

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>ROBERT HAMLLEN, Plaintiff, v. GATEWAY ENERGY SERVICES CORPORATION, Defendant.</p>	<p>Civil Action Case No: 7:16-cv-03526-VB-JCM</p>
<p>ANTHONY WAGAR, Plaintiff, v. GATEWAY ENERGY SERVICES CORPORATION, Defendant.</p>	<p>Case No: 7:18-cv-10244</p>

CLASS ACTION SETTLEMENT AGREEMENT

Plaintiffs Robert Hamlen, Anthony Wagar, and David Eisig (“Plaintiffs”), and Defendant Gateway Energy Services Corporation (“Gateway”) enter into this Settlement Agreement (“Agreement”) as of this March 29, 2019. Plaintiffs and Gateway are collectively referred to herein as the “Parties” and, individually, as “Party.” Capitalized terms used herein are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to the Court’s approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Settlement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the

Gateway Actions will be settled and compromised upon the terms and conditions contained herein.

I. RECITALS

1.1 Plaintiff Robert Hamlen filed a class action complaint against Gateway on May 11, 2016, styled as *Hamlen v. Gateway Energy Services Corporation*, Civil Action No. 7:16-cv-03526-VB-JCM (the “Hamlen Action”), in the United States District Court for the Southern District of New York. Plaintiff Anthony Wagar filed a class action complaint against Gateway on November 5, 2018, styled as *Wagar v. Gateway Services Corporation*, Civil Action No. 7:18-cv-10244-VB (the “Wagar Action”), in the United States District Court for the Southern District of New York.

1.2 David Eisig filed a class action complaint against Gateway on July 28, 2016, styled as *Eisig, et al. v. Gateway Energy Services Corporation*, Index No. 605739/2016 (the “Eisig Action”), in the Nassau County Supreme Court in New York. Plaintiff David Eisig is represented by The Law Offices of Paul M. Sod, Lubin Austermuehle, P.C., and The Law Offices of Paul G. Neilan, P.C. The Eisig Action is currently on appeal to the New York Supreme Court Appellate Division – Second Department, Docket No. 2017-01615.

1.3 The Parties recognize and acknowledge the benefits of settling these cases.

1.4 Plaintiffs believe that, after extensive discovery and motion practice, the claims asserted in their cases have merit and the evidence developed to date supports their claims. Despite the strengths of their cases, Plaintiffs recognize the risks and uncertainties inherent in litigation and are mindful of the problems of proof under, and possible defenses to, the claims in this matter. Plaintiffs further recognize and acknowledge the expense and length of time it would take to prosecute this matter against Gateway through trial, post-trial proceedings, and appeals.

Counsel for Plaintiffs have taken into account the uncertain outcome and risks of the litigation, including the difficulties and delays inherent in such litigation and the likelihood of protracted appeals. Counsel for Plaintiffs have, therefore, determined that the Settlement set forth in this Agreement is fair, reasonable, and adequate. The Settlement confers substantial benefits upon, and is in the best interests of, the Plaintiffs and the Settlement Class (hereafter defined).

1.5 Gateway maintains that it has a number of meritorious defenses to the claims asserted in these actions. Nevertheless, Gateway recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeals, and the disruption to its business operations arising out of class action litigation. Gateway also recognizes the risk that a trial on class-wide claims might present. Accordingly, Gateway believes that the Settlement set forth in the Agreement is likewise in its best interests.

II. DEFINITIONS

As used in this Agreement and the attached exhibits (which are an integral part of the Settlement and are incorporated in their entirety by reference), the following terms will have the meanings set forth below, unless this Agreement specifically provides otherwise. Other capitalized terms in this Agreement but not defined in this section will have the meanings ascribed to them elsewhere in this Agreement.

2.1 “Gateway Actions” means, collectively, *Hamlen v. Gateway Energy Services Corporation*, Civil Action No. 7:16-cv-03526-VB-JCM, filed individually and on behalf of those similarly situated against Gateway and seeking representation for Class Members, *Wagar v. Gateway Energy Services Corporation*, Civil Action No. 7:18-cv-10244-VB, filed individually and on behalf of those similarly situated against Gateway and seeking representation

for Class Members, and *Eisig, et al. v. Gateway Energy Services Corporation*, Index No. 605739/2016, filed individually and on behalf of those similarly situated against Gateway and seeking representation for Class Members.

2.2 “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 notice and administration of the Settlement and to secure performance as forth in this Settlement.

2.3 “Agreement” or “Settlement” means this class action settlement agreement containing all terms, conditions, and exhibits representing the entire agreement between the Parties.

2.4 “Attorneys’ Fees and Costs” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Class Counsel and New York Plaintiffs’ Counsel as determined by the Court, as described more particularly in Section VII of this Settlement.

2.5 “Benefit” means the cash payment available to a Claimant who files a Valid Claim under this Agreement. The specific Benefit paid is subject to review, audit, and validation by the Settlement Administrator based upon the terms and conditions of this Agreement.

2.6 “Claim” means a request for relief pursuant to this Settlement submitted by a Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement.

2.7 “Claim Deadline” means the date by which a Claim Form must be postmarked and mailed to the Settlement Administrator or electronically submitted to be considered timely. The Claim Deadline will be at 11:59 p.m. Eastern Time on the last day of

the Claim Period.

2.8 “Claim Form” means the form attached hereto as Exhibit A, whether in electronic or “hard copy,” that will be completed by a Settlement Class Member and submitted to the Settlement Administrator in order to receive benefits under the Settlement.

2.9 “Claim Period” means the period commencing upon mailing of the Notice (or such other time as the Court orders) and concluding ninety (90) days thereafter irrespective of whether the ninetieth (90) day falls on a Saturday, Sunday, or Holiday.

2.10 “Class Counsel” means Greg Blankinship, Todd S. Garber, Antonino B. Roman, and Chantal Khalil of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP (“FBFG”) and Jonathan Shub and Kevin Laukaitis of Kohn, Swift & Graf (“KS&G”).

2.11 “Class Member(s)” means all Persons who were Gateway Variable Rate Customers during the applicable statute of limitations period in the following states with class periods beginning on following dates:

State	Electricity	Natural Gas
New York	November 2012 ¹	July 2011
New Jersey	November 2012	July 2011
Pennsylvania	November 2012	November 2012
Maryland	November 2015	November 2015
Virginia	N/A	November 2013
Kentucky	N/A	July 2011
Ohio	N/A	July 2011

¹ All dates are the dates invoices were generated for customers.

