

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into this __ day of _____, 2023, by and between Russell G. Binder, individually, and James and John Smith, as co-administrators of the Estate of Donald F. Smith, and each as representatives of the “WVUH Settlement Class” (as defined herein) (collectively, the “WVUH Class Representatives”), on the one hand, and CIOX Health, LLC (“CIOX”), on the other hand. This Agreement, together with its Exhibits, is intended by the parties to fully, finally, and forever settle and compromise this Action, as defined herein, and to settle, resolve and discharge the Released Claims, as defined herein, according to the terms and conditions of this Settlement Agreement. This Agreement includes the attached exhibits, which are incorporated by reference as though fully set forth herein:

Exhibit A – List of the healthcare providers for which CIOX provided release of information services in relation to claims by the WVUH Settlement Class during the Class Period (collectively, the “WVU Medicine Entities”).

Exhibit B – Proposed Notice of Pendency of Class Action and Proposed Settlement.

Exhibit C – Proposed Claim Information Disclosure

Exhibit D – Proposed Proof of Claim or Claim Form (Requestor and Patient).

Exhibit E – Proposed Order Directing Sending of Notice to the Class.

In consideration of, and subject to, the promises, covenants, terms, and conditions contained in this Settlement Agreement, the Parties hereby agree, subject to Court approval pursuant to all applicable rules, as follows:

I. Definitions.

As used in this Agreement, capitalized terms have the meanings specified below:

1. “Administration Costs” means the fees and expenses incurred by the Claims Administrator appointed by the Parties to perform tasks related to the notice and administration of the Settlement and to secure performance as set forth in this Settlement Agreement.

2. “Agreement” or “Settlement Agreement” means, this Settlement Agreement and Release, containing all terms, conditions, and Exhibits, which includes the entire agreement reached by the parties.

3. “CIOX” or “Defendant” means CIOX Health, LLC and each and all of its respective parent companies, affiliates, subsidiaries, agents, successors, previously named companies, predecessors-in-interest, officers, directors, employees, attorneys, and shareholders.

4. “Claim Period” means the period of time in which a Class Member may submit a Valid Claim to be eligible to receive a payment as part of the settlement. The last day of the Claim Period will be no later than 270 calendar days from the date that the Claims Administrator mails the first batch of Class Notices.

5. “Claims Administrator” means American Legal Claim Services LLC, approved by the Parties and retained by CIOX to manage and administer the process by which the members of the Settlement Class are notified and paid pursuant to this Agreement.

6. “Claimant(s)” means any Class Member who timely and properly submits a completed Proof of Claim in such manner and within such time as provided herein and in the Class Notice and Proof of Claim.

7. “Class Counsel” means (i) David J. Romano and the law firm of Romano Law Office, LC, 363 Washington Avenue, Clarksburg, WV 26301, (ii) David E. Goddard and the law firm of Goddard Law, 7 Chenoweth Dr., Ste. C, Bridgeport, WV 26330, and (iii) Richard A. Monahan and the law firm of Bordas & Bordas, PLLC, 1358 National Road, Wheeling, WV 26003.

8. “Class List” means the list of members of the Settlement Class identified in CIOX’s computer records as having made requests for copies of medical records from the WVU Medicine Entities during the Class Period that may be Qualifying Requests under the settlement. Such list shall include all identification data for each such patient, specifically, (1) name, (2) date of birth, (3) last known address and (4) social security number, which will be provided to Class Counsel and the Claims

Administrator, subject to a confidentiality order. To the extent CIOX is not in possession of a patient's name, date of birth, last known address or social security number, and such information is necessary for the Class Administrator to provide notice to a Class Member pursuant to Section V(c), CIOX shall request such information from WVUH. If WVUH declines or neglects to provide such information, Class Counsel may take steps to obtain it, at their own cost, through subpoena or Court order.

9. "Class Member" means a Person who qualifies as a member of the Settlement Class and who does not timely and properly opt out of the Settlement Class.

10. "Class Notice" means the written "Notice of Pendency of Class Action and Proposed Settlement," the Parties' proposed form of which is attached hereto as Exhibit B; the "Claim Information Disclosure," the Parties' proposed form of which is attached hereto as Exhibit C; and the "Proof of Claim Form," the Parties' proposed form of which is attached hereto as Exhibit D. The parties acknowledge that additional edits to the content and layout of the Class Notice documents may be made by mutual agreement of the parties or as directed by the State Court, but agree on the substance and approach of the attached exhibits.

