

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between Sally Cannon Dunlop, Adam Budd, and Lindsay Beiler, individually and on behalf of Settlement Class Members (as defined in Paragraph 39) (together “Plaintiffs”), and Bayhealth Medical Center, Inc. (“Defendant” or “Bayhealth”) (collectively the “Parties”), in the action *Dunlop, et al. v. Bayhealth Medical Center, Inc.*, Case No. N25C-10-167, pending in the Superior Court of the State of Delaware (the “Action”).

### **RECITALS**

WHEREAS, Plaintiffs have filed a Complaint against Defendant in the Superior Court of the State of Delaware relating to a Data Incident affecting Defendant which Defendant discovered on or around July 31, 2024, and asserted claims for negligence, negligence *per se*, breach of implied contract, invasion of privacy, unjust enrichment, breach of fiduciary duty and declaratory judgment;

WHEREAS, Plaintiff Sally Cannon Dunlop initiated this matter by filing a Class Action Complaint in the United States District Court for the District of Delaware on August 14, 2024. An Amended Complaint was filed adding Plaintiff Adam Budd on August 28, 2024, and a Second Amended Complaint was filed adding Plaintiff Lindsay Beiler on November 27, 2024. Defendant filed a Motion to Dismiss Plaintiffs’ Second Amended Complaint on December 11, 2024;

WHEREAS, on January 21, 2025, the Parties filed a Motion to Stay Proceedings Pending Mediation or, in the Alternative, for an Extension of Time to Respond to Defendant’s Motion. The District Court approved the stay by Order dated January 22, 2025;

WHEREAS, on May 1, 2025, the Parties attended a mediation with Bennett G. Picker, Esquire of Stradley Ronon. Though the Parties did not reach a settlement at that time, they continued to negotiate and the Parties later reached a settlement in principle;

WHEREAS, the Parties proceeded to negotiate and draft a full Settlement Agreement and exhibits, obtain bids for and retain a class action settlement administrator to conduct notice and claims administration, and Plaintiffs drafted and filed a motion for preliminary approval of the class settlement in the action pending in the United States District Court for the District of Delaware;

WHEREAS, shortly after the motion for preliminary approval was filed, it came to the Parties’ attention that, based on the residence of the Settlement Class Members, the United States District Court for the District of Delaware did not have jurisdiction of the action pursuant to the Class Action Fairness Act;

WHEREAS, Plaintiffs proceeded to dismiss the action in the United States District Court for the District of Delaware without prejudice and refiled the action in this Court;

WHEREAS, Defendant denies the allegations and all liability with respect to any and all facts and claims alleged in the Action, that the Class Representatives and the class that they purport to represent have suffered any damage(s), and/or that the Action satisfies the requirements to be tried as a class action under Delaware Rule of Civil Procedure 23; and

WHEREAS, following extensive arm's length settlement negotiations, a mediation session, and the exchange of informal discovery, the Parties reached an agreement of the essential terms of settlement.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

## I. **DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. "Action" means the class action lawsuit captioned *Dunlop, et al. v. Bayhealth Medical Center, Inc.*, Case No. N25C-10-167, pending in the Superior Court of the State of Delaware.

2. "Approved Claim" means the timely submission of a Claim Form by a Settlement Class Member that has been approved by the Settlement Administrator.

3. "Claim Form" means the form that will be available for Settlement Class Members to submit a Settlement Claim (defined below) to the Settlement Administrator (defined below) and that is substantially in the form of **Exhibit 3**. Settlement Class Members must submit a Claim Form, subject to the provisions of this Settlement Agreement, to obtain benefits under this Settlement Agreement.

4. "Claims Deadline" means the last day for a Settlement Class Member to submit a timely Claim Form, which will occur ninety (90) days after the Notice Deadline.

5. "Claims Period" means the period of time during which Settlement Class Members may submit Claim Forms to receive settlement benefits, which will end ninety (90) days after the Notice Deadline.

6. "Class Counsel" means Kenneth J. Grunfeld of Kopelowitz Ostrow P.C. and Raina C. Borrelli of Strauss Borrelli PLLC.

7. "Class Representatives" means Sally Cannon Dunlop, Adam Budd, and Lindsay Beiler.

8. "Court" means the Superior Court of the State of Delaware.

9. “Data Incident” means the data security incident effecting Bayhealth which Bayhealth discovered in or around July 2024.