Excluded from the Settlement Class² are: any non-residential Gateway customers; any Gateway customers who enrolled in a fixed-rate plan but were later charged variable rates; any customers of Gateway's parents, subsidiaries, or affiliates; Gateway Energy Services Corporation; any of its parents, subsidiaries, or affiliates; any entity controlled by either of them; any officer, director, employee, legal representative, predecessor, successor, or assignee of Gateway Energy Services Corporation; any person who has previously released claims that will be released by this Settlement; federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and the judge to whom the Gateway Actions are assigned and any member of his immediate family.

2.12 "Class Notice" means the notice of pendency and proposed settlement of class action that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. The Class Notice, which will be available to Class Members on the website created and maintained by the Settlement Administrator, will be in the forms of Exhibit B, Exhibit C, and Exhibit D to this Agreement.

2.13 "Class Period" refers to the period spanning from the dates indicated in Section 2.11 for each jurisdiction and commodity to the Preliminary Approval Date. The Class Period varies by State and commodity, as stated in Section 2.11.

2.14 "Class Representatives" means Plaintiffs Robert Hamlen, Anthony Wagar, and David Eisig.

2.15 "Complaint" means, collectively, the Class Action Complaints filed in the Hamlen Action, Wagar Action, and Eisig Action.

² Customers who enrolled in a fixed rate plan with Gateway at any time are excluded from the Settling Class.

2.16 “Court” means the United States District Court for the Southern District of New York.

2.17 “Defendant” or “Gateway” means Gateway Energy Services Corporation, including its officers, directors, owners, operators, parents, subsidiaries, employees, agents, representatives, lawyers, insurers, and/or affiliates.

2.18 “Effective Date” means the date on which all the following conditions are satisfied:

- a. Execution of this Agreement by the Class Representatives and Gateway;
- b. Entry of the Final Approval Order and Judgment by the Court approving this Agreement and all exhibits without material modification. (By way of illustration only, material modifications include but are not limited to: (1) any change to the scope of the Released Claims set forth in this Settlement Agreement; (2) any change to the Final Approval Order which limits or reduces any of the protections afforded to Defendant, (3) any increase in the cost of the settlement to be borne by Defendant to be determined at the sole discretion of Defendant; (4) any non-trivial change to the Benefit, Class Notice, Claim Form, and claim process);
- c. The passage of the earliest date on which: (i) the time for taking an appeal from the Final Approval Order and Judgment has expired, without any appeal having been taken; (ii) if an appeal is taken, the highest court to which such appeal may be taken affirms the Final Approval Order and Judgment or dismisses the appeal without, in either case, any modification of the Final Approval Order and Judgment that is in any respect unsatisfactory to the Parties; or (iii) the date

calculated in 2.18(b) should there be no objections to the settlement

2.19 “Fairness Hearing” or “Final Approval Hearing” means the final hearing to be conducted by the Court, on notice to the Settlement Class, to consider approval of the Settlement and Class Counsel’s motion for approval of attorneys’ fees and reimbursement of costs and expenses. The Parties will ask the Court to schedule a Fairness Hearing approximately ninety (90) days from the entry of the Preliminary Approval Order.

2.20 “Final Approval Order” means the Order granting final approval to the Settlement, which should not be entered earlier than ninety (90) days after the appropriate state and federal officials have been served with notice of the Settlement in accordance with the Class Action Fairness Act of 2005, as codified in 28 U.S.C. § 1715(b). Within fourteen (14) days of the Court’s entry of the Preliminary Approval Order, Gateway agrees to provide the Settlement Administrator with the names, last known addresses, account numbers, and Household usage amounts for electricity and natural gas supply service while on a variable rate plan for all Class Members.

2.21 “Household” means the physical dwelling at which a Gateway customer had an account for gas and/or electric service.

2.22 “Individual Settlement Amount” means the monetary amount calculated as of the end date of the Class Period that is allocated to each Class Member.

2.23 “Long-Form Notice” means the notice of pendency and proposed settlement of class action that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. The Long-Form Notice, which will be available to Class Members on the website created and maintained by the Settlement Administrator, will be substantially in the form of Exhibit C to this Agreement.

2.24 “Named Plaintiff Enhancement Award” means the monetary amount awarded by the Court in recognition of the assistance provided by the Class Representatives in the prosecution of the Gateway Actions, the amount of which is as set forth below.

2.25 “New York Plaintiffs’ Counsel” refers to Counsel for Plaintiff David Eisig in the Eisig Action, namely, Paul Sod of The Law Offices of Paul M. Sod, Peter S. Lubin of Lubin Austermuehle, P.C., and Paul G. Neilan of The Law Offices of Paul G. Neilan, P.C.

2.26 “Gateway Variable Rate Customer” means any Person who enrolled in, and remained exclusively in, a residential variable rate plan and, at any time during the applicable statute of limitations period, paid Gateway variable rates for electricity and/or natural gas supply services, in the states with class periods specified in Section 2.11 above. Gateway customers who enrolled in a fixed-rate plan and were later charged a variable rate after expiration of the fixed-rate plan are excluded from the definition of Gateway Variable Rate Customer.

2.27 “Objection” means an objection filed with the Court by a member of the Settlement Class, objecting to any aspect of the Settlement.

2.28 “Objection Deadline” means the last date on which a Class Member may object to the Settlement. The Objection Deadline will be specified in the Preliminary Approval Order and Notice.

2.29 “Opt-Out” means a request by a Class Member to be excluded from the Settlement Class by following the procedures set forth in the Preliminary Approval Order and the Class Notice.

2.30 “Opt-Out Deadline” means the last date on which a Class Member may request to be excluded from the Settlement Class. The Opt-Out Deadline will be specified in the Preliminary Approval Order and Notice.

2.31 “Opt-Out Period” means the period that begins the day after the date on which the Notice is first mailed or published, and that ends no later than thirty (30) days prior to the Final Approval Hearing.

2.32 “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

2.33 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

2.34 “Preliminary Approval Order” means the Order preliminarily approving the Settlement, certifying the Settlement Class for the purposes set forth in this Agreement, and approving the form of notice to potential Class Members and will be substantially in the form of Exhibit E to this Agreement.

2.35 “Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every nature and description, including claims for attorneys’ fees, expenses and costs, whether known or unknown, suspected or unsuspected, existing now or arising in the future that (a) is or are based on any act, omission, inadequacy, misstatement, representation, harm, matter, cause or event whatsoever that has occurred at any time from the beginning of time up to and including the end of the Class Period and (b) arise from or are related in any way to customers exclusively on Gateway’s variable rate plan.

2.36 “Released Persons” means Gateway and its parents, subsidiaries, affiliates, predecessors, successors and assigns, as well as their respective current and former officers, directors, members, stakeholders, owners, employees, agents, attorneys and insurers.

