

**INDIANA COMMERCIAL COURT**

STATE OF INDIANA     )  
                                  ) SS:                    IN THE MARION SUPERIOR COURT  
COUNTY OF MARION    )                    CAUSE NO. 49D01-2111-PL-038870

IN RE: ESKENAZI HEALTH DATA    )  
INCIDENT LITIGATION                )

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

## KEY TERMS

<b>Action:</b>	The consolidated class action captioned <i>In re Eskenazi Health Data Incident Litigation</i> , Case No. 49D01-2111-PL-038870, pending in Marion County Indiana Superior Court No. 1
<b>Agreement:</b>	This Class Action Settlement Agreement and Release (referred to as “Settlement Agreement” or “Agreement”). The terms of the Settlement Agreement are set forth herein including all exhibits hereto.
<b>Court:</b>	Marion County Superior Court No. 1
<b>Defendant:</b>	The Health & Hospital Corporation of Marion County d/b/a Eskenazi Health
<b>Plaintiffs/Class Representatives:</b>	Terri Ruehl Young, Justin Parsley, Karen Winkler, Alysha Clifton, Crystal Cal, and Nicole Randle
<b>Class Counsel:</b>	Lynn A. Toops of Cohen & Malad, LLP
<b>Eskenazi Health Counsel:</b>	Michelle Gomez and Paul Karlsgodt of Baker & Hostetler, LLP and Philip Zimmerly of Bose McKinney & Evans, LLP
<b>Parties:</b>	Plaintiffs and Eskenazi Health
<b>Settlement Administrator:</b>	Kroll Settlement Administration LLC, the third-party class action settlement administrator selected by the Parties subject to the approval of the Court. Under the supervision of Class Counsel, the Settlement Administrator shall oversee and implement the Notice Plan and receive and process any Claim Forms and Requests for Exclusion from the Class. Class Counsel and Defendant may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
<b>Settlement Website:</b>	The internet website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and Requests for Exclusion and provides access to relevant case documents and downloadable Claim Forms.

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## KEY TERMS

**Data Incident:** The incident that occurred on or about May 19, 2021, and of which Defendant gave notice on November 11, 2021, in which cybercriminals gained access to Defendant's networks and compromised Personal Information about patients and employees

**Personal Information:** Information potentially accessed, viewed, and/or obtained as a result of the Data Incident, including one or more of the following: name, age, address, date of birth, diagnosis, clinical information, treatment type or location, medical record number, telephone number, email address, patient account number, physician name, insurance information, prescriptions, date(s) of service, driver's license number, passport number, face photos, Social Security number, and/or credit card information, and any other types of personally identifiable information collected or maintained by Eskenazi Health leading to notification regarding the Data Incident.

**Settlement Class:** Plaintiffs Terri Ruehl Young, Justin Parsley, Karen Winkler, Alysha Clifton, Crystal Cal, and Nicole Randle and the approximately 160,000 individuals who were sent written notification that their Personal Information was posted on the dark web as a result of the Data Incident, as identified on the Class List. Persons who fall within this definition may be referred to as "Settlement Class Member(s)" or "Class Member(s)."

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**Claimant:** A Settlement Class Member who submits a Claim Form for a Settlement Benefit.

**Claim Form:** The form attached hereto as **Exhibit C**, as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by Settlement Class Members who wish to file a claim for their given share of the Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hard copy form, to any Class Member who timely requests one.

## KEY TERMS

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<b>Documented Loss:</b>	Monetary losses incurred by a Settlement Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are reasonably traceable to the Data Incident, as further described below. Documented Loss must be supported by Reasonable Documentation that a Settlement Class Member actually incurred unreimbursed losses and consequential expenses that are reasonably traceable to the Data Incident and incurred between May 19, 2021 and the Claims Deadline.
<b>Effective Date:</b>	The date upon which the Settlement contemplated by this Agreement becomes effective as set forth in the accompanying <i>Schedule of Dates and Deadlines</i> .
<b>Final Approval Order:</b>	The order to be entered by the Court after the Final Approval Hearing, which approves the Settlement Agreement. A proposed Final Approval Order is included as <b>Exhibit E</b> to this Agreement.
<b>Final Approval Hearing:</b>	The hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to the Indiana Rules of Civil Procedure and whether to issue the Final Approval Order and Judgment.
<b>Notice:</b>	Notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Notice Plan approved by the Court in connection with the preliminary approval of the Settlement. The Notice shall consist of the Summary Notice, the Detailed Notice, and the Settlement Website and toll-free telephone line.
<b>Detailed Notice:</b>	The long form notice of settlement substantially in the form attached hereto as <b>Exhibit B</b> .
<b>Notice Plan:</b>	The program, as approved by the Court, developed by the Settlement Administrator, and described in this Agreement for disseminating Notice to the Settlement Class Members of the terms of this Agreement and the Final Approval Hearing.