10. “Defendant’s Counsel” means Paulyne Gardner of Mullen Coughlin, LLC.

11. “Effective Date” means one (1) business day after all of the following conditions have occurred: (i) the Court enters the Preliminary Approval Order; (ii) the Court has entered a Final Approval Order and Judgment finally approving this Settlement Agreement; and (iii) either (a) the date upon which the time expires for filing or noticing any reconsideration or appeal of the Final Approval Order and Judgment; or (b) if there is an appeal or appeals or reconsideration sought, the date on which the Final Approval Order and Judgment is affirmed without any material modification and is no longer subject to judicial review; and (iv) the date of final dismissal of any appeal or reconsideration or the final dismissal of any proceeding on certiorari with respect to the Final Approval Order and Judgment, and the Final Approval Order and Judgment is no longer subject to judicial review. Notwithstanding the above, any order modifying or reversing any attorneys’ fees, costs, and expenses or Service Award to a Class Representative shall not affect the “Effective Date” or any other aspect of the Final Approval Order and Judgment.

12. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.

13. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of Delaware Rule of Civil Procedure 23, and is consistent with all material provisions of this Agreement. Notwithstanding the foregoing, any order modifying or reversing any Attorneys’ Fees and Expenses Award or Service Award made in this case shall not affect whether the Final Approval Order and Judgment is “Final” as defined herein or any other aspect of the Final Approval Order and Judgment.

14. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Delaware Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

15. “Litigation Costs and Expenses” means costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Action.

16. “Medical Monitoring Services” means two years of Kroll Essential Monitoring. These services include one-bureau credit monitoring; dark web monitoring; real-time inquiry alerts; and \$1 million in identity theft insurance, among other features.

17. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Service Awards Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.

18. “Non-Profit Residual Recipient” means Delaware Combined Campaign for Justice or a non-profit organization(s) otherwise approved by the Court.

19. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members, substantially in the form attached hereto as Exhibit 1 (“Short Form Notice”) and Exhibit 2 (“Long Form Notice”).

20. “Notice Deadline” means the last day by which Notice must begin to issue to the Settlement Class Members, and which will occur thirty (30) days after entry of the Preliminary Approval Order.

21. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, performing National Change of Address search(es) and/or skip tracing, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

22. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be sixty (60) days after the Notice Deadline.

23. “Opt-Out Deadline” is the last day on which a Settlement Class member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Deadline.

24. “Out-of-Pocket Losses” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Data Incident, and that have not already been reimbursed by a third party, as set forth in Paragraph 52.

25. “Personal Information” means information that identifies an individual or that in combination with other information can be used to identify, locate, or contact an individual. The term “Personal Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement, or how the Parties may use the term in other circumstances.

26. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Delaware Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for Settlement Class Members to object to or opt-out of the Settlement, and set a date for the Final Approval Hearing, substantially in the form annexed hereto as Exhibit 4.

27. “Pro Rata Cash Payment” or “Cash Payment” means a pro rata cash payment from the Net Settlement Fund, estimated at \$60, with the final payment amounts depending on the number of valid claims submitted, which a Settlement Class Member may claim under this Settlement Agreement, as set forth in Paragraphs 50-51.

28. “Released Claims” means any and all past, present, and/or future claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, defenses, and remedies of every kind or description in law or in equity, including but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 et seq., and all similar statutes in effect in any states in the United States; all Delaware consumer protection statutes; violations of any federal or state data breach notification statute; negligence; negligence per se; breach of implied contract; breach of fiduciary duty; invasion of privacy; unjust enrichment; and failure to provide adequate notice pursuant to any breach notification statute or common law duty, as well as monetary sanctions or damages for contempt, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, or interest—whether known or unknown (including Unknown Claims as set forth in Paragraph 83), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that the Releasing Parties had or have that have been or could have been asserted in the Action or that otherwise relate to or arise from the Data Incident, the operative facts alleged in the Action, including the complaint and the amendments thereto, the alleged access, disclosure and/or acquisition of Settlement Class Members’ Personal Information in the Data Incident, Defendant’s provision of notice to Settlement Class Members following the Data Incident, Defendant’s information security policies and practices as they relate to or arise from the Data Incident, or Defendant’s maintenance or storage of Personal Information as they relate to or arise from the Data Incident, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

29. “Released Parties” means Defendant and each and every of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of its past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, agents and/or third-party administrators thereof, subrogees and assigns of any of the foregoing, as well as clients of Defendant and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a “Released Party.” It is expressly understood that to the extent a Released Party is not a party to this Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

30. “Releasing Parties” means (i) Plaintiffs and all Settlement Class Members, (ii) each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the

entireties, agents, and attorneys, (iii) any entities in which a Plaintiffs and/or other participating Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, (iv) any other person or entity claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or any other Settlement Class Member, and all those who claim through them or on their behalf, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (i)-(iv).