2.37 “Releasing Parties” means Plaintiffs, all Settlement Class Members, Class Counsel, and any Person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate.

2.38 “Reminder Notice” means the notice, substantially in the form attached hereto as Exhibit D, which is to be sent to Class Members in the manner and at such time as set forth in the Preliminary Approval Order. The Reminder Notice will include an identification number unique to each Class Member that will permit certain information to automatically populate the online Claim Form.

2.39 “Settlement Administrator” will be charged with determining the applicable Individual Settlement Amount for each Class Member in accordance with data provided by Gateway after review and approval by Class Counsel. The Settlement Administrator, subject to Court approval, will be the Angeion Group, unless another third-party administrator is later agreed to by the Parties in writing and approved by the Court.

2.40 “Settlement Class” or “Settlement Class Members” means all Class Members that do not Opt-Out of the Settlement.

2.41 “Settlement Website” means an internet website created and maintained by the Settlement Administrator. The URL of the Settlement Website will be provided in the Short Form Notice.

2.42 “Short-Form Notice” means the summary notice of the pendency and proposed settlement of class action that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement that will be mailed to Class Members.

The Short-Form Notice, which will be available to Class Members on the website created and maintained by the Settlement Administrator, will be substantially in the form of Exhibit B to this Agreement. The Short-Form Notice will include an identification number unique to each Class Member, which will permit certain information to automatically populate the online Claim Form, as well as a tear off option for return mailing.

2.43 “Valid Claim” means a Claim Form submitted by the Settlement Class Member that (a) is submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) is, on the initial submission or following correction after receipt of a deficiency notice from the Settlement Administrator, accurately, fully, and truthfully completed, and executed by a Settlement Class Member, with all of the information requested in the Claim Form; (c) is signed physically or by e-signature of a Settlement Class Member personally, subject to the penalty of perjury; (d) is returned via mail and post-marked by the Claims Deadline, or, if submitted online, is received by 11:59 p.m. Eastern Time on the final day of the Claim Period; and (e) is determined to be valid by the Settlement Administrator, jointly by the parties after good-faith consultation, or by the Court.

III. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

3.1 For the purpose of this Settlement only, the Parties agree that the Gateway Actions may be certified as a class action under Fed. R. Civ. P. 23(a) and (b)(3) in accordance with the terms of this Agreement and without prejudice to Gateway’s right to contest class certification in the event that this Agreement fails to become effective or is not fully implemented in accordance with its terms.

If the Settlement is not approved or this Agreement fails to be fully implemented, Gateway reserves all rights to object to any subsequent motion to certify a class in this or any

other lawsuit and no representation or concession made in connection with the Settlement or this Agreement will be considered law of the case or an admission by Gateway or to have any kind of preclusive effect against Gateway or to give rise to any form of estoppel or waiver by Gateway in this action or any other proceeding.

3.2 Gateway expressly denies any and all liability and/or wrongdoing with respect to any and all of the claims alleged in this lawsuit and any similar lawsuits and enters into this Settlement solely to compromise a disputed claim. Accordingly, any references to the alleged business practices of Gateway in this Settlement, this Agreement or the related Court hearings and processes will raise no inference respecting the propriety of those business practices or any other business practices of Gateway.

IV. REQUIRED EVENTS

As soon as practicable after the execution of this Agreement, Class Counsel will file this Agreement and a motion seeking entry of the Preliminary Approval Order, which order by its terms will accomplish all of the following:

4.1 Preliminarily approve the Settlement and this Agreement as fair and reasonable to the Settlement Class;

4.2 Conditionally certify the Settlement Class for the purpose of effecting the Settlement;

4.3 Designate Plaintiffs as the representatives of the Settlement Class;

4.4 Designate Class Counsel as counsel for the Settlement Class;

4.5 Approve the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:

- a. Process requests for Opt-Outs from the Settlement in accordance with Section VII of this Agreement;
- b. Process Objections to the Settlement in accordance with Section VII of this Agreement;
- c. Process Claim Forms in accordance with Section VI of this Agreement; and
- d. Before disseminating Class Notice, establish the Settlement Website, which Class Members can visit to read and obtain additional information regarding the Settlement, including submission of Claim Forms.

4.6 Approve the form, contents, and method of notice to be given to the Settlement Class as set forth in Section VI of this Agreement, and direct the Settlement Administrator to provide, and cause to be provided, such notice and to file with the Court a declaration of compliance with those notice requirements, as set forth in Section VI of this Agreement.

V. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS

5.1 Benefit Available to Settlement Class Members

In order to qualify for a Benefit, Class Members must timely submit a completed Claim Form (substantially in the form of Exhibit A). This can be done on the Settlement Website on or before the Claims Deadline. Class Members may also submit a paper copy of the Claim Form. Claim Forms submitted via mail must be postmarked on or before the Claims Deadline. The claims period will be ninety (90) days from the date of the initial postcard mailing. Claims returned by mail must be postmarked by the 90th day. Claim Forms submitted using the Settlement Website must be submitted by 11:59 p.m. Eastern Time on the final day of the Claim Period (on the 90th day). In consideration of the Settlement and Release given herein, Gateway

will make the following Benefit available to each Class Member who submits a Valid Claim:

- a. Gateway Variable Rate Customers will receive \$.00333 per kilowatt hour for electric supply service received from Gateway while on a variable rate plan.
- b. Gateway Variable Rate Customers will receive \$.02509 per therm (or therm equivalent) for natural gas supply service received from Gateway while on a variable rate plan.
- c. In the event that the Gateway Variable Rate Customer has more than one Household, then the Class Member may file another Claim seeking a Benefit in accordance with 5.1(a) and 5.1(b) and receive another Individual Settlement Amount for that additional Household.

5.2 Provided the \$.00333 per kilowatt hour and \$.02509 per therm (or therm equivalent) rates in Sections 5.1(a) and (b) of this Agreement, the maximum total Benefit amount payable by Gateway will be \$9,250,000. In the event that the value of the Benefits claimed somehow exceeds \$9,250,000, the Benefit payable to each Gateway Variable Rate Customer will be reduced *pro rata* based on the individual's electric supply and/or natural gas supply use while on a variable rate plan.