11. "Class Period" means the period beginning on December 1, 2010 up to and including July 5, 2017.

12. "State Court" refers to the Circuit Court of Monongalia County, West Virginia, or any other Circuit Court agreed to by the parties, or any other Circuit Court that is willing to accept the consolidated and transferred civil actions as ordered by a Circuit Court with jurisdiction.

13. "Defense Counsel" means (i) Javier F. Flores and the law firm of Dinsmore & Shohl LLP, 101 Arch Street, Suite 1800, Boston, MA 02110; and (2) Russell D. Jessee and the law firm of Steptoe & Johnson PLLC, 707 Virginia Street East, Charleston, WV 25301.

14. "Disputed Fee Amount" means the delta between the Per-Page Rate charged by CIOX to produce copies of the medical records in response to a Qualifying Request and the Settlement Rate of 14 cents per page.

15. “Effective Date” means the date ten (10) business days after each and all of the following conditions have occurred: (a) this Agreement has been signed by the undersigned parties; (b) an order has been entered by the State Court finding it will likely be able to certify the Settlement Class and approve the settlement, including any revisions thereto as directed by the Court, set forth in this Agreement and approving the Class Notice; (c) the State Court-approved Class Notice has been duly provided as ordered by the Court; (d) Defendant has not elected to withdraw from or terminate the settlement in accordance with the terms of this Agreement; (e) the State Court has entered its Final Approval Order and Judgment and appeal rights have expired or been exhausted; (f) the Court has entered a final order and judgment with respect to any attorneys’ fees and expenses to be awarded to Class Counsel and appeal rights have expired or been exhausted; and (g) all appeal rights have been expired or been exhausted.

16. “Federal Action” means and refers to the matter titled *Thomas M. Wilson, Sr., Daniel Halsey as Administrator of the Estate of Tamara Halsey, Jason Grazuties, Sandra Sheppard, Robert Bradley, and Arvada Martin, individually and on behalf of all others similarly situated v. MRO Corporation, CIOX Health, LLC, and Medi-Copy Services, Inc.*, Case No. 2:16-cv-05279, pending in the United States District Court for the Southern District of West Virginia, Charleston Division.

17. “Federal Amended Complaint” means the Amended Complaint filed in the Federal Action on October 28, 2016.

18. “Federal Court” means the United States District Court for the Southern District of West Virginia, Charleston Division.

19. “Federal Parties” (or individually, “Federal Party”) means, collectively, Plaintiffs in the Federal Action and CIOX, as defined herein.

20. “Final Approval” means that the Settlement Class has been certified and this Agreement has been approved by the Court and a Final Approval Order and Judgment has been entered in accordance with this Agreement.

21. “Final Approval Hearing” means the hearing at or after which the State Court will make a final decision as to whether to certify the Class and approve the settlement set forth in this Agreement as fair, reasonable, and adequate.

22. “Final Approval Order and Judgment” means the order and judgment to be entered by the State Court after the Final Approval Hearing granting certification of the Settlement Class and finally approving the settlement as set forth in this Agreement.

23. “Thomack/Jenkins Class” means the approved class represented by Class Counsel in the matter of *Christopher Thomack and Joseph Michael Jenkins, on their own behalf and on behalf of all other similarly situated persons v. West Virginia University Hospitals, Inc., West Virginia United Health System, Inc. d/b/a WVU Healthcare and any related entities of WVU Healthcare acting in concert with WVU Healthcare*, C.A. No. 13-C-53, pending in the Circuit Court of Monongalia County, West Virginia.

24. “Judgment” means the Final Approval Order and Judgment to be entered by the State Court after the Final Approval Hearing granting certification of the Settlement Class and approving the settlement as set forth in this Agreement. The Judgment shall be deemed “Final”: (a) thirty (30) calendar days after the Final Approval Order and Judgment is entered if no document is filed within that time seeking appeal, review, rehearing, reconsideration, or any other action regarding the Final Approval Order and Judgment; or (b) if any such document is filed, then ten (10) calendar days after the date upon which all appellate and/or other proceedings resulting from the document have been finally terminated in such a manner as to permit no further judicial action.