## KEY TERMS

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<b>Preliminary Approval Order:</b>	The order by the Court that preliminarily approves the Settlement (including, but not limited to, the forms and procedure for providing Notice to the Settlement Class), permits Notice to the proposed Settlement Class, establishes a procedure for Settlement Class Members to object to or opt out of the Settlement, and sets a date for the Final Approval Hearing, without material change to the Parties' agreed-upon proposed preliminary approval order attached hereto as <b>Exhibit D</b> .
<b>Reasonable Documentation:</b>	Documentation supporting a claim for Documented Loss including, but not limited to, credit card statements, bank statements, invoices, police reports, telephone records, and receipts. Documented Loss costs cannot be documented solely by a personal certification, declaration, or affidavit from the Claimant; a Class Member must provide supporting documentation.
<b>Settlement Payment:</b>	Any payment to be made to any Settlement Class Member for Approved Claims pursuant to this Settlement Agreement.
<b>Settlement Fund:</b>	Two million five-hundred thousand dollars (\$2,500,000.00), to be paid by Eskenazi Health, as specified in this Agreement, with no reversion except as provided in Sections 3.1 and 7.
<b>Summary Notice:</b>	The summary notice of the proposed settlement herein, substantially in the form attached hereto as <b>Exhibit A</b> .
<b>Net Settlement Fund:</b>	The amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (ii) Service Awards approved by the Court; (iii) any amounts approved by the Court for the Fee Award and Costs, and (iv) applicable Taxes, if any.
<b>Identity Theft Protection Services Attributes:</b>	3 bureau credit monitoring for 3 years, to include identity theft insurance of no less than \$1,000,000

## KEY TERMS

### Out-of-Pocket Losses

**Maximum Payment Amount:** \$5,000 per claimant

**Lost Time Payment Amount:** \$20 per hour, up to 4 hours per claimant

**Cash Payment:** Pro rata (as further described in § 3.2.4)

**Approved Claims:** A claim as evidenced by a Claim Form submitted by a Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Class Member; (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth herein; and (d) has been approved by the Settlement Administrator.

**Settlement Benefit(s):** Any Settlement Payment, the Identity Theft Protection Service, the Out-of-Pocket Loss Payments, the Cash Payments, and any other benefits Class Members receive pursuant to this Agreement, including non-monetary benefits and relief, the Fee Award and Costs, and Administrative Expenses.

**Administrative Expenses:** All costs, charges, and expenses incurred by the Settlement Administrator in the administration of this Settlement, including, without limitation, all expenses and costs associated with claims administration and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party expenses and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

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**Cy Pres Recipient(s):** Indiana Community Action Association, Inc. (100%)

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**Costs of Notice and Administration:** To be paid entirely from the Settlement Fund

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**Attorneys' Fees Amount:** The amount of attorneys' fees awarded by the Court to Class Counsel, not to exceed One-third of the Settlement Payment, to be paid from the Settlement Fund

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**Service Award Amount:** \$2,500, per Class Representative, to be paid from the Settlement Fund

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## KEY TERMS

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**Released Claims:**

Any claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys' fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted on behalf of the Settlement Class in the Action and that is related to or arises from the Data Incident regardless of whether the claims or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether they are foreseen or unforeseen, suspected or unsuspected, or fixed or contingent. For additional information, see Section 5 (below) and paragraphs 9 and 10 of **Exhibit E**.

**Released Persons:**

The Health and Hospital Corporation of Marion County d/b/a Eskenazi Health and the Related Entities.

**Related Entities:**

The Health and Hospital Corporation of Marion County d/b/a Eskenazi Health and its respective past or present parents, subsidiaries, divisions, and related or affiliated entities, including but not limited to Eskenazi Medical Group, Eskenazi Health Foundation, and any divisions of the Health and Hospital Corporation of Marion County, and each of its and their members, partners, owners, employees, respective predecessors, successors, directors, trustees, officers, principals, agents, attorneys, insurers and reinsurers, and includes, without limitation, any person related to any such entity who is, was, or could have been named as a defendant in this litigation, other than any person who is found by a court of competent jurisdiction to be guilty under the criminal law of initiating, causing, aiding or abetting the criminal activity underlying the Data Incident or who pleads *nolo contendere* to any such charge.