5.3 The Benefits described in this Section will be available on a "claims made" basis and Gateway will pay or, cause to be paid, Valid Claims only. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

5.4 All Class Members who submit a Claim Form must sign (or, in the case of claims made on-line on the Settlement Administrator's website, electronically confirm), as part of the Claim Form, an attestation under penalty of perjury that they were a Gateway

Variable Rate Customer, as that term is defined in this Agreement

5.5 Class Members who are paid by check will have ninety (90) days within which to cash or deposit those checks. The voiding of any such check by the passage of time as described in this paragraph will not serve to invalidate the release given in Section XI hereof by any Class Member who failed to timely negotiate his or her check. Individual checks that have not been negotiated within ninety (90) days after issuance, if any, will be void, and the underlying funds will be paid by the Claims Administrator to Gateway.

VI. DUTIES OF SETTLEMENT ADMINISTRATOR AND NOTICE DISSEMINATION

6.1 The Parties will jointly ask the Court to approve the Angeion Group as the Settlement Administrator. The Settlement Administrator will, subject to the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator will maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator will maintain all records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel, Gateway's Counsel, the Parties, and their representatives promptly upon request.

6.2 The Settlement Administrator will be responsible for, among other things, providing notice as set forth in the Agreement, processing Claim Forms, Opt-Outs, and Objections to the Settlement (including receiving and maintaining on behalf of the Court and the Parties any Class Members' correspondence regarding Opt-Out requests from the Settlement Class), establishing the Settlement Website, and administering the payment of Valid Claims. The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims including but not limited to: validating Claims against the

Defendant's records, employing a unique Class Member identifier which Class Members will use to access the Claim Form via the Settlement Website and screening for multiple or fraudulent claims which are not consistent with the facts. The Settlement Administrator and Parties will have the right to audit claims, and the Settlement Administrator may request additional information from Class Members submitting claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member (including by cross examination) or deny claims, subject to the supervision of the Parties and ultimate oversight by the Court. The Settlement Administrator will approve or deny all claims, and its decision will be final and binding, except that Class Counsel and Defendant will have the right to audit claims and/or to challenge the Settlement Administrator's decisions. In the event that any party disputes a decision by the Settlement Administrator, the parties will confer in good faith and, if they are able to reach agreement, direct the Settlement Administrator accordingly. Should the parties be unable to reach agreement, any party may submit the issue to the Court for resolution.

6.3 Class Members will be identified based on the records maintained by Gateway provided that, if the Settlement Administrator determines, pursuant to the procedures set forth herein, that a Class Member's current mailing address is different from the last known mailing address, then such current mailing address will be employed for all communications with the Class Member.

6.4 No later than fourteen (14) days after the Court enters the Preliminary Approval Order, Gateway will deliver to the Settlement Administrator an electronic file ("Class Member E-File"), in a format to be agreed upon by Gateway and the Settlement Administrator, containing the following related data with respect to each Class Member:

- a. The name of the Class Member;
- b. The last known address of the Class Member;
- c. Household usage amounts for electricity and natural gas supply service while on the variable rate plan for each Class Member during the Class Period for each Household for which a Class Member has an account with Gateway; and
- d. The benefit to be received by each Class Member absent a *pro rata* reduction should claims exceed the maximum benefit amount.

6.5 Upon receipt of the Class Member E-File, the Settlement Administrator will conduct a search on the National Change of Address Database of the names of all Class Members to determine if the last known mailing address appears to remain valid. The Settlement Administrator will, if appropriate, revise the last known mailing address based on the results of its search and the last known mailing address or the revised address, as appropriate, will be deemed the “Current Address” of the for purposes of the Settlement Administrator mailing the Short-Form Notice and Reminder Notice.

6.6 In the event that a Short-Form Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will conduct, to the extent the data permits, a one-time skip trace search of the Class Member to determine if an address other than the Current Address is appropriate. Based on the results of its search, the Settlement Administrator will, if appropriate, revise the Current Address and re-send, by mail, first class postage pre-paid, the Short-Form Notice to at the Revised Current Address. The Settlement Administrator will employ the Revised Current Address for purposes of mailing the Reminder Notice and checks.

6.7 Notwithstanding the identification of the Last Known Mailing Address, Current Address and Revised Current Address, the mailing address set forth on a Claim Form submitted by a Claimant who is determined, pursuant to the procedures set forth herein, to be a Class Member will be used by the Settlement Administrator in preparing the distribution schedule and distributing the checks.

6.8 No later than thirty (30) days after the Preliminary Approval Order, a Short-Form Notice to the Settlement Class will be provided by United States Mail, postage prepaid, in a preprinted double-sided postcard format with a change of address form on the back flap. The Short-Form Notice will include an identification number unique to each Class Member, which will permit certain information to automatically populate the online Claim Form, as well as a tear off option for a postage pre-paid return mailing claim form. Notice to former customers of Gateway will be provided in the same manner, mailed to their last known addresses as reflected in records reasonably available to Gateway.

6.9 No later than thirty (30) days after the Preliminary Approval Order, the Settlement Administrator will create and maintain a website to provide, among other things, copies of the Long-Form Notice discussed in the preceding section hereof, this Agreement, the Settlement Administrator's and Class Counsel's contact information, certain selected pleadings and Court orders from the Gateway Actions, a method for the electronic submission of Claim Forms at the appropriate time, and a method for requesting the Claim Form(s) by mail. The website will also contain these additional information and functionalities:

- a. Contain a search function through which Class Members can enter a property address and confirm whether that property is associated with their electric and/or natural gas accounts with Gateway, and if so, their respective benefits;

- b. Permit Class Members to automatically populate the online Claim Form using the unique identification number contained on the Short-Form Notice and Reminder Notice, and to update their mailing address. In addition, entry of the unique identification number into the online Claim Form should permit Class Members to view the amount of benefit to be received absent a pro rata reduction should claims exceed the maximum benefit amount; and
- c. Contain a “frequently asked questions” section setting forth, among other things, procedures for completing and submitting a Claim Form online or by mail; procedures for requesting exclusion from the Class pursuant to the terms of the Preliminary Approval Order; procedures for objecting to the Settlement pursuant to the terms of the Preliminary Approval Order; the scheduled date for the Settlement Hearing; and deadlines relevant to the Settlement as established in the Preliminary Approval Order, including the dates for seeking exclusion from the Class, objecting to the Settlement, and filing a Claim Form.

6.10 No later than sixty (60) days after the Preliminary Approval Order, the Settlement Administrator will cause the Reminder Notice to be mailed, by first class mail, postage pre-paid, to all Class Members identified in the Class Members E-File at the addresses set forth therein or at such other addresses as the Settlement Administrator identifies pursuant to the procedures set forth above, provided that no Reminder Notice will be sent to any Class Member (i) who submits a Claim Form prior to the date when the Reminder Notice is to be sent or (ii) whose Short-Form Notice was returned as undeliverable despite the Settlement Administrator’s use of a Revised Current Address pursuant to the procedures set forth above.

