

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made as of May 13, 2021, by and between, as hereinafter defined, (a) Settlement Class Representatives on behalf of themselves and the Settlement Class, (b) UPMC d/b/a The University of Pittsburgh Medical Center, and UPMC McKeesport (collectively, “UPMC”) and subject to preliminary and final Court approval as required by Rule 1714 of the Pennsylvania Rules of Civil Procedure. Settlement Class Representatives and UPMC enter into this Agreement by and through their respective counsel. By this Agreement, UPMC and the Settlement Class Representatives seek to and do hereby resolve all claims that could have been or were asserted by the Settlement Class Representatives and the Settlement Class (as defined in this Agreement) in the action titled *Dittman, et al. v. UPMC, et al.*, Case No. GD No. 14-003285 (Allegheny Cty. Ct. Com. Pl.). Settlement Class Representatives and UPMC are collectively referred to herein as the “Parties.”

### **Recitals**

- 1.1. In a series of announcements beginning in February 2014, UPMC announced that it had been the victim of a criminal cyberattack on its computer systems in which the attackers gained unauthorized access to the personal information of approximately 66,000 current and former employees of UPMC entities (the “Data Breach”).
- 1.2. Immediately following the Data Breach, UPMC undertook a thorough assessment of its cybersecurity systems and protocols. Numerous modifications and enhancements were implemented to the affected system and infrastructure security. All deficiencies identified during the assessment were remediated and policies were updated to protect against future attempted data breaches.
- 1.3. A comprehensive effort was initiated to address concerns of employees of UPMC entities. UPMC launched a dedicated internal website for information and guidance for staff and communicated relevant information to employees on a daily basis. A dedicated toll-free telephone line was established and staffed to answer any questions from employees. UPMC engaged an accounting firm to file tax fraud documents with the IRS on behalf of employees at UPMC’s expense. UPMC also offered Lifelock credit monitoring to all employees of UPMC entities for a period of five years.
- 1.4. After announcement of the Data Breach, a putative class action lawsuit was filed by impacted employees in the Court of Common Pleas of Allegheny County, seeking damages and other relief and alleging they had been injured as a result of the Data Breach. The employees brought claims for negligence and breach of implied contract.
- 1.5. UPMC filed Preliminary Objections to the employees’ Complaint on April 30, 2014. In response to UPMC’s Preliminary Objections, the employees filed their First Amended

Class Action Complaint on May 16, 2014. UPMC submitted renewed Preliminary Objections on June 6, 2014, and the employees responded by filing a Second Amended Class Action Complaint on June 25, 2014. UPMC filed Preliminary Objections to the Second Amended Class Action Complaint on July 16, 2014.

- 1.6. On May 28, 2015, the trial court sustained UPMC's preliminary objections and dismissed the entire Second Amended Class Action Complaint. Thereafter, the employees appealed, first to the Superior Court of Pennsylvania, which affirmed on January 12, 2017, and then to the Supreme Court of Pennsylvania, which on November 21, 2018, vacated the Superior Court's opinion, reversed the trial court's dismissal of the employees' negligence claim, and remanded.
- 1.7. After remand, UPMC renewed its preliminary objections regarding the standing of one subclass of employees, which the trial court overruled on October 24, 2019. UPMC sought permission for interlocutory appeal to the Superior Court, which denied the petition for review on May 27, 2020.
- 1.8. On June 12, 2020, counsel for the Parties participated in a mediation conference with independent third-party neutral John M. Noble, Esq. The Parties did not reach agreement at that session, but counsel for the Parties continued their negotiations. The Parties also began the discovery process, serving written requests for production and interrogatories and negotiating the terms of an ESI protocol to govern the case.
- 1.9. On August 31, 2020, counsel for the Parties reached agreement regarding the material terms of a settlement, which, if approved by the Court, will resolve all claims in the litigation. Thereafter, the Parties drafted the comprehensive settlement Agreement described herein.
- 1.10. This Agreement resulted from good faith, arm's-length settlement negotiations, including multiple rounds of offers, demands, and counteroffers among counsel for the Parties, and a supervised mediation with John M. Noble, Esq.
- 1.11. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in the Settlement and how best to serve the interests of the Settlement Class. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of the Litigation, and the substantial benefits to be received by the Settlement Class pursuant to this Settlement, that a settlement with UPMC on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

- 1.12. UPMC denies any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence in any other litigation, including but not limited to as an admission or concession on the part of UPMC with respect to any claim of fault or liability or wrongdoing or damages whatsoever, any infirmity in the defenses that UPMC asserted or would assert, or to Plaintiffs' ability to satisfy the certification requirements of Pennsylvania Rules of Civil Procedure Rule 1708 & 1709 in contested litigation. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, UPMC has agreed to settle the Litigation on the terms as set forth in this Settlement, subject to Court approval.
- 1.13. The Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to all Released Claims (as defined below) of the Settlement Class. The Parties intend this Agreement to bind Settlement Class Representatives, UPMC, and all Settlement Class Members that do not timely and validly exclude themselves from the Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Litigation be settled, compromised, and dismissed on the merits and with prejudice, subject to preliminary and final Court approval, as required by Pa. R. Civ. P. 1714, on the following terms and conditions:

#### **Definitions**

- 2.1. "Approved Claim" means a claim for Settlement benefits from the Documented Fraud Fund made using a Claim Form by a Settlement Class Member found to be valid and in an amount approved by the Settlement Administrator.
- 2.2. "Claims Administration" means the processing of Claim Forms received from Settlement Class Members and payment of Approved Claims and Unclaimed Distributions by the Settlement Administrator, as well as any other duties and obligations of the Settlement Administrator, as set forth in the Settlement.
- 2.3. "Claims Deadline" means the deadline by which Settlement Class Members must submit a claim to be eligible for certain benefits under this Settlement, which shall be 90 days after the Notice Deadline.
- 2.4. "Claim Form" shall mean the claim form attached as Exhibit 4 (including an electronic version thereof), or a claim form approved by the Court that is substantially similar to Exhibit 4, that a Settlement Class Member must complete and submit in order to be eligible for certain benefits under the Settlement.
- 2.5. "Class Counsel" means:

Gary F. Lynch  
Jamisen A. Etzel  
CARLSON LYNCH LLP  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
P: 412-322-9243  
glynch@carlsonlynch.com  
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- 2.6. “Class Representatives” means Barbara A. Dittman, Gary R. Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kristen Cushman, and Shannon Molyneaux.
- 2.7. “Complaint” means the operative Second Amended Class Action Complaint, filed in the Litigation on June 25, 2014.
- 2.8. “Costs of Settlement Administration” means all reasonable actual costs and expenses of the Settlement Administrator associated with or arising from the Claims Administration and the Notice Program. The Costs of Settlement Administration shall be paid to the Settlement Administrator as set forth in this Settlement.
- 2.9. “Court” means the Court of Common Pleas of Allegheny County, Pennsylvania.
- 2.10. “Data Breach” or “Security Incident” mean the data breach announced by UPMC in February 2014, in which the personally identifying information of current and former employees of UPMC entities may have been accessed, compromised, or stolen by unauthorized third parties.
- 2.11. “Defendants’ Released Persons” means: UPMC, UPMC d/b/a The University of Pittsburgh Medical Center, UPMC McKeesport, their subsidiaries and affiliate companies and all other persons, governmental entities, associations, corporations and/or other entities, whether or not named herein, their heirs, executors, administrators, predecessors, successors, assigns, attorneys and insurers, and their respective directors, officers, agents, servants and employees.
- 2.12. “Documented Fraud” means any incident between January 1, 2014 and December 31, 2016 in which a Settlement Class Member was the victim of any completed or attempted acts of identity theft or fraud involving the use of Personally Identifying Information, such as, but not limited to: 1) submission of a fraudulent tax return in the Settlement Class Member’s name resulting in tax refund theft or mis-delivery; 2) opening of a fraudulent financial account in the Settlement Class Member’s name; 3) hijacking control over an existing financial account owned by the Settlement Class Member through fraudulent address or password changes; and 4) the posting of any fraudulent transaction against a financial

account in the Settlement Class Member's name. In addition, any incidents occurring after January 1, 2017 may be treated as a Documented Fraud by the Settlement Administrator if a Settlement Class Member submits additional documentation indicating a direct causal connection between the 2014 Data Breach and the incident of identity theft. For purposes of this Agreement, a Settlement Class Member may be deemed to have suffered a Documented Fraud even though the Settlement Class Member's funds were ultimately restored through the intervention of, e.g., law enforcement, another governmental agency, or a financial institution.