## KEY TERMS

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**Request for Exclusion:**

The written communication by a Settlement Class Member in which he or she requests to be excluded from the Settlement Class pursuant to the terms of the Agreement.

**Unknown Claims:**

Any and all Released Claims that any Class Representative or Settlement Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement.

**Taxes:**

All federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants). All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Agreement (“Tax Expenses”), shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, an Administration Expense and shall be timely paid by the Settlement Administrator, out of the Settlement Fund, without prior order from the Court and the Settlement Administrator shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members with Approved Claims any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). The Parties hereto agree to cooperate with the Settlement



## KEY TERMS

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Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the “administrator.” The Settlement Administrator shall timely and properly file or cause to be filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the escrow account (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this Agreement) shall be consistent with this Section and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in this Agreement.

## SCHEDULE OF DATES AND DEADLINES

Unless otherwise ordered by the Court, or agreed to by the parties in writing, the following dates and deadlines apply to this agreement. All dates and deadlines will be calculated in conformity with Indiana Rule of Trial Procedure 6(a).

<i>Event</i>	<i>Date/Deadline</i>
<b>Date of Execution</b>	First date on which this agreement has been signed by all parties, as indicated on the signature page
<b>Deadline to Move for Preliminary Approval</b>	7 days after the Date of Execution
<b>Date of Preliminary Approval</b>	The day on which the Court enters the Preliminary Approval Order
<b>Deadline to Provide the Class List to the Settlement Administrator</b>	7 days after the Court enters the Preliminary Approval Order
<b>Deadline to Fund the Settlement</b>	Defendant shall pay initial startup costs 30 days after the Court enters the Preliminary Approval Order; and the remaining amount 30 days prior to the Final Approval Hearing.
<b>Deadline to Send Notice</b>	30 days after Preliminary Approval Order
<b>Deadline to File Motion for Fees, Expenses, and Service Awards</b>	15 days before Deadline to Object
<b>Deadline to Object</b>	30 days after the Deadline to Send Notice
<b>Deadline to Opt-Out</b>	30 days after the Deadline to Send Notice
<b>Deadline to Report Opt-Outs</b>	7 days after Deadline to Opt-Out
<b>Deadline to Terminate for Opt-Outs</b>	5 days after Deadline to Report Opt-Outs
<b>Deadline to File Motion for Final Approval</b>	No later than 7 days before the Date of the Final Approval Hearing
<b>Date of the Final Approval Hearing</b>	To be set by the Court (Parties to request a date approximately 120 days after the Court enters its Preliminary Approval Order)
<b>Date of Final Approval</b>	The day on which the Court enters the Final Approval Order
<b>Effective Date</b>	The Effective Date shall be the first day after all of the following conditions have occurred: (a) Defendant and Class Counsel execute the Settlement Agreement; (b) the Court enters the Preliminary Approval Order as agreed to by the parties; (c) Notice is provided to the Settlement Class consistent with the Preliminary Approval Order; (d) the Court enters the Final Approval Order and Judgment, as agreed to by the parties and submitted in conjunction with Plaintiffs' Motion for Final Approval; and (e) the Final Approval Order and Judgment have become "Final" because: (i) the time for appeal, petition, rehearing or

## SCHEDULE OF DATES AND DEADLINES

	other review has expired; or (ii) if any appeal, petition, request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, requests for rehearing or other review has expired.
<b>Deadline to Pay Fees and Expenses</b>	10 days after Date of Final Approval
<b>Deadline to Pay Service Awards</b>	7 days after Effective Date
<b>Deadline to Submit Claims</b>	180 days after Preliminary Approval Order
<b>Deadline to Process Claims</b>	30 days after Deadline to Submit Claims
<b>Deadline to Cure Claim</b>	21 days after mailing of a deficiency letter
<b>Deadline to Pay Valid Claims</b>	30 days after the Deadline to Cure Claims or the Effective Date, whichever is later
<b>Date Settlement Payments Expire</b>	120 days after issuance

## **1. Recitals.**

In 2021, numerous separate lawsuits were filed against Defendant relating to the Data Incident, all of which were consolidated by the Court into case number 49D01-2111-PL-038870.