31. “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.

32. “Residual Settlement Fund” means any funds that remain in the Settlement Fund after Settlement Payments have been distributed and the time for cashing and/or redeeming Settlement Payments has expired. The Residual Funds will be sent to one or more Non-Profit Residual Recipient(s).

33. “Service Award Payment” means compensation awarded by the Court and paid to any Class Representative in recognition of his or her role in this litigation.

34. “Settlement” means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

35. “Settlement Administrator” means Kroll Settlement Administration LLC (“Kroll”), a notice and settlement administrator with recognized expertise in class action notice and claims generally and data security litigation specifically, as jointly agreed upon by the Settling Parties and approved by the Court.

36. “Settlement Class” means the persons who are identified on the Settlement Class List, which includes all individuals residing in the United States whose Private Information was potentially compromised in the Data Incident discovered by Bayhealth in July 2024, including all those individuals who received notice of the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

37. “Settlement Class List” means the list generated by Defendant containing the full names and current or last known home addresses and email addresses for Settlement Class Members, which Defendant shall provide to the Settlement Administrator within 10 days of the Preliminary Approval Order.

38. “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.

39. “Settlement Fund” means the sum of Two Million, Five Hundred Thousand Dollars and Zero Cents (\$2,500,000.00) to be paid by or on behalf of Defendant as specified in Paragraph 44, including any interest accrued thereon after payment. This payment is the limit and extent of the monetary obligations of Defendant, its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of its past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, agents and/or third-party administrators thereof, subrogees and assigns of any of the foregoing, with respect to this Agreement and the settlement of this matter. As such, the Settlement Fund represents the total extent of Defendant’s monetary obligations under the Settlement Agreement. Defendant’s contribution to the Settlement Fund shall be fixed and shall be final. Defendant shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund.

40. “Settlement Payment” or “Settlement Check” means the payment to be made via mailed check or electronic payment to a Settlement Class Member pursuant to Paragraph 58.

41. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ motion for an award of attorneys’ fees, costs and expenses, and/or service awards, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

42. “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

## **II. SETTLEMENT FUND**

43. **Establishment of Settlement Fund.** Defendant agrees to make a payment, and deposit that payment into, the Settlement Fund as follows: (a) Within twenty (20) days of the Court granting preliminary approval of this Settlement, Defendant shall pay, from the total settlement amount, to the Settlement Administrator an amount estimated by the Settlement Administrator

(said amount being part of and not in addition to the Settlement Fund) to defray the actual expenses of notice to Settlement Class Members; (b) not more than fourteen (14) days after the Effective Date, Defendant shall pay into a Qualified Settlement Fund to be established and maintained by the Settlement Administrator the remaining portion of the Settlement Fund. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed Two Million, Five Hundred Thousand Dollars and Zero Cents (\$2,500,000.00). To the extent this Settlement is not finally approved, Defendant will be entitled to the return of any amounts not already incurred by the Settlement Administrator in connection with administration of the Settlement. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9 to Defendant within five (5) days of the entry of the Preliminary Approval Order. Following Defendant's payment of all Settlement Fund monies as described in this Paragraph after Final Approval, Defendant shall have no responsibility, financial obligation, or liability whatsoever with respect to the selection of the Settlement Fund account, investment of Settlement Fund account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other Taxes or Tax-Related Expenses imposed on the Settlement Fund account or its distributions, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund.

44. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 80.

45. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

46. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 80.

47. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay: (i) all costs of Settlement Administration including Taxes and Tax-Related Expenses; (ii) approved Out-of-Pocket Loss Claims; (iii) approved Pro Rata Cash Payments; (iv) approved claims for Medical Monitoring; (v)

Service Awards; and (vi) Attorneys Fee Award and Costs. Any amount remaining in the Residual Settlement Fund shall be paid to the Non-Profit Residual Recipient in accordance with Paragraph 66. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

48. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties, their counsel, and their insurers and reinsurers for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

### **III. SETTLEMENT BENEFITS**

#### **a. Pro Rata Cash Payment**

49. **Pro Rata Cash Payment.** All Settlement Class Members may submit a claim for a Pro Rata Cash Payment from the Net Settlement Fund, estimated at \$60, with the final payment amounts adjusted up or down depending on the number of claims submitted, by submitting a Claim Form to the Settlement Administrator no later than the Claims Deadline. The Pro Rata Cash Payment will be calculated in accordance with Paragraph 65 below and may be increased or decreased based on the number of valid claims submitted for this settlement benefit.