- 2.13. "Documented Fraud Fund" means a specific subset of the Settlement Fund which will be used by the Settlement Administrator to pay only Approved Claims. The amount of the Documented Fraud Fund is one-half of the total Settlement Fund after any Costs of Settlement Administration exceeding \$200,000 are subtracted. The maximum amount of the Documented Fraud Fund is \$839,500. If less than all of the Documented Fraud Fund is required to pay all Approved Claims, the remainder of the Documented Fraud Fund will roll over into the general Settlement Fund and be used for Unclaimed Distributions.
- 2.14. "Effective Date" means the first business day after which all of the following events have occurred: (a) Class Counsel and UPMC's counsel have executed this Settlement; (b) following notice to the Settlement Class, the Court has entered the Final Approval Order and Judgment without material change to either the Parties' Settlement or agreed-upon proposed Final Approval Order and Judgment, as described in this Settlement and attached hereto as Exhibit 6; and (c)(i) the time for seeking rehearing, appellate, or other review of the Final Approval Order and Judgment has expired with no appeal, motion for rehearing, or motion for further review being filed, except as specifically described further in this definition; or (ii) the Final Approval Order and Judgment is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Effective Date shall not be altered, precluded, or delayed in the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses or Service Awards in the amounts that Class Counsel requests but otherwise enters a Final Order and Judgment without material change to the remainder of the Settlement or the agreed-upon proposed Final Order and Judgment. Further, the Effective Date shall not be altered, precluded, or delayed in the event that an appeal is filed, with the sole issues on appeal being the award of attorneys' fees, costs, and/or expenses to Class Counsel and/or Service Award.
- 2.15. "Final Approval" means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award. In the event that the Court issues

separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

- 2.16. “Final Approval Order and Judgment” means the order and judgment that the Court enters upon Final Approval and in the form of, or materially in the form of, the proposed Final Approval Order and Judgment attached hereto as Exhibit 6. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order and Judgment includes all such orders.
- 2.17. “Litigation” means the action styled *Dittman, et al. v. UPMC, et al.*, No. GD-14-003285 (Allegheny Cty. Ct. Com. Pl.) in the Allegheny County Court of Common Pleas.
- 2.18. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.
- 2.19. “Notice Deadline” means the date by which the Settlement Administrator is required to send out Mail Notice, which shall be 30 days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.
- 2.20. “Notice Program” means the notice plan and methods provided for in this Settlement and consists of: (a) a direct mail notice to Settlement Class Members (“Mail Notice”); (b) an email notice to Settlement Class Members (“Email Notice”); (c) notice posted on the Settlement Website; and (d) such other notice as is required by due process and Pa. Rules of Civil Procedure 1712 and 1714(c). The Notice Program shall be effected in substantially the manner provided for in this Settlement, subject to Court approval.
- 2.21. “Objection Deadline” means 90 days after the Notice Deadline.
- 2.22. “Opt-Out Deadline” means 90 days after the Notice Deadline.
- 2.23. “Parties” means UPMC and the Settlement Class Representatives, individually and on behalf of the Settlement Class.
- 2.24. “Personally Identifiable Information” or “PII” means a United States resident’s first name or first initial and last name in combination with any one or more of the following data elements: (a) Social Security Number; (b) date of birth; (c) driver’s license or state issued identification card number; (d) home address; (e) any financial account number or credit or debit card number; and (f) any salary or wage information.
- 2.25. “Plaintiffs’ Released Persons” means the Settlement Class Representatives, members of the Settlement Class who do not timely and validly exclude themselves from the Settlement, their assigns, beneficiaries, estates, heirs, and the Settlement Class Representative’s counsel of record in the Litigation.

- 2.26. “Preliminary Approval Order” means the order preliminarily approving the Settlement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of, or materially in the form of, the proposed Preliminary Approval Order attached hereto as Exhibit 5.
- 2.27. “Qualified Settlement Fund” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in the Settlement. The Parties agree that the Qualified Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Qualified Settlement Fund and paying from the Qualified Settlement Fund any Taxes owed with respect to the Qualified Settlement Fund. The Parties agree that the Qualified 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 it as a qualified settlement fund from the earliest date possible.
- 2.28. “Releasing Parties” means the Settlement Class Representatives and all Settlement Class Members who do not timely and validly exclude themselves from the Settlement, and each of their assigns, beneficiaries, estates, heirs, and the Settlement Class Representative’s counsel of record in the Litigation.
- 2.29. “Service Award” means a payment of up to \$3,000 to each Settlement Class Representative (seven total); subject to Court approval, in compensation for their involvement in this Litigation and service on behalf of Settlement Class Members. The Service Awards shall be paid separately by UPMC.
- 2.30. “Settlement Agreement” or “Settlement” means this settlement agreement and release, including exhibits hereto.
- 2.31. “Settlement Administrator” means the entity to be selected by the Parties, and approved by the Court to effectuate the Notice Program, Claims Administration, and payment distributions per the terms of this Settlement.
- 2.32. “Settlement Class Members” or “Settlement Class” means: All persons who were employed by a UPMC entity and whose Personally Identifying Information was contained in or on the UPMC computer system and was potentially accessed, stolen, or compromised as a result of the Data Breach first announced by UPMC in February 2014. Excluded from the class are the Court, any immediate family members of the Court; and individuals who timely and validly request exclusion from the Settlement Class.

- 2.33. “Settlement Class Representatives” means Barbara A. Dittman, Gary R. Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kristen Cushman, and Shannon Molyneaux.
- 2.34. “Settlement Fund” means a non-reversionary fund in the amount of one million, six hundred and seventy-nine thousand U.S. dollars (\$1,679,000), which will be used to pay Approved Claims and Unclaimed Distributions to Settlement Class Members, and any Costs of Settlement Administration that exceed \$200,000, in accordance with this Agreement.
- 2.35. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but no later than the Notice Deadline, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to the Settlement, Notice, Preliminary Approval Order, Claim Form, Complaint, and such other documents as Class Counsel and UPMC’s counsel agree to post, or that the Court orders posted, on the website. These documents shall remain on the Settlement Website at least 60 days after the Effective Date. The URL of the Settlement Website shall be agreed upon by Class Counsel and UPMC’s counsel. Settlement Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least 60 days after the Effective Date.
- 2.36. “Total Settlement Consideration” means the maximum amount UPMC will be required to pay under the terms of this Agreement, which is \$2,650,000.
- 2.37. “Unclaimed Distributions” means equal payments made from the Settlement Fund to all Settlement Class Members who do not submit Approved Claims.
- 2.38. “Unclaimed Distributions Fund” means all funds remaining in the Settlement Fund and available for distribution to Settlement Class Members after subtracting Costs of Administration in excess of \$200,000 and the Documented Fraud Fund, and then returning back or “rolling over” any unclaimed amounts of the Documented Fraud Fund after the aggregate amount of all Approved Claims has been determined by the Settlement Administrator.
- 2.39. “UPMC” means UPMC, UPMC d/b/a The University of Pittsburgh Medical Center, and UPMC McKeesport.



### Settlement Class

- 3.1. For settlement purposes only, the Parties agree that the Court should certify the following class pursuant to Pa. R. Civ. P. 1710 and 1714 defined as:

**All persons who were employed by a UPMC entity and whose Personally Identifying Information was contained in or on the UPMC computer system and was potentially accessed, stolen, or compromised as a result of the Data Breach first announced by UPMC in February 2014.**

Excluded from the class are the Court, any immediate family members of the Court; and individuals who timely and validly request exclusion from the Settlement Class.

- 3.2. For settlement purposes only, Class Counsel shall seek, and UPMC shall not oppose, the appointment of Class Counsel as settlement class counsel and the appointment of Settlement Class Representatives as defined above. Settlement Class Representatives will move for provisional certification of the Settlement Class, for settlement purposes only, contemporaneously with their motion for preliminary approval of the Settlement. UPMC agrees to jointly request, or to not contest, provisional certification of the Settlement Class for settlement purposes only.
- 3.3. Within fourteen (14) days after preliminary approval, UPMC shall provide, or cause to be provided, the Settlement Administrator and Class Counsel with: 1) a class list reflecting the most recent available contact information (i.e., name and mailing address) of each individual falling under the class definition; and 2) any information in UPMC's possession and reasonably accessible indicating that a Settlement Class Member previously claimed to have suffered any Documented Fraud as a result of the Data Breach
- 3.4. Class Counsel agrees to maintain the confidentiality of the class list and any related information, use it only for purposes of implementing this Agreement, and destroy all copies of it within 1 year of the Effective Date.