25. “Motion for Preliminary Approval Submission Date” shall refer to the Parties’ submission of a Motion for Preliminary Approval of a Settlement Class after the Federal Court either approves or denies the joint motion for preliminary approval of settlement and certification of a settlement class (or any amendment thereto) in the Federal Action.

26. “Order Directing Sending of Notice to the Class” means the order, substantially in the form of the Proposed Order Directing Sending of Notice to the Class attached hereto as Exhibit E, finding the

State Court will likely be able to certify the Settlement Class and approve the settlement set forth in this Agreement, approving Class Notice to the Class Members as described herein, and setting a hearing to consider final approval of the settlement, the award of attorneys' fees and expenses to Class Counsel, and any objections thereto.

27. "Parties" (or individually, "Party") means, collectively, the WVUH Class Representatives and CIOX, as defined herein.

28. "Per-Page Rate" means the fee assessed by CIOX and paid by the requestor in response to a Qualifying Request, on a per-page basis to provide medical records from one or multiple WVU Medicine Entities during the Class Period as follows:

a. **Patient Requests**

- i. \$0.40 per-page: December 1, 2010, through July 15, 2011;
- ii. \$0.75 per-page: July 15, 2011 through June, 2014;
- iii. \$0.49 per-page: June, 2014 through February 8, 2016;
- iv. \$0.39 per-page: February 8, 2016 through August 23, 2016; and
- v. \$0.12 per-page: August 23, 2016 through July 5, 2017.

b. **Non-Patient Requests**

- i. \$0.40 per-page: December 1, 2010, through July 15, 2011;
- ii. \$0.75 per-page: July 15, 2011 through June, 2014; and
- iii. \$0.55 per-page: June, 2014 through July 5, 2017.

c. **Negotiated Rate Requests**

- i. Per page rate charged to a law firm or company by CIOX during the Class Period pursuant to a pricing agreement or amended rate.

29. "Person" means any individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity, and their respective spouses, heirs, affiliates,

attorneys, predecessors, successors, representatives, and/or assignees.

30. “Proof of Claim” or “Claim Form” means a claim form in substantially the form attached hereto as Exhibit D to be used by the Claimants to make a claim under the Settlement, which form is to be approved by the Court and to be made available upon request from the Claims Administrator.

31. “Qualifying Request” means a request made by a member of the Settlement Class for copies of medical records from WVU Medicine Entities and/or Released Parties during the Class Period for which the requestor subsequently paid CIOX a fee, but specifically excluding (i) any subpoenas or requests made without an executed medical authorization or release; (ii) any requests that were made by a State or Federal Government entity or agency; or (iii) any unpaid requests.

32. “Released Claims” means and includes any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, and including, but not limited to, breach of contract, unjust enrichment, money had and received, negligence, negligence *per se*, specific performance, promissory estoppel, unfair trade practice, and violation of state or federal consumer protection statutes as of the Effective Date of this Agreement, that directly relate to or arise out of: (a) a Qualifying Request; (b) any and all acts, omissions, facts, transactions, occurrences, claims, demands, actions, causes of action, rights, or liabilities alleged, asserted, or referred to in the State Actions, included but not limited to those by the Settlement Class against the Released Parties, as defined herein and those relating to or arising out of the fees charged by Ciox for copies of medical records; and/or (c) any alleged failure to comply with the West Virginia Code §§ 16-29-1, *et seq.* and W. Va. Code §§ 46A-6-101, including, but not limited to, all such claims for general, special, treble, and punitive damages, as well as any and all such claims for penalties, attorneys’ fees, and costs of suit. For purposes of the settlement and with reference to Plaintiffs, “Released Claims” further specifically extends to and includes any and all claims, actions, causes of action, or liabilities,

whether arising under local, state, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that directly relate to or arise from the service of providing copies of requested medical records and associated fees. Additionally, “Released Claims” further specifically extends to and includes any and all claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that directly relate to or arise from the charges for copies of medical records from the WVU Medicine Entities or otherwise asserted in the State Court Actions against CIOX.