50. **Assessing Claims for Pro Rata Cash Payments.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. A Settlement Class Member shall not be required to submit any documentation or additional information in support of their claim for a Pro Rata Cash Payment. The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met to award payments for Pro Rata Cash Payments.

#### **b. Reimbursement For Out-Of-Pocket Losses**

51. **Reimbursement for Out-of-Pocket Losses.** In addition to the Pro Rata Cash Payment, all Settlement Class Members may submit a claim for Out-of-Pocket Losses. All Settlement Class Members may submit a claim for up to Five Thousand Dollars and Zero Cents (\$5,000.00) for reimbursement of Out-of-Pocket Losses. “Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Incident including, without limitation, the following: (i) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of class member’s personal information; (ii) costs incurred on or after July 31,

2024, associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; and (iii) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members who elect to submit a claim for Reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation supporting their claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) whether the Settlement Class Member has been reimbursed for the loss by another source. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Settlement Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation. Settlement Class Members shall not be reimbursed for Out-of-Pocket Losses if they have already been reimbursed for the same Out-of-Pocket Losses by another source. A claim for reimbursement for Out-of-Pocket Losses may be combined with a claim for a Pro Rata Cash Payment and Medical Monitoring but in no circumstance will a Settlement Class Member be eligible to receive more than the Five Thousand Dollars and Zero Cents (\$5,000.00) cap.

**52. Assessing Claims for Out-of-Pocket Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflects valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Incident, but may consult with Class Counsel and Defendant's Counsel in making individual determinations. In assessing what qualifies as "fairly traceable," the Parties agree to instruct the Settlement Administrator to consider (i) whether the timing of the loss occurred on or after July 31, 2024; and/or (ii) whether the Personal Information used to commit identity theft or fraud consisted of the same type of Personal Information that was potentially impacted as a result of the Data Incident. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity. Settlement Class Members that file a Claim for Out-of-Pocket Losses only and not for a Pro Rata Cash Payment and have their Out-of-Pocket Losses Claim rejected may be treated by the Settlement Administrator as if he or she elected a Pro Rata Cash Payment.

**53. Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement

Administrator may consult with Class Counsel and Defendant's Counsel in making such determinations.

**c. Medical Monitoring**

54. All Settlement Class Members are eligible to enroll in 2 years of Kroll Essential Monitoring. The Settlement Administrator shall send an activation code to each valid Medical Monitoring Services claimant within fourteen (14) days of the Effective Date that can be used to activate Medical Monitoring Services. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Codes will be active for 180 days after the date of mailing, and may be used to activate the full term if used at any time during that 180-day period. The provider shall provide Medical Monitoring Services to all valid claimants who timely activate those services for a period of 2 years from the date of activation. Medical Monitoring expenses, the administration of which will be undertaken by the Settlement Administrator and overseen by Class Counsel, will be paid for from the Settlement Fund.

**d. Additional Security Measures**

55. Defendant has confirmed that it has made certain changes to its information security and will attest to these changes in a confidential declaration provided to Class Counsel in support of the Settlement. Within thirty (30) days after the entry of the Preliminary Approval Order, Defendant shall provide Class Counsel with a confidential declaration or affidavit, suitable for filing under seal with the Court as necessary, attesting that agreed upon security-related measures have been implemented on or before, and up to, the date of the Preliminary Approval Order and identifying the approximate cost of those security-related measures. Costs associated with these security-related measures should be paid by Defendant separate and apart from other settlement benefits and separate and apart from the Settlement Fund. The information provided by Defendant pursuant to this paragraph shall be treated as confidential and cannot be used for any purpose other than approval and enforcement of this Settlement Agreement.

**V. PAYMENTS TO SETTLEMENT CLASS MEMBERS**

56. **Payment Timing.** Payments for Approved Claims for reimbursement for Out-of-Pocket Losses and Pro Rata Cash Payments shall be issued in the form of an electronic payment or check mailed as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date. The Settlement Administrator shall utilize electronic payment methods wherever possible.