On April 12, 2022, Plaintiffs filed an Amended Consolidated Class Action Complaint alleging Defendant was liable to Plaintiffs and a Class for claims relating to the Data Incident.

On May 2, 2022, Defendant moved to dismiss the Amended Consolidated Class Action Complaint. The parties fully briefed and argued the motion. The Court denied the motion on September 2, 2022 and Defendant subsequently Answered and denied liability as to all claims asserted by Plaintiffs.

The parties then engaged in significant discovery and motion practice relating to discovery, including motions to compel, production of documents, answering of interrogatories, and exchanging witness and exhibit lists.

On November 2, 2023, the parties participated in a mediation facilitated by mediator Bennett G. Picker, esq., who has significant experience mediating data breach class actions. The mediation did not result in settlement, but the parties continued direct negotiations, ultimately reaching agreement in principle.

The parties thereafter negotiated the detailed terms of this agreement.

## **2. Incorporation of Key Terms, Schedule, Recitals, and Exhibits.**

This agreement expressly incorporates the preceding Key Terms, Schedule of Dates and Deadlines, Recitals, and the following exhibits, all of which are integral parts of this agreement:

Exhibit A – the “**Summary Notice**”

Exhibit B – the “**Detailed Notice**”

Exhibit C – the “**Claim Form**”

Exhibit D – the “**Preliminary Approval Order**”

Exhibit E – the “**Final Approval Order**”

## **3. Benefits to Class Members.**

### **3.1. Defendant to Pay Settlement Fund.**

Defendant agrees to make a payment of two million, five-hundred thousand dollars and no cents (\$2,500,000) and deposit that payment into the Settlement Fund no later than the Deadline to Fund the Settlement as follows: (i) Defendant shall pay estimated startup costs into the Settlement Fund thirty (30) days after the Court enters the Preliminary

Approval Order, which shall be available to cover Notice and Claims Administration Costs incurred prior to entry of the Final Approval Order and Judgment, and (ii) Defendant shall pay the balance of the Settlement Fund, thirty (30) days prior to the Final Approval Hearing. For the avoidance of doubt, and for purposes of this Settlement only, Defendant's liability shall not exceed two million, five-hundred thousand dollars and no cents (\$2,500,000), inclusive of all forms of relief, attorney's fees, costs, and expenses. The timing set forth in this provision is contingent upon the receipt of a W-9 from Kroll for the Settlement Fund by the Deadline to Fund the Settlement. If Defendant does not receive this information by the Deadline to Fund the Settlement, the payments specified by this paragraph shall be made within seven (7) days after Defendant receives this information.

Custody of Settlement Fund: The Settlement Fund will be *in custodia legis* of the Court and will remain subject to the Court's jurisdiction until distributed. The Settlement Fund must be used only to make payments pursuant to this agreement or otherwise ordered by the Court. The Settlement Fund shall be held in a qualified settlement fund pursuant to Treasury Regulation § 1.468B-1(c)(1). The Settlement Fund will be used to pay Approved Claims, Administrative Expenses, the Attorneys Fee award and costs, Service Awards, and any Taxes associated with the Settlement. All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class.

In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason, any amounts remaining in the Settlement Fund after payment of all Administrative Expenses incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Eskenazi Health and/or its insurer, and no other person or entity shall have any further claim whatsoever to such amounts.

Limitation of Liability:

- (a) Eskenazi Health, its insurer, and Eskenazi Health's Counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.
- (b) Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii)

the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

- (c) The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representatives, and Eskenazi Health, its insurer, and Eskenazi Health's Counsel harmless for (i) any act or omission or determination of the Settlement Administrator, or any of the Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