6.11 The Settlement Administrator will be responsible for the following additional duties:

- a. Training its employees and agents to fully, accurately and without bias (i) apply the requirements set forth herein for approving or rejecting a Claim Form, (ii) communicate with Class Members, Class Counsel and Defendant's Counsel concerning all matters relevant to the administration of the Settlement, and (iii) perform all other functions required of the Settlement Administrator under this Agreement;
- b. Performing any tax reporting or other duties required by federal, state, or local law, including but not limited to with respect to payment of Valid Claims, collecting necessary IRS W-9 forms, and issuing an IRS Form 1099 to Claimants with Valid Claims;
- c. Maintaining adequate records of all its activities, including the dates of each mailing of the Short-Form Notice and Reminder Notice; the date when the Settlement Website became publicly accessible; returned mail from Class Members or Settlement Class Members; and other communications and attempted written or electronic communications with Class Members or Settlement Class Members;
- d. Retaining in an accessible manner all written communications with Class Members or Settlement Class Members;
- e. Preparing reports, schedules and declarations as requested by Class Counsel or Defendant's Counsel and/or are described herein as the responsibility of the Settlement Administrator;

- f. Preparing and mailing checks (which shall be sent in an envelope, not as a postcard) to pay Valid Claims;
- g. Referring to Class Counsel all inquiries by Settlement Class Members regarding matters not specified herein as within the scope of the Settlement Administrator's responsibilities; and
- h. Performing such other tasks as Class Counsel and Defendant's Counsel mutually request.

6.12 No later than twenty-one (21) days prior to the Final Approval Hearing, the Settlement Administrator will certify to the Court compliance with the notice provisions of this section.

6.13 Within fourteen (14) days after the Effective Date of the Settlement, the Settlement Administrator will establish a non-interest bearing checking account at a federally insured depository institution.

6.14 Within thirty (30) days of the Effective Date, Gateway will deliver to the Settlement Administrator the aggregate amount of funds to be deposited in the account to pay Valid Claims.

6.15 Within fourteen (14) days after funding of the account, the Settlement Administrator will draw and mail checks payable to Class Members with Valid Claims, remailing undeliverable checks to the extent valid current addresses are available (including by means of a one-time skip trace).

VII. OPT OUTS AND OBJECTIONS

Subject to the Court's approval, the Parties agree that:

7.1 Opt-Out

Any potential Class Member, other than any Class Representative, may elect to be excluded from this Settlement and from the Settlement Class by Opting-Out of the Settlement Class. Any potential Class Member who desires to be excluded from the Settlement Class must give written notice of the election to Opt-Out on or before the date specified in the Preliminary Approval Order, with copies mailed to the Settlement Administrator, Class Counsel, and counsel for Gateway. Opt-Out requests must: (i) be signed by the Class Member who is requesting exclusion; (ii) include the full name, address, and phone number(s) of the Class Member requesting exclusion; and (iii) include a statement substantially in the following form: “I/We request to Opt-Out from the settlement in the Gateway Actions.” No Opt-Out request will be valid unless all of the information described above is included. No Class Member, or any person acting on behalf of or in concert or participation with that Class Member, may exclude any other Class Member from the Settlement Class. The last date for Class Members to Opt-Out of the Settlement will, subject to Court approval, be on the Opt-Out Deadline contained in the Preliminary Approval Order. Class Members who timely Opt-Out of the Settlement will not be bound by the terms of this Agreement, including any releases contained herein.

In the event that ten percent (10%) or more of the Settlement Class opt out, Gateway will have the option to elect to terminate this Agreement, in which circumstance the Settlement will become null and void and the parties will return to the *status quo ante* as described in Section XV.

The Class Representatives affirmatively support this Settlement and agree not to opt out of this Settlement. None of the Class Representatives, Class Counsel, Gateway, or its

counsel will in any way encourage any Class Member to opt out or discourage any Class Member from participating in this Settlement.

7.2 Objections

Any Class Member who wishes to object to the Settlement must file a written Objection and/or a notice of intention to appear before the Court at the Fairness Hearing, and serve copies on the Settlement Administrator, Class Counsel, and counsel for Gateway. To be heard at the Fairness Hearing, the Class Members must make any Objection in writing and file it with the Clerk of Court by the Opt-Out and Objection Deadline. The Objection must also be mailed to each of the following, received no later than the last day to file the objection: (i) Class Counsel via D. Greg Blankinship, FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER LLP, 445 Hamilton Avenue, Suite 605, White Plains, NY 10601; and (ii) Gateway's counsel via Michael D. Matthews, Jr., MCDOWELL HETHERINGTON LLP, 1001 Fannin Street, Suite 2700, Houston, TX 77002. Any Objection must (a) attach documents establishing, or provide information sufficient to allow the Parties to confirm that the objector is a Class Member; (b) include a statement of such Class Member's specific Objection; (c) state the grounds for the Objection; (d) identify any documents such objector desires the Court to consider; (e) provide all information requested on the Claim Form. In addition, any Class Member objecting to the Settlement will provide a list of all other Objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any Court in the United States in the previous five years. If the Class Member or his/her or its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she or their counsel it will affirmatively so state in the Objection. Any Objection to be considered timely must be filed by the Objection Deadline contained on the Preliminary Approval Order.

Upon the filing of an objection, Class Counsel and Defendant's Counsel may take the deposition of the objecting Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS, AND NAMED PLAINTIFF ENHANCEMENT AWARDS

8.1 For the purpose of this Settlement, the Parties agree, subject to Court approval, that Greg Blankinship, Todd S. Garber, Antonino B. Roman, and Chantal Khalil of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG") and Jonathan Shub and Kevin Laukaitis of Kohn, Swift & Graf ("KS&G") will be appointed Class Counsel, without prejudice to Gateway's right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement fails to be implemented fully, Gateway reserves all rights to object to any subsequent motion to appoint class counsel in these or any other actions.

8.2 Class Counsel will submit to the Court an application seeking an award of not more than two million, five-hundred forty-three thousand, seven hundred and fifty dollars and zero cents (\$2,543,750) in attorneys' fees ("Fee Award"), and up to one-hundred thousand dollars and zero cents (\$100,000) reimbursement of documented expenses ("Expense Reimbursement Award"). In the application, Class Counsel will request that the Court award attorneys' fees to New York Plaintiffs' Counsel to be paid to New York Plaintiffs' Counsel Paul M. Sod out of the Fee Award in an amount equal to 11.8% of the Fee Award, but capped at three

hundred thousand dollars and zero cents (\$300,000), and reimbursement for New York Plaintiffs' Counsel's litigation expenses of up to five thousand dollars and zero cents (\$5,000) to be paid to New York Plaintiffs' Counsel Paul M. Sod out of the Expense Reimbursement Award.