57. **Timing.** To the extent payments are made by check, settlement checks shall bear the legend that they expire if not negotiated within sixty (60) days of their date of issue.

58. **Returned Checks.** For any electronic payment or settlement check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after

the electronic payment or check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. Any replacement electronic payment(s) or settlement check(s) issued to Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.

59. **Uncashed Checks.** To the extent that an electronic payment or settlement check is not cashed, accepted and/or negotiated within sixty (60) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued electronic payment or check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing an electronic payment or check or mailing the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued electronic payment or check. Any reissued electronic payment(s) or settlement check(s) issued to Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.

60. **Deceased Class Members.** If the Settlement Administrator is notified that a Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the electronic payment(s) or settlement check(s) to the Settlement Class Member's estate upon receiving proof the Settlement Class Member is deceased and after consultation with Class Counsel and Defendant's Counsel.

## **VI. CLAIMS; DISTRIBUTION OF SETTLEMENT FUNDS; RESIDUAL SETTLEMENT FUND**

61. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via the Settlement Website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline.

62. **Order of Distribution of Funds.** The Settlement Administrator must first use the funds available in the Settlement Fund (after payment of Notice and Administrative Expenses and Taxes and Tax-Related Expenses) to make payments for Service Awards, followed by Fee Award and Costs, followed by Approved Claims for Out-of-Pocket Losses, followed by Approved Claims for Medical Monitoring, followed by Approved Claims for Pro Rata Cash Payments.

### **63. Pro-Rata Contingencies.**

a. In the event that the funds remaining in the Net Settlement Fund are not sufficient to make payment for those Approved Claims for Out-of-Pocket Losses, then the value of the payments for Approved Claims for Out-of-Pocket Losses shall be reduced on a pro rata basis, such that the aggregate value of all payments for Approved Claims for Out-of-Pocket Losses

does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed for Approved Claims for Pro Rata Cash Payments.

b. In the event that the funds remaining in the Net Settlement Fund are not sufficient to make payment for those Approved Claims for Medical Monitoring Services, then the duration of the Medical Monitoring Services shall be reduced to 1 year.

c. In the event that funds remaining in the Net Settlement Fund after the payment for Approved Claims for Out-of-Pocket Losses and Medical Monitoring Services are not sufficient to make payment for the full amount of the Approved Claims for Pro Rata Cash Payments (*i.e.*, Sixty Dollars and Zero Cents [\$60.00] per Approved Claim), then the value of the Approved Claims for Pro Rata Cash Payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Approved Claims does not exceed the Net Settlement Fund. The Pro Rata Cash Payment amount may also be increased based on the amount of the Net Settlement Fund and the number of valid claims submitted To ensure that the maximum amount of the Net Settlement Fund is distributed, following the payment of Approved Claims for Out-of-Pocket Losses and Approved Claims for Medical Monitoring Services, the amount remaining in the Net Settlement Fund shall be divided by the number of Settlement Class Members who submit Approved Claims for Pro Rata Cash Payments and allocated on a *pro rata* basis to all Settlement Class Members who submitted Approved Claims for Pro Rata Cash Payments.

d. All *pro rata* determinations required by this Paragraph shall be performed by the Settlement Administrator upon notice to Class Counsel and Defendant's Counsel.

64. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date. To the extent any monies remain in the Residual Settlement Fund more than 150 days after the distribution of Settlement payments to the Settlement Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be distributed as required by state law or to the Non-Profit Residual Recipient.

## **VII. SETTLEMENT CLASS NOTICE**

65. **Timing of Notice.** Within ten (10) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to the members of the Settlement Class. The Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

66. **Form of Notice.** Notice shall be disseminated via U.S. mail to Settlement Class Members as postcard notice with an attached, tear-off Claim Form. Reminder notice shall be sent if necessary and agreed upon by both Class Counsel and Defendant's Counsel.

## **VIII. OPT-OUTS AND OBJECTIONS**

67. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The Request for Exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

68. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement by submitting written objections to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature (or electronic equivalent) of the Settlement Class Member or the Settlement Class Member’s attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

69. Within seven (7) days after the deadline to opt-out as set forth in this Paragraph and as approved by the Court, the Settlement Administrator shall furnish to counsel for the parties a complete list of all timely and valid request for exclusions.

