the Preliminary Approval Order, Defendants shall pay the sum of \$1,825,000.00 (the "Settlement Fund") into an interest-bearing account (the "Settlement Fund Account"). Within five (5) business days after the Final Approval Order and Judgment has become Final, the Settlement Administrator shall transmit

checks (the "Settlement Fund Payments") from the Settlement Fund Account to each Settlement Class Member in an amount, for each Settlement Class Member, equal to the Settlement Fund divided by the number of Settlement Class Members. No Settlement Class Member need make a claim or take any other action in order to receive a Settlement Fund Payment from the Settlement Fund Account.

b. No portion of the Settlement Fund shall revert to Defendants under any circumstances. If any Settlement Fund Payment checks are not negotiated by Settlement Class Members within ninety (90) days of the date such checks are transmitted, such funds shall, at the option of the Court upon a joint application by the Parties, either: (1) be redistributed to Settlement Class Members who did negotiate their Settlement Fund Payment checks; or (2) be donated to a charitable organization to be selected by the Court, with no input from the Parties.

6. Best Efforts of Parties. The Parties agree to undertake their respective best efforts to effectuate this Agreement. The Parties shall encourage the Court to approve the Agreement, and shall not encourage any Settlement Class Member to object to the Court's approval of the Agreement or to opt out of the Settlement Class. The Parties shall each affirmatively oppose before the Court any objections to approval of the Agreement or the certification of the Settlement Class.

7. Objections to Settlement.

a. Any Settlement Class Member who has not timely filed a written request for exclusion from the Settlement Class pursuant to Section II-9 below may object to the fairness, reasonableness or adequacy of the proposed Settlement. Each Settlement Class Member who wishes to object to any term of this Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to the Parties' respective counsel at the addresses set

forth in Section II-25 below. Any such objection must be filed with the Clerk of the Court and received by the Parties' respective counsel no later than thirty (30) days from the date of issuance of the Summary Notice. Any such objection must:

- i. Identify the Settlement Class Member by name;
- ii. Identify the Settlement Class Member's current street address and current electronic mail address, if any;
- iv. Identify the Settlement Class Member's account number(s) with Defendants or either of them;
- v. Attach copies of any materials that will be submitted by or on behalf of the objecting Settlement Class Member to the Court or presented at the fairness hearing;
- vi. Be personally signed by the Settlement Class Member; and
- vii. Clearly state in detail the legal and factual grounds for the objection, and if represented by counsel, such counsel's name, address, telephone number, and electronic mail address; and
- viii. Identify, by case name and docket number, any other occasion in the past five (5) years in which the Settlement Class Member filed an objection to a class action settlement, identify the Settlement Class Member's counsel in such instance, including counsel's name, address, telephone number, and electronic mail address, and include a statement disclosing any consideration that the objecting Settlement Class Member, the objecting Settlement Class Member's counsel (if any), or the objecting Settlement Class Member's counsel's law firm (if any) has received in connection with the resolution or dismissal of an objection to a class action settlement, whether at the trial level or on appeal, within the five (5) years preceding the date that

the objecting Settlement Class Member's objection is filed. If the objecting Settlement Class Member or the objecting Settlement Class Member's counsel has not objected to any other class action settlement in any court in the United States in the preceding five (5) years, the objection must affirmatively so state.

b. Settlement Class Members may so object either on their own or through an attorney hired at their own expense. If an objecting Settlement Class Member hires an attorney to represent him or her, that attorney must file with the Court and serve upon the Parties' respective counsel at the addresses set forth at Section II-25 below, a notice of appearance no later than twenty (20) days before the Fairness Hearing.

c. Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely submitted, may be deemed ineffective, and will be deemed by the Parties to have been waived, and the Parties will each argue that the Settlement Class Member asserting such objection may not have his or her objection heard or otherwise considered by the Court.

8. Requests to Appear at Fairness Hearing. Settlement Class Members or their counsel who wish to appear at the Fairness Hearing must make such request by notifying the Court and the Parties' respective counsel in writing at the addresses set forth in Section II-25 below. Any such request must be filed with the Court and received by the Parties' respective counsel no later than twenty (20) days before the date of the fairness hearing, and must state the name, address, telephone number, and electronic mail address, if any, of the Settlement Class Member, as well as the name, address, telephone number, and electronic mail address of the person who will appear on his or her behalf, if any. Any such request must further indicate that the Settlement Class Member has previously or contemporaneously objected to the Settlement in compliance with the requirements of Section II-7 of this Agreement. Any request for appearance

that fails to satisfy the requirements of this Section or of Section II-7 above, or that has not been properly or timely submitted, may be deemed ineffective, and shall be deemed to constitute a waiver of such Settlement Class Member's rights to appear and to comment on the Settlement at the Fairness Hearing.