8.3 Defendant does not challenge Class Counsel's request for Attorneys' Fees and Costs up to the amounts indicated. Defendant will pay the award for Attorneys' Fees and Costs separate and apart from the amount made available for Settling Class Member claims, and no later than ten (10) business days after the Effective Date.

8.4 Class Counsel will provide Gateway with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice to allow Gateway to pay the award for Attorneys' Fees and Costs as set forth above.

8.5 Court approval of the award for Attorneys' Fees and Costs will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's application for Attorneys' Fees and Costs, the remainder of the terms of this Agreement will remain in effect. In addition, no interest will accrue on such amounts at any time. Neither Class Counsel nor Plaintiffs will request any award inconsistent with these terms.

8.6 Defendant agrees to pay Administration Expenses, separate and apart from the amount made available for Settling Class Member claims and the attorneys' fees and expenses.

8.7 Class Counsel will also submit to the Court an application for Named Plaintiff Enhancement Awards of up five thousand dollars and zero cents (\$5,000) for each Class Representative, as compensation for their efforts in bringing the Gateway Actions and achieving the benefits of the Settlement on behalf of the Settlement Class. Defendant does not challenge any such application made up to the amount indicated. Defendant will pay Named Plaintiff Enhancement Awards approved by the Court separate and apart from the amount made

available for Settling Class Member claims and attorneys' fees and expenses, within ten (10) business days after the Effective Date.

IX. COSTS OF NOTICE AND ADMINISTRATION

Gateway will be responsible to pay the Administration Expenses, separate and apart from the amount made available for Class Members' claims, attorneys' fees and expenses and named plaintiff enhancement awards. The Angeion Group has been selected as the Settlement Administrator after a review and comparison of estimates made available by claims administration services contacted by both Parties. Efforts have been made to minimize the costs of notice and administration, including all costs relating to the Settlement by and through the Angeion Group.

X. PROCEDURES FOR SETTLEMENT APPROVAL

10.1 Preliminary Approval

Promptly after the execution of this Agreement, Plaintiffs will move the Court for an order preliminarily approving this Agreement and requesting that the Court approve the form and content of the Long-Form Notice, Short-Form Notice, and Reminder Notice to the Class, substantially in the forms of Exhibits C, B, and D, respectively, to this Agreement, and:

- a. certifying the Settlement Class, for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a)(1)-(4) and (b)(3), with Plaintiffs Robert Hamlen, Anthony Wagar, and David Eisig appointed as Class Representatives for the Settlement Class, and Greg Blankinship, Todd S. Garber, Antonino B. Roman, and Chantal Khalil of FBFG and Jonathan Shub and Kevin Laukaitis of KS&G appointed as Class Counsel for the Settlement Class;

- b. setting the date of the Fairness Hearing, upon notice to the Settlement Class, to consider:
 1. whether the Settlement should be approved as fair, reasonable, and adequate and whether the Released Claims of the Settlement Class against the Released Persons should be dismissed with prejudice;
 2. Class Counsel's motion for an award of attorneys' fees, costs and expenses; and
 3. the Named Plaintiff Enhancement Awards.

Class Counsel will file a motion for final approval of settlement, and an application for the award of attorneys' fees, costs, and enhancement awards for named plaintiff, no later than seventy-five (75) days following the mailing of Notice (and so at least 15 days prior to the Objection Deadline). Class Counsel will respond to any objections to the foregoing motions no later than seven (7) days prior to the date of the Final Fairness Hearing.

Upon the filing of Plaintiffs' Motion for Preliminary Approval, counsel for Gateway will provide notice of the Settlement to the appropriate officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 with the costs of such notice to be paid by Gateway.

10.2 Final Approval of the Court

This Agreement and the Settlement embodied herein are subject to Final Approval by the Court. If the Settlement is approved, the Court will enter a judgment dismissing the claims against Gateway with prejudice. The Parties waive any right to appeal or collaterally attack a Final Approval Order entered by the Court.

In the Eisig Action, the New York Plaintiffs' Counsel will, within seven (7) days of entry of the Final Approval Order, dismiss the Eisig Action with prejudice, with Gateway and Eisig to

bear their own costs and attorneys' fees.

If this Agreement or any part of it is materially modified by the Court or is materially modified upon appeal or remand, either Party may terminate this Agreement pursuant to Section XV. If no Party timely elects to terminate, then the Parties will remain bound to the Settlement as so modified. For purposes of this paragraph, a "material modification" is one that significantly affects the rights or obligations of one or more of the Parties. Without limiting the foregoing and by way of illustration only, material modifications include but are not limited to: (1) any change to the scope of the Released Claims set forth in this Settlement Agreement; (2) any change to the Final Approval Order which limits or reduces any of the protections afforded to Defendant, (3) any increase in the cost of the settlement to be borne by Defendant to be determined at the sole discretion of Defendant; (4) any non-trivial change to the Benefit, Class Notice, Claim Form, and claim process. No order or action of the Court pertaining to attorneys' fees or expenses will be considered to constitute a material modification so long as such order, action, or modification does not increase the cost of settlement to be borne by Defendant, and does not require that Defendant do anything not specifically set forth herein, or is one that significantly affects the rights or obligations of one or more of the Parties. Similarly, no order or action of the Court pertaining to the Named Plaintiff Enhancement Award will be considered to constitute a material modification so long as such order, action or modification does not increase the cost of Settlement to be borne by Defendant and does not require that it do anything not specifically set forth herein. Any dispute as to the materiality of any modification or proposed modification of this Agreement will be resolved by the Court.

XI. RELEASES

11.1 Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, Plaintiffs and the Settlement Class Members and all of their administrators, executors, personal representatives, heirs, agents, attorneys, assigns, predecessors and successors, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, will be deemed to, and will, in fact, have remised, released and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against any of the Released Persons.

11.2 The Releasing Parties hereby fully release and forever discharge the Released Parties from the Released Claims.

11.3 Without limiting the foregoing, the release specifically extends to claims that the Releasing Parties do not know or suspect to exist in their favor at the time that the Settlement, and the release contained herein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Civil Code, which provides:

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

The Releasing Parties understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or

believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

XII. FINAL JUDGMENT AND SETTLEMENT APPROVAL

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Class for the purposes of this settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief will be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

XIII. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to, and agrees with, the other Party as follows:

13.1 Each Party has had the opportunity to receive, and has received, independent legal advice from his or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

13.2 Gateway represents and warrants: (a) that it has the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (b) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Gateway; and (c) that the Agreement has been duly and validly executed and delivered by Gateway and constitutes its legal, valid and binding obligation.