### Settlement Consideration

- 4.1. In exchange for the mutual promises and covenants in this Agreement; including, without limitation, the Releases set forth below and the dismissal of the Action upon the Effective Date, UPMC agrees to pay and provide the settlement consideration described in this Section 4.
- 4.2. In no event shall UPMC be required to pay or provide more than the Total Settlement Consideration of \$2,650,000 in connection with this Settlement.

- 4.3. Within 30 calendar days after the Effective Date, UPMC shall cause to be deposited the sum of \$1,679,000, into an account for the Qualified Settlement Fund established and administered by the Settlement Administrator at a financial institution approved by Class Counsel and UPMC. Class Counsel and/or the Settlement Administrator shall timely furnish to UPMC any required account information, wiring instructions or necessary forms before the payment is made.
- 4.4. The Qualified Settlement Fund shall be a Court approved qualified settlement fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The Settlement Administrator shall be responsible for all administrative, accounting and tax compliance activities in connection with the Qualified Settlement Fund and the monies deposited into the Qualified Settlement Fund, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. UPMC shall provide to the Settlement Administrator any documentation necessary to facilitate obtaining Qualified Settlement Fund status for the Qualified Settlement Fund pursuant to Treas. Reg. § 1.468B-1. All taxes on income or interest generated by the Qualified Settlement Fund, if any, shall be paid out of the Qualified Settlement Fund. This Settlement Fund will be non-reversionary, except in the event this Settlement Agreement is voided, cancelled, or terminated, as set forth herein.
- 4.5. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following, in this order:
- 1) the portion of Costs of Settlement Administration that exceed \$200,000, but only if such excess costs are approved in advance by Class Counsel, UPMC, and the Court;
  - 2) Approved Claims, up to the maximum amount of the Documented Fraud Fund, which is \$839,500; and
  - 3) Unclaimed Distributions, which will consist of all funds remaining in the Settlement Fund, to be paid in equal payments to all Settlement Class Members who do not submit Approved Claims.
- 4.6. Payment of Approved Claims to the Settlement Class. Payments from the Documented Fraud Fund will be made on a “claims made” basis in accordance with the Claims Administration and Distribution Plan (attached hereto as Exhibit 1). This means that only Settlement Class Members who submit Approved Claims will receive payments from the Documented Fraud Fund. Two types of Approved Claims will be accepted: 1) Documented Out-of-Pocket Fraud Loss Claims, and 2) Documented Fraud-Related Inconvenience Claims. These types of claims are not mutually exclusive, meaning that a Settlement Class Member may make a claim for one type or the other, or both. The amounts of all Approved Claims are subject to a sequence of priority and potential pro rata reduction as described

below. The Settlement Administrator will pay Approved Claims from the Documented Fraud Fund in the following manner:

- a. *Documented Out-of-Pocket Fraud Loss Claims.* Settlement Class Members may submit a valid Claim Form along with documentation establishing that they: 1) personally experienced one or more incidents of Documented Fraud as defined in this Agreement, and 2) suffered unreimbursed, out-of-pocket losses from such incident(s). Such claimants will be entitled to a payment from the Documented Fraud Fund not to exceed the actual amount of the documented out-of-pocket loss, or a maximum limit of \$5,000 total per claimant, whichever amount is less. Settlement Class Members who submit claims related to incidents of fraud occurring after January 1, 2017 must provide additional documentation indicating a direct causal link between the 2014 Data Breach and the claimed loss.
- b. *Documented Fraud-Related Inconvenience Claims.* Settlement Class Members may submit a valid Claim Form along with documentation establishing that they: personally experienced one or more incidents of Documented Fraud as defined in this Agreement, and 1) devoted one or more hours of time specifically to investigating and addressing the incident(s) of Documented Fraud; or 2) lost the use of an identifiable sum of money for at least one month before it was reimbursed or restored by way of law enforcement, governmental agency, or financial institution intervention. Such claimants will be entitled to a maximum payment of up to \$250 total.
  - i. The payable amount for a Documented Fraud-Related Inconvenience Claim will be determined by the Settlement Administrator using the following guidelines: 1) a Settlement Class Member may receive up to \$25 per hour the claimant attests was spent investigating or addressing Documented Fraud incident(s), up to a maximum of 10 hours; and 2) a Settlement Class Member may receive up to \$50 per month that the claimant attests an identifiable sum of money was unavailable for use due to the Documented Fraud incident(s) before being restored, up to a maximum of 5 months. A claimant may be compensated for both hours and the lost use of money, but in no event will a Document Fraud-Related Inconvenience claimant receive more than \$250.
- c. *Order of Priority for Approved Claims, Pro Rata Reductions, and Roll Over of Unclaimed Funds.* The Settlement Administrator will determine final payable amounts for Approved Claims using the following procedures. After the Claims Deadline, the Settlement Administrator will determine the validity of submitted claims. If the aggregate value of all Approved Claims is less than amount of the

Documented Fraud Fund, then the Settlement Administrator will pay all the Approved Claims in full. Any funds remaining in the Documented Fraud Fund will then roll over into the Unclaimed Distributions Fund to be used for Unclaimed Distributions. If the aggregate value of all Approved Claims exceeds the amount of the Documented Fraud Fund, the Settlement Administrator will give priority to Documented Out-of-Pocket Fraud Loss Claims and determine whether those claims can be paid in full by making pro rata, proportional reductions of Documented Fraud-Related Inconvenience Claims, while preserving a minimum payment amount of \$25 for Documented Fraud-Related Inconvenience Claims. If the Documented Fraud Fund is insufficient to pay both all Document Out-of-Pocket Fraud Loss Claims in full and a minimum of \$25 per Documented Fraud-Related Inconvenience Claim, then no Documented Fraud-Related Inconvenience Claims will be paid at all. Instead, the Documented Out-of-Pocket Fraud Loss Claims will be paid in full and any remaining amounts in the Documented Fraud Fund will roll over to the Unclaimed Distributions Fund, or the Documented Out-of-Pocket Fraud Loss Claims will be paid as fully as possible after making proportional pro rata reductions to those claims. In other words, the payment of any Documented Fraud-Related Inconvenience Claims is conditioned on the availability of sufficient funds in the Documented Fraud Fund to pay a minimum of \$25 per Documented Fraud-Related Inconvenience Claim.

- 4.7. Payment of Unclaimed Distributions to the Settlement Class. After the Settlement Administrator calculates the amount payable from the Documented Fraud Fund for Approved Claims, and rolls over any unclaimed funds from the Documented Fraud Fund into the Unclaimed Distributions Fund, the entire remaining amount of the Settlement Fund shall be distributed in equal shares to all non-claiming Settlement Class Members. The Parties estimate that the value of these Unclaimed Distributions will be between \$10–\$20 each, depending on whether Costs of Administration exceed \$200,000 and whether any of the Documented Fraud Fund rolls over into the Unclaimed Distributions Fund.
- 4.8. Payment Timing and Method. All payments to Settlement Class Members described in this Agreement will be made by the Settlement Administrator through checks to Settlement Class Members mailed via USPS First Class Mail. The Settlement Administrator shall make all payments within 60 calendar days of the Effective Date, or as soon thereafter as reasonably practicable using the Settlement Administrator’s best efforts. If a check is returned as undeliverable with forwarding address information, the Settlement Administrator shall re-mail the check to the updated address as indicated. For any checks that are returned undeliverable without forwarding address information, the Settlement Administrator will make one attempt to identify an updated mailing address using reasonable efforts. Checks not cashed within 90 days shall no longer be valid, but the

Settlement Administrator is authorized to reissue an expired, unredeemed check upon request of a Class Member if such request is made within 240 days of the Effective Date.