9. Requests for Exclusion (Opt Out) from Settlement Class Membership.

a. Any Settlement Class Member who wishes to be excluded from membership in the Settlement Class must mail a written request for exclusion to the Settlement Administrator at Epiq Class Action & Claims Solutions, Inc. [ADDRESS]. Such request must be postmarked no later than thirty (30) days from the date of issuance of the Summary Notice. The request must: (i) be personally signed by the Settlement Class Member; (ii) clearly express the Settlement Class Member's desire to be excluded (or to "opt out") from the Settlement Class; and (iii) include the Settlement Class Member's name, address, telephone number, and electronic mail address, if any, and, if represented by counsel, counsel's name, address, telephone number, and electronic mail address.

b. Any Settlement Class Member who wishes to be excluded from the Settlement Class can opt out only for himself or herself and cannot opt out for any other Settlement Class Member. Nor can any Settlement Class Member authorize any other Settlement Class Member to opt out on his or her behalf.

c. Any Settlement Class Member who has filed an objection to the fairness, reasonableness or adequacy of the proposed Settlement pursuant to and in full compliance with Section II-7 above shall be deemed not to have opted out of the Settlement Class pursuant to this Section. In the event that a Settlement Class Member makes a submission to the Court and the Parties that appears to assert both an objection to the fairness, reasonableness or adequacy of the

proposed Settlement, and a statement of intent to opt out of the Settlement Class, the Parties shall advise the Court that the Settlement Class Member has opted out of the Settlement.

10. Termination of Agreement.

a. If (i) preliminary or final approval of this Agreement and the Settlement is not obtained from the Court, (ii) the Final Approval Order and Judgment in the form attached as Exhibit B to this Agreement is materially modified by the Court, and any of the Parties objects to such modification, (iii) any person appeals from the Court's entry of the Final Approval Order and Judgment and such Final Approval Order and Judgment is reversed in whole or in material part by a final decision of an appellate court, or (iv) 20% of the Settlement Class elects to exclude themselves from membership in that Settlement Class (that is, to "opt out" of the Settlement), any Party may provide written notice to the other Parties within twenty (20) business days of one of the occurrences described in this sub-Section that this Agreement shall be null and void, shall have no further force and effect with respect to any Party, and shall not be offered in evidence or used in the Action or in any other matter for any purpose.

b. In the event the circumstances described in the preceding sub-Section occur, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this Agreement shall be without prejudice to the Parties or the Settlement Class Members, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any matter for any purpose, and all Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. Any Party may then move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement, and no Party shall object to such a

motion. The Action shall then proceed in all material respects as if this Agreement and any related orders had never been executed.

11. Attorneys' Fees and Expenses, and Incentive Awards.

a. At the same time as the Parties file their joint motion for final settlement approval, as described in Section II-4 above, Plaintiffs shall submit their application for an award of attorneys' fees and reimbursement of expenses.

b. Plaintiffs agree that they will not seek payment from Defendants of attorneys' fees and expenses that exceed \$500,000.00, and Defendants agree not to contest an award of attorneys' fees and expenses to Plaintiffs for any amount up to \$500,000.00. The Parties understand and acknowledge that the award of attorneys' fees and expenses is within the Court's discretion, and that there is no presumption as to the appropriate amount for a reasonable reimbursement for the legal services rendered by Plaintiffs' Counsel in the Action. Such amounts as are awarded by the Court shall be payable by Defendants to Class Counsel within twenty (20) business days of the award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. Any amounts paid before the Final Approval Order and Judgment becomes Final are subject to Class Counsel's obligation to make appropriate repayments to Defendants, if, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Agreement is terminated or the fee or cost award is reduced or reversed.

c. Defendants further agree not to oppose the payment of a single \$2,500 incentive award to Plaintiffs. Plaintiffs' application for an incentive award pursuant to this sub-Section shall be made at the same time that Plaintiffs apply for an award of attorneys' fees and reimbursement of expenses. Such application will be heard at the time of the Fairness Hearing

or as soon thereafter as may be determined by the Court. Any incentive award made by the Court shall be paid out of any fee and expense award made by the Court.