13.3 Class Representatives represent and warrant that they are entering into the Agreement on behalf of themselves individually and as proposed representatives of the Settlement Class Members, of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Each Class Representative represents and warrants that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that he will not file an Opt-Out request from the Settlement Class or object to the Agreement.

13.4 Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiffs have, may have arising out of these lawsuits or could have asserted in these lawsuits, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

13.5 Neither Party relies or has relied on any statement, representation, omission, inducement, or promise of the other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

XIV. NO ADMISSIONS OF FAULT

The Agreement and every Agreement and term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement will not be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiffs, Gateway,

any Class Member or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party.

XV. MISCELLANEOUS PROVISIONS

15.1 Termination of Agreement

This Agreement will terminate (a) at the election of either Party in the event of any proposed “material modification” of this Agreement as described in Section 10.2 of this Agreement; (b) prior to approval of this Agreement by the Court, upon the mutual agreement of the Parties by and through their respective counsel; (c) in the event of any material modification as described in Section 10.2 of this Agreement’ or (d) at Gateway’s option in the event that more than 10% of the Settlement Class Opt-Out of the Settlement as stated in Section 7.1 of this Agreement.

15.2 Entire Agreement

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda and agreements between the Parties. Neither Plaintiff nor Gateway are entering into this Agreement in reliance upon any representations, warranties or inducements other than those contained in this Agreement.

15.3 Change of Time Periods

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs’ Counsel and Defendant’s Counsel, without notice to Class

Members except that the Settlement Administrator will ensure that such dates are posted on the Settlement Website.

15.4 Extension of Time

The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

15.5 Plaintiffs' Authority

Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of the Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class in order to effectuate the terms of this Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of the Plaintiffs and, subsequent to an appropriate Court Order, the Class Members.

15.6 Counterparts

This Agreement may be executed in one or more counterparts, all of which together will be deemed to be one and the same instrument. The Parties agree that a copy of the executed counterparts may be filed with the Court in connection with the motion to approve the Settlement, either in portable document format or some other suitable electronic form, as an exhibit to Plaintiffs' Motion for Preliminary Approval without the need to collate and file a copy with original signatures.

15.7 Cooperation

The Parties will cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and

responsibilities. The Parties will also cooperate so that Class Counsel may have such confirmatory discovery as is reasonably necessary in connection with this Agreement.

15.8 Binding Nature

This Agreement will be binding upon the heirs, executors, administrators, successors and assigns of the Plaintiff, Settlement Class Members, and Gateway.

15.9 Construing the Agreement

This Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Agreement is the result of arm's-length negotiations between the Parties, and it is acknowledged that all Parties have contributed substantially to the preparation of this Agreement; accordingly, the doctrine of *contra proferentum* will not apply in construing this Agreement, nor will any other such similar doctrine apply.

15.10 Choice of Law

This Agreement will be governed by and interpreted in accordance with the substantive common law of the State of New York, exclusive of choice of law principles.

15.11 Jurisdiction

The Parties submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for the purpose of enforcing this Agreement or implementing any part of the Settlement embodied in this Agreement.

15.12 Headings

The captions and headings employed in this Agreement are for convenience only, are not a part of the Agreement, and will not be used in construing or interpreting the Agreement.

15.13 Media and Contact of Class Members

To avoid contradictory, incomplete or confusing information about the Settlement during the Claim Period, the Parties agree that if they make any written press releases or statements to the media about the Settlement or containing any material produced in connection with the Gateway Actions before the conclusion of the Claim Period, such releases or statements will be approved by the Parties in advance and, where desired by the other Party, made jointly. Except as noted herein, neither Party will release any public statements nor contact any Class Member in an effort to induce them to file claims except where such Class Members previously contacted Class Counsel. No Party will make any reference to the total value of the Settlement on any website, or in any promotional material.

15.14 Evidentiary Preclusion

The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Gateway Actions or any other proceeding for any purpose whatsoever. However, the Released Parties may file the Agreement and/or the Final Approval Order in any action or

proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15.15 Effect of Non-approval

In the event that this Agreement is not approved by the Court in substantially its present form, any Objection to the Settlement is sustained by the Court, or the Settlement does not become final for any reason including Termination pursuant to Section XV above, the terms and provisions of this Agreement will have no further force and effect with respect to the Parties or the Class Members, and will not be used in the Gateway Actions or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement will be treated as vacated, *nunc pro tunc*. In such event, this Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Agreement will be without prejudice to any Party or Class Member and will not be admissible or offered into evidence in any action or proceeding, and will not be deemed, asserted or construed to be an admission or confession by any Party or any other Person or entity of any fact, matter or proposition of law, and will not be used or asserted in any other manner or for any purpose, and all Parties and Class Members will stand in the same position as if this Agreement and Settlement had not been negotiated, made or submitted to the Court.

15.16 Effectiveness, Amendments, and Binding Nature

This Agreement may be amended only in writing signed by the Parties. Except as otherwise stated above, each Party, including Plaintiffs on behalf of themselves and the

Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Agreement will nevertheless remain effective.

This Agreement is binding on, and will inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest. All Released Parties other than Defendant, which is a Party, are intended to be third-party beneficiaries of this Agreement.

15.17 Stay Pending Court Approval

Class Counsel, the New York Plaintiffs' Counsel, and Gateway's Counsel agree to stay all proceedings in the Gateway Actions, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. Among other things, this requires in the New York Plaintiffs' Counsel in the Eisig Action to notify the Second Department of this Settlement within five (5) days of the Court's entry of the Preliminary Approval Order. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Gateway Actions, in accordance with Section XV of this Agreement.

The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings against any of the Released Parties which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

15.18 Signatures

This Agreement may be executed in counterparts, and, when so executed, will constitute a binding original. Each of which will be deemed an original but all of which together will constitute one and the same instrument. Facsimile signatures or signatures sent by email will be deemed original signatures and will be binding.

15.19 Notices

Whenever this Agreement requires or contemplates that one Party will or may give notice to the other, notice will be provided in writing by first class U.S. Mail and email to:

- a. If to Plaintiffs' or Class Counsel:

D. Greg Blankinship
FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER LLP
445 Hamilton Avenue, Suite 605
White Plains, NY 10601
gblankinship@fbfglaw.com

- b. If to Gateway or Gateway's Counsel:

Michael D. Matthews, Jr.
McDowell Hetherington LLP
1001 Fannin Street, Suite 2700
Houston, TX 77002
matt.matthews@mhllp.com

15.20 Good Faith

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

15.21 Protective Orders

All orders, settlement agreements and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of “Confidential” documents.