**3.2. Class Members to Be Paid from the Net Settlement Fund upon Submission of a Valid Claim.**

The Settlement is designed to exhaust the Settlement Fund. The Settlement Fund shall be used first to make payments for the following: (i) Administrative Expenses, (ii) Fee Award and Costs, (iii) Service Award, and (iv) Taxes. The remaining amount is the Net Settlement Fund. The "Cash Payment Fund" shall be one-half of the Net Settlement Fund, and the "Loss Benefits Fund" shall be the remaining one-half of the Net Settlement Fund. The Settlement Administrator will first apply the Loss Benefits Fund to pay for Identity Theft Protection Services claimed by Class Members. If Loss Benefits Funds remain after paying for the Identity Theft Protection Services, the Settlement Administrator will next use it to pay valid claims for Out-of-Pocket Losses and Lost Time. If sufficient funds do not exist to pay all valid claims for Out-of-Pocket Losses and Lost Time, the payments shall be reduced pro rata. If monies remain in the Loss Benefits Fund after these payments, those monies will be transferred to and considered to be part of the Cash Payment Fund. The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied and the payments for the Identity Theft Protection Services are made shall be referred to as the "Post CM/DL Net Settlement Fund." The Settlement Administrator shall then utilize the Post CM/DL Net Settlement Fund to make all Cash Payments. The amount of each Cash Payment shall be calculated by dividing the Post CM/DL Net Settlement Fund by the number of valid claims submitted for Cash Payments.

In the event the Net Settlement Fund is insufficient to cover the payment for the Identity Theft Protection Services claimed by Class Members, the duration of the Identity Theft Protection Services coverage will be reduced to exhaust the fund. In such an event, no Net Settlement Funds will be distributed to Claimants for Approved Claims for

Documented Loss Payments or for Cash Payments. If the aggregate amount of all Documented Loss Payments and payments for the Identity Theft Protection Services exceeds the total amount of the Net Settlement Fund, then the value of the Documented Loss Payment to be paid to each Class Member shall be reduced, on a pro rata basis, such that the aggregate value of all Documented Loss Payments and payments due for Identity Theft Protection Services does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed to Claimants with Approved Claims for Cash Payments. All such determinations shall be performed by the Settlement Administrator.

A Class Member may claim Settlement Benefits by submitting a completed Claim Form to the Settlement Administrator that is postmarked no later than the Deadline to Submit Claims or by submitting such a request by that deadline through the Settlement Website. All claims will be processed and validated as set forth in Section 4.

### **3.2.1. Claims for Identity Theft Protection Services.**

“**Identity Theft Protection Services**” means credit monitoring and identity theft protection services having the Identity Theft Protection Services Attributes listed in the Key Terms to provided by a vendor approved by Class Counsel.

The Settlement Administrator will make the Identity Theft Protection Services available no later than the Deadline to Pay Valid Claims for all Class Members who make a valid claim for Identity Theft Protection Services and will pay the costs of the Identity Theft Protection Services provided from the Net Settlement Fund.

### **3.2.2. Claims for Out-of-Pocket Losses.**

“**Out-of-Pocket Losses**” means unreimbursed out-of-pocket expenses incurred by a Class Member that are fairly traceable (as determined by the Settlement Administrator) to the Data Incident, including but not limited to: (i) bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), miscellaneous qualified expenses subject to explanation, such as postage, notary, fax, copying, mileage, and/or gasoline for local travel; (ii) fees for credit reports, credit monitoring, and/or other identity theft insurance product purchased between May 19, 2021 and the Deadline to Submit Claims; and (iii) actual fraud that occurred between May 19, 2021 and the Deadline to Submit Claims.

The Settlement Fund will pay all valid claims for Out-of-Pocket Losses up to the per claimant limit set forth under the Out-of-Pocket Losses Maximum Payment Amount in the Key Terms.

### **3.2.3. Claims for Lost Time.**

“**Lost Time**” means time spent by a Class Member relating to the Data Incident, including but not limited to, time spent acquiring credit freezes, remedying actual fraud, monitoring statements, etc.

The Settlement Fund will pay all valid claims for Lost Time up to the per claimant limit set forth under the Lost Time Payment Amount in the Key Terms.

### **3.2.4. Claims for a Cash Payment.**

“**Cash Payment Fund**” means the Net Settlement Fund less all amounts to be paid for valid claims for Identity Theft Protection Services, Out-of-Pocket Losses, and Lost Time. If the amount of valid claims for Out-of-Pocket Losses, Identity Theft Protection Services, and Lost Time exceeds one-half of the Net Settlement Fund, then the payout for each valid claim for Out-of-Pocket Losses and Lost Time will be reduced pro rata such that the amount available in the Cash Payment Fund is equal to no less than one-half of the Net Settlement Fund. The Cash Payment Fund will be used to pay all Cash Payments.

“**Cash Payment**” means a cash payment to be made whether or not a Class Member also submits a claim for Credit Monitoring, Out-of-Pocket Losses, or Lost Time.