## **IX. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

70. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail;

- e. Establishing and maintaining the Settlement Website;
- f. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- g. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- h. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- i. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than seven (7) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
- j. After the Effective Date, processing and transmitting settlement payments to Settlement Class Members;
- k. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding the number of settlement electronic payments and/or checks mailed and delivered, electronic payments and/or settlement checks cashed, undeliverable information, and any other requested information relating to settlement payments. The Settlement Administrator shall also, as requested by Class Counsel or Defendant's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- l. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- m. Performing any function related to settlement administration as provided for in this Agreement or at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that settlement payments have been distributed.

71. **Limitation of Liability.** The Parties, Class Counsel, Defendant's Counsel, and Defendant's insurers, reinsurers, agents and/or third-party administrators, shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement

Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

72. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, Defendant's Counsel, and Defendant's insurers and reinsurers for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

## **X. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

73. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Defendant reserves the right to contest class certification for all other purposes. The Parties further stipulate to designating the Class Representatives as the representatives for the Settlement Class.

74. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of this Settlement with the Court. Class Counsel shall provide Defendant's counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from Defendant.

75. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing, within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline. In connection with the motion for preliminary approval, counsel for the parties shall request that the Court set a date for the Final Approval Hearing that is no earlier than 120 days after entry of the Preliminary Approval Order. Class Counsel shall provide Defendant's counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from Defendant.

76. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain

jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

## **XI. MODIFICATION AND TERMINATION**

77. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

78. **Termination.** Class Counsel (on behalf of the Settlement Class Members) and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice"): (1) within seven (7) days of the Court's refusal to grant preliminary approval of the Settlement in any material respect; or (2) within fourteen (14) days of either of the following: (a) the Court's refusal to enter the Judgment in any material respect, or (b) the date upon which the Judgment is modified or reversed in any material respect by any appellate or other court. No order of the Court or modification or reversal or appeal of any order of the Court concerning the amounts of the attorneys' fees and costs and/or Service Awards shall constitute grounds for termination of the Settlement.

79. **Effect of Termination.** In the event of a termination as provided in Paragraph 80, this Agreement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved. Finally, in such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

## **XII. RELEASES**

80. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims. Plaintiffs, Settlement Class Members, and any Releasing Parties covenant and agree that they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce

any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

81. **Unknown Claims.** The Released Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Action and that Plaintiffs, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. With respect to the Released Claims, Plaintiffs, Settlement Class Members, and any Releasing Parties, expressly understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs, Settlement Class Members, and any Releasing Parties explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiffs and Defendant with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Upon the Effective Date, Plaintiffs, the Settlement Class, and any Releasing Party shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

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.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Class Representatives, the Settlement Class, and any Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph. Each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a payment from the Settlement.

82. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Class Representatives, other Settlement Class Members, and Class Counsel and any other attorneys for Plaintiffs in the Action shall be enjoined from prosecuting any claim released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

### **XIII. SERVICE AWARDS**

83. **Service Awards.** At least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion seeking a service award payment not to exceed Five Thousand Dollars and Zero Cents (\$5,000) for each of the Class Representatives, for a total of Fifteen Thousand Dollars and Zero Cents (\$15,000), in recognition of their contributions to this Action, subject to Court approval. The Settlement Administrator shall make the Service Award Payments to the Class Representatives from the Settlement Fund. Such Service Award Payments shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

84. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

### **XIV. ATTORNEYS' FEES, COSTS, EXPENSES**

85. **Attorneys' Fees and Costs and Expenses.** At least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion for an award of attorneys' fees not to exceed one-third of the Settlement Fund, or Eight Hundred and Thirty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$833,333.33), plus reasonable litigation costs and expenses, to be paid from the Settlement Fund, and subject to Court approval. The Fee Award and Costs shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

86. **Allocation.** To the extent applicable, and unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs' counsel and any other attorneys for Plaintiffs. Defendant and its insurers and reinsurers shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

87. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees and costs and expenses in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

## **XV. NO ADMISSION OF LIABILITY**

88. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

89. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document produced or executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendant in the Action or in any proceeding in any court, administrative agency or other tribunal.

## **XVI. MISCELLANEOUS**

90. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

91. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

92. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.

93. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

94. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

95. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

96. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

97. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

98. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

99. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Delaware, without regard to the principles thereof regarding choice of law.

100. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically, by facsimile, or through e-mail of an Adobe PDF shall be deemed an original.