- 4.9. Distribution of Unclaimed and Uncashed Funds. The Parties anticipate that, as a result of Settlement Class Members' failure to redeem distribution checks, some funds may still remain in the Settlement Fund after the void dates on all distributed settlement payment checks have passed and all claimants have had a reasonable opportunity to request reissued checks. On or after the one-year anniversary of the Effective Date, the Parties will instruct the Settlement Administrator to disburse 50% of the residual funds to the Pennsylvania Interest on Lawyers Trust Account Board, and to disburse the remaining 50% to the University of Pittsburgh Institute for Cyber Law, Policy, and Security.
- 4.10. Payment of Costs Associated with Administration of Settlement, Service Awards, Attorneys' Fees, and Expenses of Litigation. In addition to establishing the Settlement Fund, UPMC will pay the reasonable Costs of Settlement Administration, Service Awards to Settlement Class Representatives, Attorneys' Fees, and Expenses of Litigation, subject to the limitations below. These costs will be paid directly by UPMC as follows:
- i. *Costs of Settlement Administration.* UPMC will separately pay up to \$200,000 towards the Costs of Settlement Administration. Payment for the total projected Costs of Settlement Administration shall be made directly to the Settlement Administrator, within sixty (60) days of receipt by UPMC of an invoice from the Settlement Administrator after entry of the Preliminary Approval Order by the Court, or on a different schedule if agreed to by UPMC and the Settlement Administrator. If the total Costs of Administration are less than \$200,000, UPMC shall pay only the actual total costs, and nothing more. If the Parties are unable to identify a Settlement Administrator that will complete the tasks described herein for \$200,000 or less, UPMC shall pay exactly \$200,000 and any excess Costs of Settlement Administration will be drawn from the Settlement Fund, to the extent approved by UPMC, Class Counsel, and the Court.
  - ii. *Service Awards.* UPMC will pay costs of Court-approved Service Awards to each of the seven Settlement Class Representatives not to exceed \$3,000 per Settlement Class Representative. UPMC shall fund such payment directly to the Settlement Class Representatives, care of Class Counsel, by check or wire transfer to Class Counsel's Escrow Account, within thirty (30) days of the Effective Date. Class Counsel shall have sole responsibility for ensuring that the Service Awards are distributed to the Settlement Class Representatives following UPMC's payment to Class Counsel, and UPMC shall have no further liability with respect to the Service Awards. Neither

Class Counsel's application for, nor any institution's entitlement to, a Service Award shall be conditioned in any way upon such Settlement Class Representative's support for this Settlement.

- iii. *Attorneys Fees' and Expenses of Litigation.* UPMC will pay Court-approved Class Counsel attorneys' fees, costs, and expenses, in an amount not to exceed a combined total of \$750,000. UPMC shall make such payment to Class Counsel, by wire transfer, within thirty (30) days of the Effective Date.
  - iv. To the extent the Court does not approve the Service Awards or attorneys' fees and expenses in the full amounts stated herein, UPMC shall only pay the Court-approved amounts.
- 4.11. UPMC shall be under no obligation to fund any other, additional, or greater amount than the Settlement Consideration amounts reflected in Sections 4 and 10.1. The attorneys' fees, costs, and expenses and any Service Award awarded by the Court will be funded by UPMC, not by the Settlement Class. Class Counsel will not seek attorneys' fees, costs, and expenses or Service Awards other than as provided for in Section 10.2.
- 4.12. The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement. Each Settlement Class Representative and Settlement Class Member shall be solely responsible for the federal, state and local tax consequences to it of the receipt of any funds pursuant to this Agreement.
- 4.13. Cybersecurity improvements. UPMC states that it undertook certain cybersecurity improvements in response to the Data Breach. The measures undertaken by UPMC included but are not limited to:
- a. Engaging a third-party cybersecurity firm to assess UPMC's data security practices and to recommend potential improvements;
  - b. Working with a third-party vendor to complete an architectural assessment of various security configurations;
  - c. Hiring additional cybersecurity professionals to UPMC's information security team;
  - d. Requiring greater authentication measures before authorizing applications;
  - e. Increasing encryption efforts over sensitive data;
  - f. Amending all privileged user and administrative accounts across UPMC applications;

- g. Reviewing data access privileges to ensure compliance with best practices;
  - h. Revising policies and procedures to address data security;
  - i. Disabling unused and unnecessary services; and
  - j. Updating system security plans.
- 4.14. As further consideration for the releases described herein, UPMC will maintain any cybersecurity improvements to the extent they remain feasible and in the best interests of UPMC. This Agreement in no way obligates UPMC to commit to additional cybersecurity measures which have not already been undertaken in response to the Data Breach.

### **Preliminary Approval**

- 5.1. Upon execution of this Settlement, Class Counsel shall promptly move the Court for an order granting the Preliminary Approval Order, substantially in the form attached hereto as Exhibit 5. The motion for preliminary approval shall request that the Court: (a) preliminarily approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (b) provisionally certify the Settlement Class pursuant to Pa. R. Civ. P. 1710 and 1714 for settlement purposes only; (c) approve the Settlement Administrator and Notice Program set forth herein, form and content of the Notice, and Claim Form; (d) approve the procedures set forth in this Settlement for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (e) stay all proceedings in the Litigation unrelated to the Settlement pending Final Approval of the Settlement; (f) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning any Released Claims; (g) appoint Class Counsel and Settlement Class Representatives; and (h) schedule a Final Approval hearing at a date that provides sufficient time for the deadlines contemplated by this Settlement and that is convenient for the Court, at which time the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel's application for attorneys' fees, costs, and expenses and Service Awards (the "Final Approval Hearing").

### **Settlement Administrator**

- 6.1. The Settlement Administrator shall administer various aspects of the Settlement and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement and the Claims Administration and Distribution Plan, including, but not limited to, overseeing administration of the Qualified Settlement Fund; providing Notice to Settlement Class Members, as described in this Settlement; establishing and operating the Settlement Website and a toll-free number; administering the claims process; and distributing cash payments according to the processes and criteria established by this Settlement and the Claims Administration and Distribution Plan.

- 6.2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Settlement, include:
- a. implementing the Notice Program required by this Settlement;
  - b. establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
  - c. establishing and maintaining the Settlement Website;
  - d. establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement Agreement-related inquiries;
  - e. responding to Settlement Class Member inquiries;
  - f. processing all written notifications of exclusion from the Settlement Class and providing deficiency notices as set forth herein and in the Claims Administration and Distribution Plan;
  - g. providing weekly reports and, no later than 10 days after the Opt-Out Deadline, a final report to Class Counsel and UPMC that summarizes the number of written requests for exclusion received that week, total number of written requests for exclusion received to date, and other pertinent information as requested by Class Counsel and UPMC's counsel;
  - h. in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and validly provided a written request for exclusion from the Settlement Class;
  - i. reviewing, determining the validity of, responding to, and processing all claims submitted by Settlement Class Members, pursuant to criteria established by this Settlement Agreement and as set forth in the Claims Administration and Distribution Plan;
  - j. making available to the Parties for inspection and review the Claim Forms and any supporting documentation submitted by Settlement Class Members and any other information regarding the Settlement Administrator's review and validation process at any time upon reasonable notice;
  - k. after the Effective Date, processing and transmitting payments to Settlement Class Members that submitted Approved Claims and Unclaimed Distributions to all other



Settlement Class Members;

- l. providing weekly reports and a final report to Class Counsel and UPMC's counsel that summarize the number of claims since the prior reporting period, total number of claims received to date, number of any claims approved and denied since the prior reporting period, total number of claims approved and denied to date, and other pertinent information as requested by Class Counsel and UPMC's counsel; and,
  - m. performing any function related to Claims Administration at the agreed-upon instruction of the Parties, including, but not limited to, verifying that payments have been distributed in accordance with this Settlement.
- 6.3. UPMC shall provide the Settlement Administrator with sufficient information about Settlement Class Members to permit the Settlement Administrator to process and validate claims, including, at a minimum, the names and mailing addresses of all Settlement Class Members (the class list), and any information in UPMC's possession regarding whether a Settlement Class Member previously claimed to have suffered a Documented Fraud.
- 6.4. The Parties, Class Counsel, and Defendants' Counsel 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 Qualified Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Qualified Settlement Fund; (iv) the determination, administration, calculation or payment of any claims under this Agreement; (v) any losses suffered by or fluctuations in the value of the Qualified Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses or costs incurred in connection with the taxation of the Qualified Settlement Fund or the filing of any returns.
- 6.5. The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendants' Counsel 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 administration of the Settlement; (ii) the management, investment or distribution of the Qualified Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Qualified Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted under this Agreement; (v) any losses suffered by, or fluctuations in the value of the Qualified Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, or costs incurred in connection with the taxation of the Qualified Settlement Fund or the filing of any returns.