The Settlement Fund will pay all valid claims for a Cash Payment on a pro rata basis per claim by dividing the Cash Payment Fund by the number of valid claimants. If a Class Member submits a claim for Identity Theft Protection Services, Out-of-Pocket Losses, or Lost Time, the Class Member will also be considered to have submitted a claim for a Cash Payment, regardless of the validity of any other claim.

### **3.2.5. Cy Pres.**

After the Date Settlement Payments Expire, if there remain monies in the Net Settlement Fund, those monies will not revert to Defendant but will, after deduction of any final costs of administration, be paid to the Cy Pres Recipient(s) in the amount(s) set forth in the Key Terms.

## **4. Claims Processing and Provision of Settlement Benefits.**

### **4.1. Settlement Administrator’s Duties and Discretion in Processing Claims.**

The Settlement Administrator will be responsible for collecting and processing all Claim Forms, whether submitted by mail or through the Settlement Website. The Settlement Administrator may consult with Class Counsel in making determinations as to any claim, but the Settlement Administrator has the sole discretion to determine, in good faith and under the terms of this agreement, whether any claim is timely, whether any claim is complete or deficient, and whether any claim is valid, including whether documentation is sufficient to support any claim for Out-of-Pocket Losses. If the Settlement Administrator identifies a deficiency in the information provided for any claim, the Settlement Administrator must follow the procedures in Section 4.3 to allow the Class Member a chance to cure the deficiency.

### **4.2. Determining the Validity of Claims.**

In order for any claim to be valid, the following requirements must be met (all three of these requirements, collectively the “**Basic Claim Requirements**”): (i) the claim must be submitted by a Class Member or the Class Member’s authorized legal representative; (ii) the information required to process the claim on the Claim Form must have been



completed; and (iii) the original claim must have been submitted on or before the Deadline to Submit Claims.

A claim for an Identity Theft Protection Services, Cash Payment, or Lost Time will be valid so long as it meets the Basic Claim Requirements.

A claim for Out-of-Pocket Losses will be valid so long as it meets the Basic Claim Requirements and is accompanied by Reasonable Documentation of the loss sufficient to satisfy the Settlement Administrator that the loss is fairly traceable to the Data Incident.

No later than the Deadline to Process Claims, the Settlement Administrator must process Claim Forms to determine whether the claim is, in whole or in part, valid, invalid, or deficient.

#### **4.3. Processing Deficient Claims and Opportunity to Cure.**

If the Settlement Administrator determines that any Claim Form that has been submitted is deficient or that additional documentation or information is necessary to determine the validity of the claim, the Settlement Administrator shall promptly provide the person submitting the Claim Form with notice of the deficiency and request that the person provide the information or documentation necessary to process the Claim Form and to determine the validity of the claim. Failure of the person to provide the requested information by the Deadline to Cure Claims may result in denial of the claim, or part of it, by the Settlement Administrator.

#### **4.4. Payment of Valid Claims.**

No later than the Deadline to Pay Valid Claims, the Settlement Administrator must calculate and pay the valid claims (by check or electronic payment) and provide the Identity Theft Protection Services. The Net Settlement Fund will be responsible for providing the Settlement Administrator with all payments necessary to provide the benefits deemed valid by the Settlement Administrator within the Deadline to Pay Valid Claims.

In computing payment amounts for Cash Payments, the Settlement Administrator has authority to round payments to the nearest cent. If the total of all payments to be made exceeds the amount of the Net Settlement Fund, the Settlement Administrator shall randomly reduce a sufficient number of payments by one cent until the payments no longer exceed the Net Settlement Fund.

The Settlement Administrator shall report to Class Counsel and Defendant on a periodic basis, or as requested, regarding the status of valid, invalid, and deficient claims.

### **5. Releases.**

In exchange for the benefits of this Agreement and upon the Effective Date, each Settlement Class Member (who has not timely and validly excluded themselves from the Settlement), including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against all Released Persons.

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 that risk of such possible difference in facts and agrees that this Agreement 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.

Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class member (who has not timely and validly excluded themselves from the Settlement), including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

## **6. Process for Court Approval of Settlement.**

This entire agreement is contingent on the parties obtaining Court approval of the agreement.

### **6.1. Preliminary Approval.**

No later than the Deadline to Move for Preliminary Approval, the Class Representatives must move the Court to enter the Preliminary Approval Order. Defendant will not oppose the motion, including not opposing class certification of the Settlement Class for purposes of settlement only. The Settlement Class will exclude the Judge assigned to evaluate the fairness of this Settlement, any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge, and any Settlement Class member who timely and validly requests exclusion from the Settlement Class.