d. The Parties' negotiation of and agreement to the foregoing attorneys' fees, expenses, and incentive awards did not occur until after the substantive terms of this Agreement had been negotiated and agreed upon, under the auspices of Judge Rosen. The Parties further acknowledge that the attorneys' fees, expenses, and incentive awards to be paid under this Section are in addition to, and will not reduce in any way, the Settlement benefits provided to the Settlement Class. Should the Court decide to award less than \$500,000.00 in attorneys' fees, expenses, and incentive awards, the difference between the sum awarded and \$500,000.00 shall under no circumstances revert to Defendants. Instead, any such monies shall be added to the Settlement Fund Account and paid to Settlement Class Members as described in Section II-5 above.

e. If this Agreement is terminated pursuant to any of its provisions, Defendants' obligations to pay any amount of attorneys' fees, expenses or incentive awards shall likewise be terminated.

f. Payment by Defendants of any attorneys' fee and expense award made by the Court will completely satisfy any and all obligations on their part or on the part of the other Releasees to pay attorneys' fees, costs and expenses under this Agreement. The Released Parties shall have no other responsibility or liability whatsoever regarding the payment of attorneys' fees, costs and expenses.

g. Any challenges to the requested award of attorneys' fees and expenses or an incentive award shall not terminate or delay the Settlement.

12. Release, Waiver and Covenant Not to Sue.

a. Effective as of the date that the Final Approval Order and Judgment becomes Final, and in consideration of this Agreement and the benefits extended to the Settlement Class, Plaintiffs, on behalf of themselves and the Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, fully release and forever discharge the Releasees from the Released Claims.

b. Plaintiffs, on behalf of themselves and the Settlement Class Members, fully understand that if any fact relating to any matter covered by this Agreement is later found to be other than or different from the facts now believed by Plaintiffs to be true, Plaintiffs, on behalf of themselves and the Settlement Class Members, expressly accept and assume the risk of such possible differences in fact and agree and acknowledge that this Agreement shall nevertheless remain fully binding and effective.

c. Plaintiffs expressly understand and acknowledge that certain state statutes and principles of common law provide that a “general” release does not extend to claims that a creditor does not know or suspect to exist in his, her or its favor at the time of executing the release and which, if known, would have materially affected the settlement with the debtor. To the extent that any Settlement Class Member may argue that such statutes or principles of common law are applicable here, Plaintiffs, on behalf of themselves and the Settlement Class Members, agree that any such statutes, principles of common law or other sources of legal

authority of any and all jurisdictions that may be applicable are hereby knowingly and voluntarily waived and relinquished as they relate to Released Claims by the Settlement Class Members, and further agree and acknowledge that this is a material term of this Agreement.

d. Upon entry of the Final Approval Order and Judgment, Plaintiffs shall have, and each and every Settlement Class Member shall be deemed to have, on behalf of the Settlement Class Member and the Settlement Class Member's respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, covenanted and agreed to:

i. forever refrain from instituting, maintaining, or proceeding in any action against the Releasees with respect to any Released Claims; and

ii. release and forever discharge the Releasees from each and every such Released Claim.

e. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for a temporary restraining order or preliminary or permanent injunction against, any action, suit or other proceeding, which has been or may be instituted, prosecuted, continued to be prosecuted, or attempted, asserting any Released Claim.

f. No Settlement Class Member shall have any claim against Defendants based on the administration of this Agreement, including without limitation, any distribution made or not made pursuant to this Agreement, except as to obligations imposed on Defendants by this Agreement.

g. Nothing in this Section II-12 shall be construed to prohibit Settlement Class Members from participating in or receiving benefits from any governmental or regulatory enforcement action if in any such action it is finally determined that the governmental or regulatory agency may seek such benefits on behalf of a group that includes Settlement Class Members.

13. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties, on behalf of themselves and the Settlement Class, and supersedes and replaces any prior agreements and understandings, whether oral or written, between and among them, with respect to such matters. This Agreement shall not be subject to any change, modification, amendment, or addition, without the express written consent of all Parties, and may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

14. **Binding, Severable Agreement.** This Agreement shall benefit and bind the Parties, as well as their representatives, heirs and successors, and shall be construed as a whole, according to its plain meaning. If for any reason any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, inoperative, illegal, unenforceable, or void, the validity and effect of the other provisions shall not be affected thereby, and this Agreement shall continue in full force and effect without such provision.