### **Notice, Opt-Outs, and Objections**

- 7.1. Upon entry of the Preliminary Approval Order of the Settlement, at the direction of Class Counsel, the Settlement Administrator will begin implementing the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may opt-out or object to the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Settlement and other related documents and information.
- 7.2. The Notice Program will be implemented as follows:
  - a. Within 14 days after entry of the Preliminary Approval Order, or as soon as practicable, UPMC will provide, or will cause to be provided, available contact information to the Settlement Administrator for all potential Settlement Class Members. Based upon information obtained from UPMC and from other reasonably available sources, the Settlement Administrator will prepare a final list of potential Settlement Class Members to which Notice will be issued;
  - b. Mail Notice and Email Notice will be sent to those on the final list by the Notice Deadline. The Mail Notice shall consist of either the long-form notice or postcard notice, in the forms attached hereto as Exhibit 2. The postcard form of the Mail Notice shall be sent to all Settlement Class Members for whom an email address is located by UPMC or the Settlement Administrator prior to the Notice Deadline. The long-form Mail Notice and Claim Form, in the form attached hereto as Exhibit 4, shall be sent to Settlement Class Members for whom no valid email has been identified prior to the Notice Deadline. Email Notice shall include the short notice form attached hereto as Exhibit 3 in the body of the email. For any Mail Notices that are returned as undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Mail Notice to the updated address as indicated. For any Mail or Email Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated emailing or mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Mail or re-email the Email Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Mail Notices or re-email any Email Notices that are returned as undeliverable;
  - c. By the Notice Deadline, the Settlement Administrator will create and maintain the Settlement Website, which will contain the information and documents required by

this Settlement. The Settlement Website will be configured so that Settlement Class Members may file claims electronically.

- 7.3. The Notice shall include a procedure for Settlement Class Members to opt-out and exclude themselves from the Settlement by notifying, in writing, the Settlement Administrator, Class Counsel, and UPMC's counsel of their intent to exclude themselves from the Settlement. The notice shall be sent via first class postage prepaid U.S. mail to the addresses provided in the Notice. Such written requests for exclusion must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The written request for exclusion must include the name of this Litigation or a decipherable approximation (*Dittman, et al. v. UPMC, et al.*, Case No. GD 14-003285 (Allegheny Cty. Ct. Com. Pl.)), the full name, address, and telephone number of the Settlement Class Member or the name, address, telephone number, relationship, and signature of any individual who is acting on behalf of a deceased or incapacitated Settlement Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement. The Settlement Administrator shall provide the Parties with copies of all opt-out requests on a weekly basis and a final list of all who have timely and validly excluded themselves from the Settlement, which Class Counsel may move to file with the Court no later than 10 days prior to the Final Approval Hearing. Any Settlement Class Member who does not provide a timely request for exclusion, or who does not provide all information required by this Settlement to exclude himself or herself, shall be bound by the terms of the Settlement, including all releases in the Settlement.
- 7.4. In the event that a Settlement Class Member purports to provide notice of its intention to opt out of the Settlement but fails to accurately provide all of the information set forth above, the Settlement Administrator shall notify Class Counsel and UPMC's counsel of the deficiency. Class Counsel and UPMC shall mutually determine whether to accept the request for exclusion as valid despite the deficiency, or direct the Settlement Administrator to send the Settlement Class Member a deficiency notice. The deficiency notice shall inform the Settlement Class Member that the attempt to opt out is deficient, invalid, and without legal effect. The deficiency notice shall be sent by the Settlement Administrator via email and, if email is not feasible or no response is received within 3 days, then by a USPS First Class mail. The deficiency notice shall also inform the Settlement Class Member that it must re-submit a valid notice requesting exclusion that includes all of the required information, no later than 10 days from the date of the deficiency notice in order for the opt out to be effective. If the Settlement Class Member fails to provide all of the required information on or before that deadline, then the attempt to opt out shall be invalid and have no legal effect, and the Settlement Class Member shall be bound by the Settlement, including the releases.

- 7.5. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, and/or the application for Service Award. Objections to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, and/or to the application for Service Award must be filed electronically with the Court, or mailed to the Clerk of the Court, Class Counsel, and UPMC's counsel. For an objection to be considered by the Court, the objection must be: (a) filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and UPMC's counsel at the addresses listed in the Notice and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Litigation: *Dittman, et al. v. UPMC, et al.*, Case No. GD No. 14-003285 (Allegheny Cty. Ct. Com. Pl.), or a decipherable approximation;
  - b. the full name of the objector and full name, address, email address, and telephone number of any person acting on the objector's behalf;
  - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
  - d. whether the objection applies only to the objector, a specific subset of the Settlement Class, or the entire Settlement Class;
  - e. all grounds for the objection stated, with specificity, accompanied by any legal support for the objection;
  - f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorney's fees, costs, and expenses, or the application for Service Awards;
  - g. the identity of all representatives (including counsel representing the objector) who will appear at the Final Approval Hearing;
  - h. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
  - i. if the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in

connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate;

- j. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;
  - k. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
  - l. a statement indicating whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
  - m. the objector (or the objector's attorney's) signature on the written objection.
- 7.6. In addition, any Settlement Class Member that objects to the proposed Settlement must make himself or herself available to be deposed regarding the grounds for the objection and must provide, along with the objection, the dates when the objector will be available to be deposed during the period from when the objection is filed through the date seven days before the Final Approval Hearing.
- 7.7. Any Settlement Class Member who both objects to the Settlement Agreement and opts-out will be deemed to have opted-out and the objection shall be deemed null and void.
- 7.8. The Mail Notice shall be sent or issued by the Notice Deadline, excluding any re-mails for Mail Notices that are returned undeliverable
- 7.9. At least 35 days before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and UPMC with one or more affidavits confirming that the Notice Program was completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to, or in conjunction with, Settlement Class Representatives' motion for Final Approval of the Settlement.
- 7.10. In the event that Effective Date does not occur, UPMC will not be entitled to a return of any of the monies it has paid to the Settlement Administrator for the Costs of Settlement Administration incurred up to that point. Class Counsel and the Settlement Administrator

will take reasonable steps to ensure that no further Costs of Settlement Administration are incurred thereafter without UPMC's express written approval.

### **Final Approval Order and Judgment**

- 8.1. Settlement Class Representatives' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur, which shall be sufficiently far in advance to allow for the deadlines contemplated by this Settlement. By no later than 30 days prior to the Final Approval Hearing, Class Counsel shall file a motion for final approval of the Settlement. Class Counsel shall move for Court approval of attorneys' fees, costs, and expenses and for Service Awards no later than 14 days prior to the Objection Deadline. Objectors, if any, shall file any response to Class Counsel's motions no later than 17 days prior to the Final Approval Hearing. By no later than 10 days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed. At the Final Approval Hearing, the Court will consider the motion for final approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel), who object to the Settlement and/or Class Counsel's Fee Application, costs, expenses, and/or Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in this Settlement.
- 8.2. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment granting Final Approval of the Settlement, and whether to approve Class Counsel's Application for Attorney's Fees, costs, expenses, and Service Awards. The proposed Final Approval Order and Judgment that will be filed with the Final Approval Motion shall be in a form agreed upon by Class Counsel and UPMC as set forth in Exhibit 6 attached hereto. Such proposed Final Approval Order and Judgment shall, among other things:
  - a. determine that the Settlement is fair, adequate, and reasonable;
  - b. finally certify the Settlement Class for settlement purposes only;
  - c. determine that the Notice provided satisfied the Pennsylvania Rules of Civil Procedure and due process requirements;
  - d. dismiss all claims in the Complaint and Litigation with prejudice;

- e. bar and enjoin the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment;
- f. release and forever discharge Defendants' Released Persons from the Released Claims and release Plaintiffs' Released Persons, as provided in this Settlement Agreement; and
- g. reserve the Court's continuing and exclusive jurisdiction over UPMC and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Settlement in accordance with its terms.