### **6.2. Preparation of the Class List.**

No later than the Deadline to Provide the Class List, Defendant must provide the Settlement Administrator with information sufficient for the Settlement Administrator to: mail each member of the Settlement Class the Summary Notice (the “**Class List**”). Before sending notice, the Settlement Administrator must update the addresses provided using the United States Postal Service’s National Change of Address service.

### **6.3. Notice to Members of the Settlement Class.**

No later than the Deadline to Send Notice, the Settlement Administrator must do all of the following:

- (a) Establish at a URL agreed to by Class Counsel and Defendant’s Counsel (the “**Settlement Website**”) and post the Detailed Notice and the Claim Form to the

Settlement Website, along with any other case documents requested to be posted by Class Counsel

(b) Establish a toll-free number and an e-mail address at which members of the Settlement Class may obtain information or contact the Settlement Administrator

(c) Mail the Summary Notice by United States mail to all persons on the Class List

If any mailed Summary Notice is returned as undeliverable with a forwarding address then the Settlement Administrator must promptly cause the Summary Notice to be forwarded by mail to the listed forwarding address. If any mailed Summary Notice is returned as undeliverable without a forwarding address then the Settlement Administrator must attempt to locate the correct address through a reasonable search and must promptly forward the Summary Notice to the address obtained from the search, if any.

The Costs of Notice and Administration will be paid entirely from the Settlement Fund.

#### **6.4. Right of Members of the Settlement Class to Opt-Out.**

Any member of the Settlement Class may choose to be excluded from the Settlement Class by complying with the requirements to opt-out set forth in the Detailed Notice no later than the Deadline to Opt-Out. Any person who submits a valid and timely request to opt-out will be excluded from the settlement and will not be bound by any of its terms, including the release. Any member of the Settlement Class who does not submit a valid and timely opt-out will be bound by the Settlement. No later than the Deadline to Report Opt-Outs, the Settlement Administrator must report all opt-outs it has received to Class Counsel and counsel for Defendant.

No later than the Deadline to Terminate for Opt-Outs, if there have been more than one hundred (100) timely and valid individual opt-outs (exclusions) submitted, Defendant **may**, by notifying Class Counsel and the Court in writing, void this Settlement Agreement. If Defendant terminates the Settlement Agreement under this section, Defendant shall be obligated to pay only the Administrative Expenses incurred by the Settlement Administrator to that date for work performed in connection with this Settlement Agreement, and all remaining money in the Settlement Fund will be returned to Defendant.

#### **6.5. Right of Class Members to Object.**

Any Class Member may object to the Settlement by complying with the requirements to submit an objection set forth in the Detailed Notice no later than the Deadline to Object.

#### **6.6. Final Approval.**

At the final approval hearing, Plaintiffs will move the Court to enter the Final Approval Order. For purposes of this Settlement only, Plaintiffs and Eskenazi Health stipulate to the certification of the Settlement Class, which is contingent upon the Court

entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.

Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Eskenazi Health reserves the right to contest class certification for all other purposes. The Parties further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

#### **6.7. Effective Date.**

This agreement will become effective and binding on the Effective Date.

### **7. Attorneys' Fees, Expenses, and Service Awards**

No later than the Deadline to File Motion for Fees, Expenses, and Service Awards, Class Counsel shall file a motion with the Court for consideration at the Final Approval hearing seeking to be paid attorneys' fees of up to the Attorneys' Fees Amount listed on the Key Terms Page, plus expenses, plus service awards of up to the Service Award Amount listed on the Key Terms Page. Defendant will take no position on requests that are no greater than those amounts.

No later than the Deadline to Pay Fees and Expenses, the Settlement Administrator must pay Class Counsel the amounts awarded by the Court for attorneys' fees and expenses from the Settlement Fund.

No later than the Deadline to Pay Service Awards, the Settlement Administrator must pay Class Counsel the amounts awarded by the Court for service awards from the Settlement Fund, and Class Counsel must promptly forward the payment to the recipients awarded by the Court. In the event that the Attorney's Fee, Expenses, or Service Award is reduced on appeal, then Class Counsel will return any amounts exceeding the reduced Fee, Expense, or Service Award to Defendant within 7 days.