15.22 Confidentiality

The terms of this Agreement will remain confidential until filed in the United States District Court for the Southern District of New York.

15.23 Binding on Successors

The Agreement will be binding upon, and inure to the benefit of, the heirs, and Released Parties.

15.24 Arms-Length Negotiations

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

15.25 Waiver

The waiver by one Party of any provision or breach of the Agreement will not be deemed a waiver of any other provision or breach of the Agreement.

15.26 Exhibits

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

15.27 Retain Jurisdiction

The Court will retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Agreement.

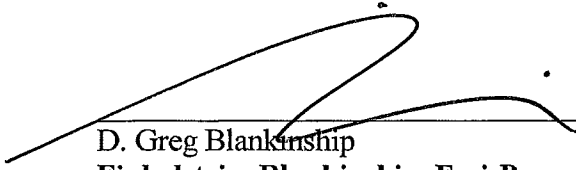
15.28 Support From The Parties

After a full investigation, discovery and arms-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Class; (b) will support motions for entry of the Preliminary Approval Order and Final Approval Order; and (c) will not encourage any Persons to Opt-Out or file an Objection to the Settlement or this Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

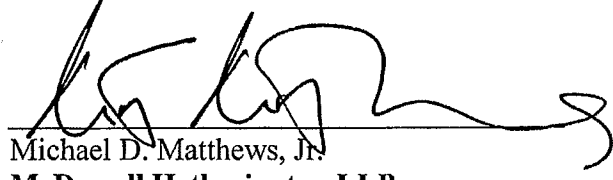
Dated this 27 day of March 2019.



D. Greg Blankinship
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP



Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP



Michael D. Matthews, Jr.
McDowell Hetherington LLP

Gateway Energy Services Corporation

By: _____

Title: _____

On Behalf of Defendant, Gateway Energy Services Corporation

Jonathan Shub
Kohn, Swift & Graf, P.C.

Paul M. Sod
The Law Offices of Paul M. Sod

Peter S. Lubin
Lubin Austermuehle, P.C.,

Paul G. Neilan
The Law Offices of Paul G. Neilan, P.C.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

Dated this ____ day of March 2019.

D. Greg Blankinship
Finkelstein, Blankinship, Frei-Pearson &
Garber, LLP

Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson &
Garber, LLP

Jonathan Shub
Kohn, Swift & Graf, P.C.

Paul M. Sod
The Law Offices of Paul M. Sod

Peter S. Lubin
Lubin Austermuehle, P.C.,

Paul G. Neilan
The Law Offices of Paul G. Neilan, P.C.

Michael D. Matthews, Jr.
McDowell Hetherington LLP

Gateway Energy Services Corporation

By:  Bruce Stewart

Title: President

*On Behalf of Defendant, Gateway Energy
Services Corporation*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

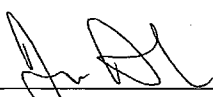
Dated this ____ day of March 2019.

D. Greg Blankinship
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Michael D. Matthews, Jr.
McDowell Hetherington LLP

Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Gateway Energy Services Corporation
By: _____
Title: _____



Jonathan Shub
Kohn, Swift & Graf, P.C.

On Behalf of Defendant, Gateway Energy Services Corporation

Paul M. Sod
The Law Offices of Paul M. Sod

Peter S. Lubin
Lubin Austermuehle, P.C.,

Paul G. Neilan
The Law Offices of Paul G. Neilan, P.C.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

Dated this ____ day of March 2019.

D. Greg Blankinship
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Michael D. Matthews, Jr.
McDowell Hetherington LLP

Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP


Gateway Energy Services Corporation

By: _____

Title: _____

On Behalf of Defendant, Gateway Energy Services Corporation

Jonathan Shub
Kohn, Swift & Graf, P.C.


Paul M. Sod
The Law Offices of Paul M. Sod

Peter S. Lubin
Lubin Austermuehle, P.C.,

Paul G. Neilan
The Law Offices of Paul G. Neilan, P.C.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

Dated this ____ day of March 2019.

D. Greg Blankinship
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Michael D. Matthews, Jr.
McDowell Hetherington LLP

Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Gateway Energy Services Corporation

By: _____

Title: _____

On Behalf of Defendant, Gateway Energy Services Corporation

Jonathan Shub
Kohn, Swift & Graf, P.C.

Paul M. Sod
The Law Offices of Paul M. Sod



Peter S. Lubin
Lubin Austermuehle, P.C.,

Paul G. Neilan
The Law Offices of Paul G. Neilan, P.C.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

Dated this ____ day of March 2019.

D. Greg Blankinship
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Michael D. Matthews, Jr.
McDowell Hetherington LLP

Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

Gateway Energy Services Corporation

By: _____

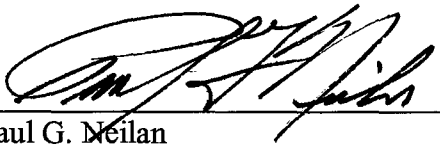
Title: _____

On Behalf of Defendant, Gateway Energy Services Corporation

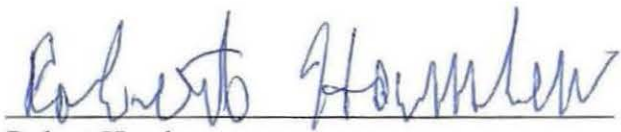
Jonathan Shub
Kohn, Swift & Graf, P.C.

Paul M. Sod
The Law Offices of Paul M. Sod

Peter S. Lubin
Lubin Austermuehle, P.C.,



Paul G. Neilan
The Law Offices of Paul G. Neilan, P.C.



Robert Hamlen

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

Anthony Wagar

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

David Eisig

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

Robert Hamlen

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

Anthony Wagar

Anthony Wagar

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

David Eisig

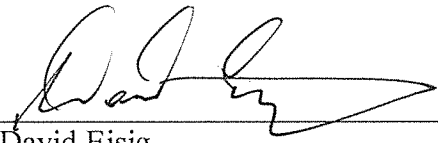
*On Behalf of Plaintiffs and the Proposed
Settlement Class*

Robert Hamlen

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

Anthony Wagar

*On Behalf of Plaintiffs and the Proposed
Settlement Class*

A handwritten signature in black ink, appearing to read "David Eisig", written over a horizontal line.

David Eisig

*On Behalf of Plaintiffs and the Proposed
Settlement Class*