### **Releases**

- 9.1. As of the Effective Date, the Releasing Parties, each on behalf of themselves and any assigns, estates, or heirs, and any other entity purporting to claim through or on behalf of them directly or indirectly, shall automatically be deemed to have fully, completely, finally, irrevocably, and forever released and discharged Defendants' Released Persons of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, administrative, statutory, or equitable, that are, were or could have been asserted in the Litigation or the Complaint, including claims that result from, arise out of, are based upon, or relate to the Data Breach, including any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of: (a) UPMC's information security policies and practices around or before the time of the Data Breach announced by UPMC in February 2014; (b) the allegations, facts, and/or circumstances described in the Litigation and/or Complaint; (c) UPMC's response to and notices about the Data Breach; (d) the fraudulent use of any PII accessed, compromised, or stolen as a result of the Data Breach; and (e) any expenses incurred investigating, responding to, or mitigating potential damage from the theft or illegal use of PII accessed, compromised, or stolen during Data Breach (the "Released Claims").
- 9.2. As of the Effective Date, Defendants' Released Persons will be deemed to have completely released and forever discharged the Releasing Parties and Plaintiffs' Released Persons from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the

Litigation, except for claims relating to the enforcement of the Settlement or this Agreement, and for the submission of false or fraudulent claims for Settlement benefits. For the avoidance of doubt, Defendants' Released Persons release, as set forth in this Paragraph, does not include entities that do not meet the definition of either Releasing Parties or Plaintiffs' Released Persons.

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

*A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.*

(Emphasis added.) Settlement Class Members, including the Settlement Class Representatives, and any of them, may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Settlement Class Representatives expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

- 9.4. The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement,



including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

- 9.5. For purposes of clarity, the releases described herein are not intended to, and shall not apply, to claims relating to the enforcement of this Agreement.
- 9.6. As of the Effective Date, Settlement Class Members shall be enjoined from prosecuting or otherwise pursuing whether directly or in any other capacity any claim they have released in this Settlement against any of Defendants' Released Persons or based on any actions taken by any of Defendants' Released Persons that are authorized or required by this Settlement or by the Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding or action asserting claims released by this Settlement.

#### **Attorneys' Fees, Costs, Expenses and Service Award**

- 10.1. Service Awards. UPMC will pay costs of Court-approved Service Awards to each of the seven Settlement Class Representative, not to exceed \$3,000 per person. UPMC shall fund such payment directly to the Settlement Class Representatives, care of Class Counsel, by check or wire transfer to Class Counsel's Escrow Account, within thirty (30) days of the Effective Date.
- 10.2. Attorneys Fees' and Expenses of Litigation. UPMC will pay Court-approved Class Counsel attorneys' fees, costs, and expenses, in an amount not to exceed a combined total of \$750,000. UPMC shall make such payment to Class Counsel, by wire transfer, within thirty (30) days of the Effective Date.
- 10.3. Notwithstanding anything herein, no decision by the Court, or modification or reversal or appeal of any decision by the Court, that fails to approve, in whole or in part, the amounts of requested Service Awards and/or attorneys' fees, costs, and expenses will prevent the Settlement Agreement from becoming effective, nor will it be grounds for termination of this Settlement Agreement. If the Court declines to approve, in whole or in part, the requested Service Award and/or attorneys' fees, costs, and expenses in the amount set forth above, or at all, the remaining provisions of this Settlement Agreement will remain in full force and effect. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount of attorneys' fees or costs or Service Awards.

- 10.4. Neither Class Counsel's application for nor any individual's entitlement to a Service Award shall be conditioned in any way upon such individual's support for this Settlement.
- 10.5. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of record.

### **Termination**

- 11.1. This Settlement Agreement may be terminated by either the Settlement Class Representatives or UPMC by serving on counsel for the opposing Party; and filing with the Court a written notice of termination within 14 days (or such longer time as may be agreed between Class Counsel and UPMC) after any of the following occurrences:
  - a. Class Counsel and UPMC mutually agree to termination before the Effective Date;
  - b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
  - c. an appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
  - d. the Court, or any reviewing appellate court, incorporates material terms or provisions into, deletes or strikes material terms or provisions from, or materially modifies, amends, or changes the proposed Preliminary Approval Order, Preliminary Approval Order, proposed Final Approval Order and Judgment, Final Approval Order and Judgment, or Settlement;
  - e. or ten percent (10%) of the total number of Settlement Class Members submit requests to opt out;
  - f. the Effective Date does not occur.
- 11.2. If any of the events described in Paragraphs 11.1(b)–(f) occur, the Parties agree that they will engage in good faith negotiations to determine whether Court approval could be obtained through a mutually agreeable modification of the terms of this Settlement Agreement. However, in the event of a termination, as provided for in the Settlement, the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement shall cease to be of any force and effect; and any Court orders approving certification of the Settlement Class and any other orders entered pursuant to this Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; the Parties shall return to the *status quo ante* in the Litigation,

as if the Parties had not entered into this Settlement. In such an event, the fact of this Settlement and that Defendants did not oppose certification of any class under the Settlement, shall not be used or cited by any person or entity, including in any contested proceeding relating to certification of any proposed class. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including all defenses to class certification.

**No Admission of Liability**

12.1. This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to this Agreement:

- a. Shall not be offered or received against any Defendant, their subsidiaries and affiliate companies and all other persons, governmental entities, associations, corporations and/or other entities, whether or not named herein, their heirs, executors, administrators, predecessors, successors, assigns, attorneys and insurers, and their respective directors, officers, agents, servants and employees, as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant or the aforementioned individuals and entities with respect to the truth of any fact alleged by any Plaintiff or the validity of any claim that has been or could have been asserted in the Litigation or in any other litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any other litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of any Defendant or the aforementioned individuals and entities;
- b. Shall not be offered or received against any Defendant, their subsidiaries and affiliate companies and all other persons, governmental entities, associations, corporations and/or other entities, whether or not named herein, their heirs, executors, administrators, predecessors, successors, assigns, attorneys and insurers, and their respective directors, officers, agents, servants and employees, as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant or the aforementioned individuals or entities;
- c. Shall not be offered or received against any Defendant, their subsidiaries and affiliate companies and all other persons, governmental entities, associations, corporations and/or other entities, whether or not named herein, their heirs, executors, administrators, predecessors, successors, assigns, attorneys and insurers, and their respective directors, officers, agents, servants and employees, as evidence of a presumption, concession or admission with respect to any liability, negligence,

fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against any Defendant or the aforementioned individuals or entities, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;

- d. Shall not be construed against any Defendant or the aforementioned individuals or entities as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and
  - e. Shall not be construed as or received in evidence as an admission, concession or presumption against any Settlement Class Representative or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by any Defendants have any merit, or that damages recoverable under the Actions would not have exceeded the amounts provided for in this Agreement.
- 12.2. UPMC disputes the claims alleged in the Litigation and does not, by this Settlement or otherwise, admit any liability or wrongdoing of any kind. UPMC has agreed to enter into this Settlement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation and to be completely free of any further claims that were asserted or could have been asserted in the Litigation.
- 12.3. Class Counsel and Settlement Class Representatives believe that the claims asserted in the Litigation have merit, and they have examined and considered the benefits to be obtained under the Settlement, risks associated with the continued prosecution of this complex, costly, and time-consuming Litigation, and likelihood of success on the merits of the Litigation. Class Counsel and Settlement Class Representatives have concluded that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.
- 12.4. The Parties understand and acknowledge that this Settlement 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 Settlement, 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.
- 12.5. Neither the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is, 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 Settlement Class Members, or of any wrongdoing or liability of the Defendants' Released Persons; or (b) is,

may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of the Defendants' Released Persons in the Litigation or in any proceeding in any court, administrative agency, or other tribunal.

### Miscellaneous

- 13.1. Confidentiality. Prior to the filing of the motion for preliminary approval, the parties agree to keep the Settlement's terms and existence strictly confidential. The Limitations in this Section 13.1 shall not apply to: (1) communications between Plaintiffs' Counsel and their clients (including Settlement Class Members); (2) any contractual or legal disclosure obligations that UPMC may have; (3) the ability of UPMC to notify its insurers and auditors about the Settlement; (4) the ability of the Parties to communicate with necessary third parties, such as the Settlement Administrator or Qualified Settlement Fund Bank, for the purpose of facilitating the administration of the Settlement. Neither party shall make any oral or written statement about the other party that is intended or reasonably likely to disparage the other party, or otherwise degrade the other party's reputation in connection with the Settlement.
- 13.2. Qualified Settlement Fund Bank. Class Counsel, subject to UPMC's approval—which shall not be unreasonably withheld—shall select the bank at which the Qualified Settlement Fund shall be established, and all funds shall be held exclusively in an interest-bearing account or accounts where the principal will not decrease and is fully insured by the United States Government or an agency thereof, including certificates of deposit, a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and credit of the United States Government. UPMC shall not bear any responsibility for or liability related to the investment of the Qualified Settlement Fund by the Qualified Settlement Fund Bank.
- 13.3. Singular and Plurals. As used in this Settlement, all references to the plural shall also mean the singular and all references to the singular shall also mean the plural whenever the context so indicates.
- 13.4. Binding Effect. This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and Defendants' Released Persons.
- 13.5. Settlement Class Member Communications. UPMC shall not authorize any communication that is intended or reasonably likely to: 1) dissuade or discourage Class Members from filing a claim, or 2) encourage Class Members to exclude themselves from the Settlement. UPMC may, in its discretion, authorize communications referring all questions regarding the Settlement to the Notice, Class Counsel, the Settlement Administrator, and the Settlement Website.