### **8. No Admission of Liability/Agreement Not Binding Absent Approval.**

This agreement is entered into by Defendant solely to compromise and settle the lawsuit and to avoid the expense and uncertainty of continued litigation. This agreement and any documents related to it shall not be construed as any admission of liability or any type of wrongdoing or misconduct or of any fact whatsoever, and any wrongdoing, misconduct, or liability is expressly denied by Defendant.

If this agreement fails to become effective, or is voided, for any reason, then: (i) no act, statement, or filing in furtherance of this agreement may be used to support or oppose the certification of any class in the lawsuit; (ii) all the parties to this agreement shall be returned to the same position in the lawsuit that they were in on the day before the Date of Execution; (iii) Defendant shall be entitled to object to certification of any class in this lawsuit; (iv) the Settlement Fund and any and all interest earned thereon, less monies expended towards Settlement Administration, will be returned to Defendant and/or its insurance carrier within (10) days after the date the Settlement Agreement becomes null

and void; and (v) neither this Settlement Agreement nor any facts concerning its negotiation, discussion or terms will be admissible in evidence for any purpose in this litigation or any other litigation.

## **9. Additional Terms**

### **9.1. Agreement to Effectuate This Settlement**

The Class Representatives, Class Counsel, Defendant, and Defendant's counsel agree to undertake their best efforts to effectuate this Settlement Agreement, including: (i) all steps that may be appropriate or necessary to secure the Court's preliminary and final approvals and entry of the Preliminary Approval Order and the Final Approval Order; and (ii) all steps that may be appropriate or necessary to oppose any challenges to or appeals from the Court's orders approving this agreement. If, for any reason, the Parties determine that the schedule set by the Court is no longer feasible, the Parties shall use their best judgment to seek the amendment of the schedule to accomplish the goals of this Agreement.

### **9.2. Integration Clause**

This agreement, and all exhibits to it, constitute the entire agreement between the parties and can be modified only in writing. This agreement, and all exhibits to it, constitute the entire agreement between the parties, and supersede any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter of this agreement. The agreement is an integrated agreement, and no promise, inducement, or agreement separate from this agreement has been made to the parties. The terms of this agreement, and all exhibits to it, are binding upon and inure to the benefit of each of the parties and their respective successors, heirs, and assigns.

### **9.3. Execution in Counterparts and by Electronic Signature**

This agreement may be executed in counterparts, and each counterpart, when executed, shall be deemed to be an original. Parties may sign by electronic signature, such as DocuSign.

### **9.4. No Construction Against the Drafter**

Each party has participated in negotiating and drafting this agreement through counsel, so if an ambiguity or question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party. Further, each party represents that they have each read this agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Settlement Agreement.

**9.5. Choice of Law, Forum, and Stipulation to Jurisdiction**

This agreement, and all exhibits to it, shall be governed by the laws of the State of Indiana, and the parties to this Settlement Agreement stipulate that the Court has personal jurisdiction over them for purposes of administering, interpreting, and enforcing this agreement. All proceedings relating to the administration, interpretation, and enforcement of this agreement and related documents must be brought in the Court.

[Remainder of this page intentionally left blank]

**10. Signatures**

Each party is signing as of the date indicated next to that party's signature.

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Dated: \_\_\_\_\_ **The Health and Hospital Corporation of Marion County d/b/a Eskenazi Health**

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

Its: \_\_\_\_\_

**Counsel for Defendant**

Dated: \_\_\_\_\_

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

Michelle R. Gomez  
Baker & Hostetler LLP

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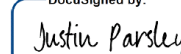
**Class Representatives**

Dated: 07/17/2024 \_\_\_\_\_

DocuSigned by:  
  
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Terri Ruehl Young

Dated: 07/17/2024 \_\_\_\_\_

DocuSigned by:  
  
800528814A47419...

Justin Parsley

Dated: 07/23/2024 \_\_\_\_\_



Karen Winkler

Dated: 07/24/2024 \_\_\_\_\_



Alysha Clifton

Dated: 07/23/2024 \_\_\_\_\_



Crystal Cal

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Dated: 07/23/2024

*Nicole C. Randle*

Nicole Randle

Dated: 07/24/2024

**Class Counsel**

*Lynn Toops*

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

Lynn A. Toops

Cohen & Malad, LLP

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$2.5 Million Eskenazi Health Resolves Data Breach Class Action Lawsuit](#)

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