15. **Terms and Conditions Not Superseded.** Nothing in this Agreement abrogates, supersedes, modifies, or qualifies in any way any of the contractual terms and conditions applicable in the ordinary course of the relationship between Defendants and their customers, except as expressly provided in this Agreement with respect to the Released Claims.

16. **Continuing Jurisdiction.** The Court shall retain continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, over the administration and enforcement of the Settlement and this Agreement, and over the distribution of benefits to the Settlement Class. Any disputes or controversies arising with respect to the interpretation, enforcement or implementation of this Agreement must be submitted by formal and proper motion to the Court.

17. **No Assignment.** The Parties each represent and warrant that they have not assigned, transferred or purported to assign or transfer, in whole or in part, any interest in any of the rights and claims that are the subject of this Agreement.

18. **Choice of Law.** The validity, construction, interpretation, performance, and enforcement of this Agreement shall be governed by the internal, substantive laws of New Jersey without giving effect to New Jersey choice of law principles.

19. **Class Member Signatures.** The Parties agree that, because the Settlement Class Members are so numerous, it is impractical to have each Settlement Class Member execute this Agreement. The Summary Notice and Settlement Notice will advise the Settlement Class Members of the binding nature of the release and of the remainder of this Agreement, and in the absence of a valid and timely request for exclusion pursuant to Section II-9 of this Agreement, such notice shall have the same force and effect as if each Settlement Class Member executed this Agreement.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, either manually or by telecopy. All executed counterparts, and each of them, shall be deemed to be one and the same original instrument. This Agreement shall be deemed executed as of February 10, 2017. The Parties shall exchange among themselves original, signed counterparts,

and a complete set of such counterparts shall be filed with the Court as an exhibit to the Submission for Preliminary Approval.

21. **Advice of Counsel.** Each of the Parties has had the benefit of the advice of counsel in the negotiation, drafting and execution of this Agreement, and the language in all parts of this Agreement is the product of the efforts of such counsel.

22. **Authority.** The Parties each represent and warrant that they have authority to enter into this Agreement.

23. **CAFA Notice.** The Settlement Administrator shall serve notice of this Settlement, at Defendants' sole expense, in a form that meets the requirements of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days after the Submission for Preliminary Approval has been filed with the Court.

24. **No Party is Drafter.** None of the Parties to this Agreement shall be considered to be the primary drafter of this Agreement, or of any of its provisions, for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

25. **Notification.** Except as otherwise described in the Settlement Notice, all notices and other communications referenced in this Agreement shall be addressed to the Parties' counsel at their respective addresses as set forth below:

Notices to Plaintiffs or the Settlement Class Members

Bruce D. Greenberg, Esq.
Lite DePalma Greenberg, LLC
570 Broad Street, Suite 1201
Newark, New Jersey 07102

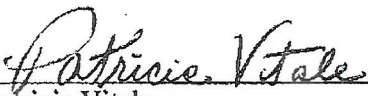
Notices to Defendants

Stephen M. Orlofsky, Esq.
Blank Rome, LLP
301 Carnegie Center, 3rd Floor
Princeton, NJ 08540

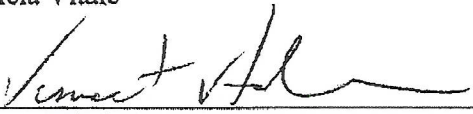
26. Time for Compliance. If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

IN WITNESS WHEREOF, the Parties have signed and delivered originals of this Agreement as of February __, 2017, but actually signed this Agreement on the dates set forth below.

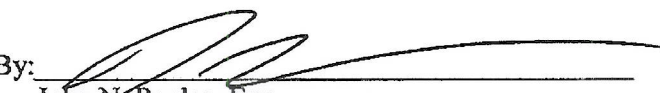
PATRICIA VITALE and VINCENT VITALE



Patricia Vitale



Vincent Vitale

Approved By: 

John N. Poulos, Esq.
Attorney in Fact

Dated: February __, 2017

U.S. GAS & ELECTRIC, INC.

By: K. M. M.
Kevin M McMinn, its Chief Operating Officer

ENERGY SERVICES PROVIDERS, INC.

By: K. M. M.
Kevin M McMinn, its Chief Operating Officer

Approved By: Stephen M. Orlofsky
Stephen M. Orlofsky
Attorney in Fact

Dated: February 6, 2017