- 13.6. Cooperation of Parties. The Parties to this Settlement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, defend Court approval, and do all things reasonably necessary to complete and effectuate the Settlement, as described herein. Nothing in this provision is intended to limit any Party's right to terminate the Settlement in accordance with its terms.
- 13.7. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of, or related to, this Settlement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.
- 13.8. Entire Agreement. This Settlement (along with any exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
- 13.9. Drafting. The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*. This Agreement is a collaborative effort of the Parties and their attorneys.
- 13.10. Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their Successors.
- 13.11. Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 13.12. Successors. This Agreement shall be binding upon and inure to the benefit of the Successors and assigns of the Parties thereto.
- 13.13. Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 13.14. No Conflict Intended. Any inconsistency between the headings used in this Settlement and the text of the paragraphs of this Settlement shall be resolved in favor of the text.
- 13.15. Governing Law. The Settlement shall be construed in accordance with, and be governed by, the laws of the Commonwealth of Pennsylvania, without regard to the principles thereof regarding choice of law.

- 13.16. Counterparts. This Settlement 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 by facsimile or through email of an Adobe PDF shall be deemed an original.
- 13.17. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement 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 Settlement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and Settlement Administration. As part of its agreement to render services in connection with this Settlement Agreement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.
- 13.18. Exhibits. The Exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.
- 13.19. Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Gary F. Lynch  
Jamisen A. Etzel  
CARLSON LYNCH LLP  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Tel: 412-253-6307  
glynch@carlsonlynch.com  
jetzel@carlsonlynch.com

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

John C. Conti  
Jeffrey J. Wetzel  
Steven L. Ettinger  
DICKY MCCAMEY  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402  
Tel.: 412-281-7272  
jconti@dmclaw.com

jwetzal@dmclaw.com  
setting@dmclaw.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

- 13.20. Authority. Any person executing this Settlement 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 Settlement to all of the terms and provisions of this Settlement.
- 13.21. Arms' Length Negotiation. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.



DATED: July 9, 2021

\_\_\_\_\_  
Barbara A. Dittman

\_\_\_\_\_  
Representative of UPMC

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Gary R. Douglas

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Alice Pastirik

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John C. Conti

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Joann Decolati

**DICKEY MCCAMEY**

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Tina Sorrentino

Counsel for UPMC

\_\_\_\_\_  
Kristen Cushman

\_\_\_\_\_  
Shannon Molyneaux

*Settlement Class Representatives*



\_\_\_\_\_  
Gary F. Lynch

**CARLSON LYNCH, LLP**

Class Counsel on behalf of the Settlement Class  
Representatives

DATED: \_\_\_\_\_, 2021

\_\_\_\_\_  
Barbara A. Dittman

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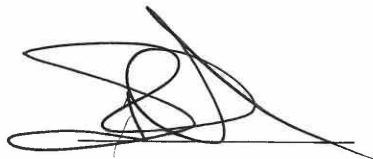
*Settlement Class Representatives*

\_\_\_\_\_  
Gary F. Lynch  
**CARLSON LYNCH, LLP**

Class Counsel on behalf of the Settlement Class  
Representatives



Representative of UPMC




John C. Conti

**DICKEY MCCAMEY**

Counsel for UPMC

DATED: \_\_\_\_\_, 2021

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Barbara A. Dittman

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John C. Conti

**DICKEY MCCAMEY**

Counsel for UPMC

Class Counsel on behalf of the Settlement Class  
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DATED: 6-2-2021, 2021

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John C. Conti

**DICKEY MCCAMEY**


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Counsel for UPMC

DATED: 6/29/2021, 2021

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Barbara A. Dittman

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Representative of UPMC

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Gary R. Douglas

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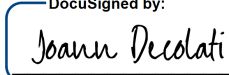
DATED: \_\_\_\_\_, 2021

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Barbara A. Dittman

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Representative of UPMC

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Gary R. Douglas

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Alice Pastirik

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Joann Decolati

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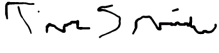
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Barbara A. Dittman

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Tina Sorrentino

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Representative of UPMC

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John C. Conti

**DICKEY MCCAMEY**

\_\_\_\_\_  
Counsel for UPMC

DATED: 7/1/2021  
\_\_\_\_\_, 2021

\_\_\_\_\_  
Barbara A. Dittman

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Representative of UPMC

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Gary R. Douglas

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Alice Pastirik

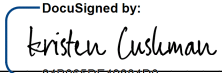
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Counsel for UPMC

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Shannon Molyneaux

*Settlement Class Representatives*

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Gary F. Lynch  
**CARLSON LYNCH, LLP**

Class Counsel on behalf of the Settlement Class  
Representatives



DATED: 6/28/2021, 2021

\_\_\_\_\_  
Barbara A. Dittman

\_\_\_\_\_  
Representative of UPMC

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Gary R. Douglas

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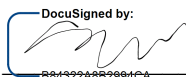
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Kristen Cushman

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Shannon Molyneaux

*Settlement Class Representatives*

\_\_\_\_\_  
Gary F. Lynch

**CARLSON LYNCH, LLP**

Class Counsel on behalf of the Settlement Class  
Representatives

# Exhibit 1

## CLAIMS ADMINISTRATION AND DISTRIBUTION PLAN

The provisions below are subject to the terms and definitions set forth in the Settlement Agreement and Release (the “Agreement”) filed with the Court in the litigation styled titled *Dittman, et al. v. UPMC, et al.*, Case No. GD No. 14-003285 (Allegheny Cty. Ct. Com. Pl.) (the “Litigation”). Terms used throughout this Claims Administration and Distribution Plan (the “Plan”) shall have the same meaning as in the Agreement. To the extent any provisions in this Plan are inconsistent with the Agreement, those terms in the Agreement control. The Court overseeing the Litigation shall have the ultimate oversight and approval of this Plan.

- I. Claims Period. The Claims Period will run for 90 days after the Notice Deadline.
- II. Claims Process. Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically through the Settlement Website or by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked before midnight on the final day of the Claims Period. All Claims Forms must be submitted during the Claims Period and in the manner set forth in the Agreement and this Plan.
  - A. The Settlement Administrator will mail copies of the Claim Forms and Notice to Settlement Class Members. Settlement Class Members submitting a claim must submit an accurate and complete Claim Form, signed under penalty of perjury, and supporting documentation as needed, to the Settlement Administrator.
  - B. In its discretion, to be reasonably exercised, the Settlement Administrator will review, determine the validity of, and process all claims submitted by Settlement Class Members. The Settlement Administrator may require supplementation of a completed Claim Form or additional information needed to validate or audit a claim. To the extent that a Settlement Class Member fails to provide any supplementation or additional information if requested, the Settlement Administrator may determine that the Settlement Class Member failed to submit a valid claim and therefore reject that claim.
  - C. The Settlement Administrator will process valid claims of Settlement Class Members and distribute payments after the Effective Date.
- III. Allocation of Settlement Fund. Out of the \$1,679,000 Settlement Fund, one-half (\$839,500) will be initially reserved in a Documented Fraud Fund to pay claims as stated below. There are two types of available claims, and they are not mutually exclusive. Any unclaimed money in the Documented Fraud Fund after all claims have been reviewed for approval will “roll over” into the Unclaimed Distributions Fund.
- IV. Documented Out-of-Pocket Fraud Loss Claims. A Settlement Class Member can seek up to \$5,000 in reimbursement from the Documented Fraud Fund for any out-of-pocket losses the Settlement Class Member experienced as a result of a Documented Fraud plausibly related to the 2014 UPMC Data Breach. The Settlement Class Member must provide documentation and identify on Part I of the Claim Form the amount of unreimbursed losses suffered. No specific or exact type of documentary support is

required, but the documents must appear to be reliable and confirm the timeframes and amounts of the fraud incidents listed by the Settlement Class Member on the Claim Form. Possible types of acceptable documentation include, but are not limited to:

- A. statements, receipts, or other documents from a financial institution, merchant, or other similar entity that show the fraudulent transaction(s);
- B. communications from a financial institution, merchant, law enforcement agency, tax authority, or similar entity describing or referring to the fraud or attempted fraud against the Settlement Class Member;
- C. copies of contemporaneous communications made by the Settlement Class Member around the time of the incident(s) to a financial institution, merchant, law enforcement agency, tax authority, or other similar entity describing the fraud committed against the Settlement Class Member.