101. **Notices.** All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Kenneth J. Grunfeld, Esq.  
**KOPELOWITZ OSTROW P.C.**  
One West Las Olas Blvd., Suite 500  
Fort Lauderdale, Florida 33301  
Telephone: (954) 525-4100

Raina C. Borrelli  
**STRAUSS BORRELLI PLLC**  
980 N. Michigan Avenue, Suite 1610  
Chicago, Illinois 60611  
Tel: (872) 263-1100  
Email: raina@straussborrelli.com

All notices to Defendant provided for herein, shall be sent by overnight mail and email to:

Paulyne Gardner  
**MULLEN COUGHLIN LLC**  
426 W. Lancaster Avenue, Suite 200  
Devon, PA 19333  
(267) 930-2098 – Office  
(215) 254-9240 – Mobile

pgardner@mullen.law

The notice recipients and addresses designated above may be changed by written notice.

**102. Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

**SIGNATURES**

**SALLY CANNON DUNLOP**

By: Sally Cannon Dunlop

Date: 11 / 17 / 2025

**ADAM BUDD**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**LINDSAY BEILER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STRAUSS BORRELLI PLLC**

*Counsel for Plaintiffs and the Class (as to form only)*

By: Raina Borrelli  
Raina C. Borrelli

Date: 11 / 25 / 2025

**KOPELOWITZ OSTROW P.C.**

*Counsel for Plaintiffs and the Class (as to form only)*

By: \_\_\_\_\_  
Kenneth J. Grunfeld

Date: \_\_\_\_\_

**BAYHEALTH MEDICAL CENTER, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MULLEN COUGHLIN LLC**

*Counsel for Defendant (as to form only)*

**SIGNATURES**

**SALLY CANNON DUNLOP**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ADAM BUDD**

By: Adam Budd  
By: [Adam Budd \(Nov 19, 2025 09:55:44 EST\)](#)

Date: Nov 19, 2025

**LINDSAY BEILER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STRAUSS BORRELLI PLLC**

*Counsel for Plaintiffs and the Class (as to form only)*

By: \_\_\_\_\_  
Raina C. Borrelli

Date: \_\_\_\_\_

**KOPELOWITZ OSTROW P.C.**

*Counsel for Plaintiffs and the Class (as to form only)*

By: Ken Grunfeld  
By: [Ken Grunfeld \(Nov 19, 2025 10:21:01 EST\)](#)  
Kenneth J. Grunfeld

Date: Nov 19, 2025

**BAYHEALTH MEDICAL CENTER, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MULLEN COUGHLIN LLC**

*Counsel for Defendant (as to form only)*

**SIGNATURES**

**SALLY CANNON DUNLOP**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ADAM BUDD**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**LINDSAY BEILER**

By: Lindsay Beiler

Date: 11 / 17 / 2025

**STRAUSS BORRELLI PLLC**

*Counsel for Plaintiffs and the Class (as to form only)*

By: \_\_\_\_\_  
Raina C. Borrelli

Date: \_\_\_\_\_

**KOPELOWITZ OSTROW P.C.**

*Counsel for Plaintiffs and the Class (as to form only)*

By: \_\_\_\_\_  
Kenneth J. Grunfeld

Date: \_\_\_\_\_

**BAYHEALTH MEDICAL CENTER, INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MULLEN COUGHLIN LLC**

*Counsel for Defendant (as to form only)*

**SIGNATURES**

**SALLY CANNON DUNLOP**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ADAM BUDD**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**LINDSAY BEILER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STRAUSS BORRELLI PLLC**

*Counsel for Plaintiffs and the Class (as to form only)*

By: \_\_\_\_\_  
Raina C. Borrelli

Date: \_\_\_\_\_

**KOPELOWITZ OSTROW P.C.**

*Counsel for Plaintiffs and the Class (as to form only)*

By: \_\_\_\_\_  
Kenneth J. Grunfeld

Date: \_\_\_\_\_

**BAYHEALTH MEDICAL CENTER, INC.**

Signed by:

By:   
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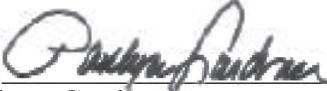
Date: 11/24/2025

Name: \_\_\_\_\_

Title: Designated Institution Official

**MULLEN COUGHLIN LLC**

*Counsel for Defendant (as to form only)*

By:   
Paulyne Gardner

Date: 11/24/2025