The incidents must have occurred between January 1, 2014 and December 31, 2016, or, if after December 31, 2016, the Settlement Class Member must provide additional documentation supporting a direct causal link between the incident(s) and the 2014 UPMC Data Breach, such as a communication from a financial institution, law enforcement agency, or tax authority indicating a connection.

- V. Documented Fraud-Related Inconvenience Claims. A Settlement Class Member can seek up to \$250 for this type of claim. The Settlement Class Member must first identify documented incidents of fraud and provide supporting documentation in the same manner as described above. Then there are two methods by which a Settlement Class Member may establish a claim value. A Settlement Class Member may make a claim under both methods and combine the total value, but the maximum for this type of claim is \$250 regardless.
  - A. Hours. A Settlement Class Member may state in Part II of the Claim Form the number of hours spent investigating or addressing the fraud incidents, and receive a claim value of \$25 per hour, up to a maximum of 10 hours. The Settlement Class Member is not required to provide specific documentation to support the number of hours attested to, provided that the documentation supplied supports the assertion that the Settlement Class Member experienced a fraud incident.
  - B. Lost Access to Money. If a Settlement Class Member's Claim Form shows that the Settlement Class Member experienced a documented fraud incident and lost access to an identifiable amount of money for at least one month, the Settlement Class Member may receive a claim value of \$50 per month that the money was unavailable (regardless of amount), up to a maximum of five months. Part II of the Claim Form requires the Settlement Class Member to identify the fraud incident and the amount of money involved and list the dates the money was taken and then restored. The Settlement Administrator should calculate the total number of days the sums of money were unavailable to the Settlement Class Member, use a 30-day month, and round up or down. For example, if a Settlement Class Member did not have access to

the sum(s) of money for 44 days, the Settlement Class Member should be credited with 1 month and a \$50 claim value. For 45 days, the Settlement Class Member should be credited with 2 months and receive a \$100 claim value; 74 days = 2 months, 75 days = 3 months, etc.

- C. Illustrations: Class Member 1 lists three hours spent dealing with documented fraud incidents, lists a stolen \$500 tax refund that the Class Member was not reimbursed for until 74 days later, and lists a fraudulent charge of \$100 that the Class Member's financial institution did not clear from her account for 30 days. Class Member 1's claim value should be \$225: \$75 for the three hours, plus \$50 per month for three months (104 total days, rounded down to three months that money was missing as a result of the two fraud incidents).

Class Member 2 lists six hours spent dealing with documented fraud incidents, and identifies a fraudulent charge of \$100 that was not removed by his financial institution for 76 days. Class Member 2's claim value should be \$250: \$150 for the six hours, plus \$150 for three months (rounded up), but the claim value is capped at \$250, even though the total would otherwise be \$300.

- D. Both Claim Types Permitted. Settlement Class Members may submit both a Documented Out-of-Pocket Fraud Loss claim and a Documented Fraud-Related Inconvenience Claim, but the maximum combined claim value is \$5,250.

- VI. Priority of Claims and Pro Rata Adjustment Procedures. If the total value of all Approved Claims is less than \$839,500, then all approved claims should be paid in full and the remaining funds will "roll over" into the Unclaimed Distribution Fund. If the aggregate value of all Approved Claims exceeds the amount of the Documented Fraud Fund, the Settlement Administrator will give priority to Documented Out-of-Pocket Fraud Loss Claims and determine whether those claims can be paid in full by making pro rata, proportional reductions of Documented Fraud-Related Inconvenience Claims, while preserving a minimum payment amount of \$25 for Documented Fraud-Related Inconvenience Claims. If the Documented Fraud Fund is insufficient to pay both all Document Out-of-Pocket Fraud Loss Claims in full and a minimum of \$25 per Documented Fraud-Related Inconvenience Claim, then no Documented Fraud-Related Inconvenience Claims will be paid at all. Instead, the Documented Out-of-Pocket Fraud Loss Claims will be paid in full and any remaining amounts in the Documented Fraud Fund will roll over to the Unclaimed Distributions Fund, or the Documented Out-of-Pocket Fraud Loss Claims will be paid as fully as possible after making proportional pro rata reductions to those claims. In other words, the payment of any Documented Fraud-Related Inconvenience Claims is conditioned on the availability of sufficient funds in the Documented Fraud Fund to pay a minimum of \$25 per Documented Fraud-Related Inconvenience Claim.

- A. Illustration 1. There are 400 approved claims for Documented Out-of-Pocket Fraud Loss, with an average value of \$1,000. There are 1,000 approved claims for Documented Fraud-Related Inconvenience, with an average value of \$200. All claims

may be paid in full, and \$239,500 will roll over into the Unclaimed Distributions Fund. ( $\$839,500 - \$400,000 - \$200,000 = \$239,500$ ).

- B. Illustration 2. There are 400 approved claims for Documented Out-of-Pocket Fraud Loss, with an average value of \$1,000. There are 3,000 approved claims for Documented Fraud-Related Inconvenience, with an average value of \$200. All Documented Out-of-Pocket Fraud claims may be paid in full, and the Documented Fraud-Related Inconvenience claims must be reduced pro rata until their average value is \$146.50. No funds will roll over into the Unclaimed Distributions Fund. ( $\$839,500 - \$400,000 = \$439,500$  remaining for Documented Fraud-Related Inconvenience Claims.  $\$439,500$  divided by 3,000 = \$146.50).
- C. Illustration 3. There are 400 approved claims for Documented Out-of-Pocket Fraud Loss, with an average value of \$2,000. There are 2,000 claims for Documented Fraud-Related Inconvenience with an average value of \$100. All Documented Out-of-Pocket Fraud Loss claims are paid in full, but no claims for Documented Fraud-Related Inconvenience will be paid because there are insufficient funds to pay at least \$25 for each of these claims. \$39,500 will roll over into the Unclaimed Distributions Fund. ( $\$839,500 - \$800,000 = \$39,500$ ). A minimum of \$25 per Documented Fraud Related Inconvenience claim would equal \$50,000 which exceeds what remains in the Documented Fraud Fund.
- D. Illustration 4. There are 400 approved claims for Documented Out-of-Pocket Fraud Loss, with an average value of \$3,000. There are 1,000 claims for Documented Fraud-Related Inconvenience with an average value of \$100. Because the approved Documented Out-of-Pocket Fraud Loss Claims would equal \$1.2 million, the Documented Out-of-Pocket Fraud Loss claims must be reduced pro rata until the average claim value is \$2,098.75. No claims for Documented Fraud-Related Inconvenience will be paid because there are insufficient funds to pay at least \$25 for each of these claims. No money will roll over into the Unclaimed Distributions Fund because the entire Documented Fraud Fund must be used towards Documented Out-of-Pocket Fraud Loss Claims. ( $\$839,500$  divided by 400 = \$2,098.75).
- VII. Unclaimed Distribution Fund. The Unclaimed Distribution Fund will include all money remaining in the Settlement Fund after subtracting: 1) the portion of Costs of Settlement Administration that exceed \$200,000, but only if such excess costs are approved in advance by Class Counsel, UPMC, and the Court; and 2) all Approved Claims, up to a maximum of \$839,500. Any unclaimed portion of the Documented Fraud Fund will revert or “roll over” to the Unclaimed Distribution Fund after all claims have been resolved by the Administrator. The Unclaimed Distribution Fund will be distributed in equal shares to all Settlement Class Members who do not submit Approved Claims or exclude themselves from the Settlement. If Documented Fraud-Related Inconvenience Claims are not paid at all due to insufficient funds in the Documented Fraud Fund, then Class Members who submitted *only* a Documented Fraud-Related Inconvenience Claim will be eligible to receive an Unclaimed Distribution payment. Class Members who submitted both an Approved Documented Out-of-Pocket Loss Fraud claim and a Documented Fraud-Related Inconvenience Claim are not eligible to receive an

Unclaimed Distribution payment, even if the Documented Fraud-Related Inconvenience Claim is not paid due to insufficient funds.