33. “Released Parties” means and includes: CIOX, as defined herein, and the WVU Medicine Entities, as defined herein, and each and all of their respective parent companies, management companies, affiliates, subsidiaries, partners, holding companies, agents, successors, predecessors-in-interest, officers, directors, employees, attorneys and shareholders but only to the extent of any WVU Entities’ patients whose medical records request was fulfilled by CIOX during the time frame identified herein.

34. “Settlement Class” means: all patients, patients’ agents, attorneys in a representative capacity, patients’ authorized representatives, including, but not limited to, defense counsel or insurance companies which utilized a patient’s signed authorization to allow them to obtain records, who, on one or more occasions during the Class Period, sought, in writing, copies of medical records from one or more WVU Medicine Entities serviced by CIOX, and who subsequently: (1) paid CIOX for copies of medical records and were not reimbursed for same, or (2) reimbursed their legal or authorized representative for the costs paid to CIOX and advanced on their behalf to obtain copies of medical records, which were then produced pursuant to West Virginia Code §§ 16-29-1, *et seq.* from a WVU Medicine Entity, as defined herein, during the Class Period. Excluded from the Settlement Class are (i) Class Counsel, including

their respective law firms during the Class Period, (ii) law firms or companies that paid for the requested copies of medical records pursuant to a specific pricing agreement or a negotiated rate (but not their clients if their clients were the patients who ultimately paid for the production), and (iii) the Judge signing the Final Approval Order and Judgment, any judge or justice considering the Federal Action or the State Action on appeal or remand (if applicable), and the current spouses and all other known persons within the third degree of consanguinity to such judges/justices.

35. "Settlement Costs" means and includes: (i) the Service Award to WVUH Class Representatives; (ii) Administration Costs; (iii) payments to Claimants; and (iv) the Fee and Expense Award.

36. "Settlement Rate" means a per-page rate of \$0.14.

37. "State Actions" means and refers to the matters titled (i) *Russell G. Binder v. The Charles Town General Hospital d/b/a Jefferson Med. Ctr., City Hospital, Inc. d/b/a Berkeley Med. Ctr., West Virginia University Hospitals, Inc., West Virginia United health System, Inc., West Virginia University Hospitals – East, Inc.*, Civil Action No. 15-C-530, pending in the Circuit Court of Berkley County, West Virginia; and (ii) *James and John Smith, as co-administrators of the Estate of Donald F. Smith v. Camden-Clark Memorial Hospital Corporation*, Civil Action No. 14-C-829, pending in the Circuit Court of Wood County, West Virginia. This Agreement shall resolve any and all claims asserted against CIOX and the WVU Medicine Entities in the State Actions for the medical records requests which were fulfilled by CIOX for those time frames as identified in this Agreement. For all claims against the WVU Medicine Entities in the State Actions related to medical records requests which were not fulfilled by CIOX, this Agreement will have no bearing or effect on those claims.

38. "State Court Plaintiffs" or "Class Representatives" means Russell G. Binder, individually, and James and John Smith, as co-administrators of the Estate of Donald F. Smith, and each as representatives of the "WVUH Settlement Class".

39. "Valid Claim" means a Proof of Claim that is: (a) fully and truthfully completed, with all of the information in the Proof of Claim identified as "required"; (b) postmarked or electronically

submitted on or before the date set forth in the Class Notice; and, if mailed, (c) sent to the address specified in the Proof of Claim and/or Settlement Webpage. The Claims Administrator, as Directed by the State Court or per an agreed order of counsel, may require reasonable additional information from the Claimant to validate the claim. To have a Valid Claim, the Class Member must not have already been fully paid or fully reimbursed by CIOX or the WVU Medicine Entities for the Disputed Fee Amount and must have actually paid the Disputed Fee Amount (i.e., reimbursed the requestor and/or did not receive reimbursement from a third-party).

40. “WVU Medicine Entities” includes the hospitals and clinics that contracted with CIOX to provide medical record management services, including: Harpers Ferry, Jefferson Memorial Hospital, Spring Mills, Inwood Family Medicine, WVUH-East Neurology, WVUH-East Urology, WVUH-East Pulmonology, WVUH-East ENT, WVUH-East Psych, WVUH-East GI, Foxcroft Family Medicine, Gateway Family Medicine, UHP Surgeons, and UHP Oncology, as well as, City Hospital, Inc. d/b/a Berkeley Medical Center, and Camden Clark Medical Center.¹

41. “WVUH Settlement Class” means any Class Members from the Settlement Class, which the Parties agree to propose as part of a proposed class settlement in the State Actions.

42. Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement as reasonably intended by the parties, including those capitalized terms included within the attached Exhibits.

43. “As directed by State Court” means pursuant to all directions of the State Court that are made according to the State Court’s authority over compromise and dismissal of a purported class action before class certification has occurred, as provided in Rule 23(e) of the West Virginia Rules of Civil Procedure; the phrase is not intended to provide the State Court with more authority than the authority provided in Rule

¹ This designation is for settlement purposes only. CIOX denies that it is making any representation with respect to the relationship or affiliation, if any, between or amongst the various clinics set-forth herein or with West Virginia University Hospital or any affiliate, parent or subsidiary thereof.

23(e) and the case law.

44. “Requestor” shall mean the individual or entity that submitted a Qualifying Request.

45. “Patient” shall mean an individual who is the subject of the medical records obtained through submission of a Qualifying Request.

II. Recitals.

The following recitals are material terms of this Agreement. This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. Plaintiffs in the Federal Action filed that certain Complaint on May 6, 2016, as amended by the Federal Amended Complaint filed on October 28, 2016.

B. Plaintiffs in the Federal Action alleged among other allegations, that they were overcharged for medical record copies in violations of W. Va. Code §§ 46A-6-101, *et seq.*, W. Va. Code §§ 16-29-1, *et seq.*, and allege violations of federal HIPAA and/or HITECH statutes.

C. Plaintiffs in the Federal Action have asserted claims individually and purportedly on behalf of a putative class and seek various categories of damages on behalf of themselves and the putative class.

D. CIOX vigorously denies all claims asserted against it in the Federal Action, denies all allegations of wrongdoing and liability, and denies all material allegations contained in the Complaint. CIOX also asserts numerous defenses as to liability and damages and disputes that Plaintiffs could certify a sustainable class, were it not for the proposed settlement discussed below.

E. Following extensive settlement negotiations, the plaintiffs in the Federal Action concluded that it is desirable and in the best interests of Plaintiffs and their putative class to settle the claims and proposed class claims asserted in the Federal Action.

F. The Federal Parties filed a Joint Motion for Preliminary Approval of Settlement and Certification of a Settlement Class on July 5, 2017 (“Joint Motion for Preliminary Approval”).

G. The State Court Plaintiffs commenced their separate civil actions in the State Actions in the Circuit Court of Berkeley County, West Virginia, on September 25, 2015, and the Circuit Court of Wood

County, on March 24, 2014, also alleging violations of W. Va. Code §§ 46A-6-101, *et seq.* and W. Va. Code §§ 16-29-1, *et seq.*

H. Because claims against the defendants in the State Actions may be released by the proposed release of certain WVU Medicine Entities identified in the Joint Motion for Preliminary Approval in the Federal Action, the Circuit Court of Berkley County, West Virginia, and the Circuit Court of Wood County, West Virginia, issued orders staying the State Actions pending resolution of the Federal Parties' Joint Motion for Preliminary Approval.

I. The State Court Plaintiffs then filed objections and motions to intervene in the Federal Court Action, arguing that the proposed settlement in the Joint Motion for Preliminary Approval was inadequate as to the claims against WVU Medicine Entities released in the proposed settlement agreement attached to the Joint Motion for Preliminary Approval.

J. Class Counsel also represent the Thomack/Jenkins Class, a certified class involving claims, among other allegations, for violations of W. Va. Code §§ 46A-6-101, *et seq.* and W. Va. Code §§ 16-29-1, *et seq.*

K. The State Court Plaintiffs represent that the parties to the Thomack/Jenkins Class have reached a tentative class settlement, which has been preliminarily approved by Order from the State Court.

L. The State Court Plaintiffs assert that facts developed through the Thomack/Jenkins Class litigation in relation to Defendants West Virginia University Hospitals, Inc. and West Virginia United Health System, Inc. establish reasons unique to the WVU Medicine Entities such that the proposed settlement in the Federal Action would be inadequate as to the potential members of the WVUH Settlement Class.

M. The State Court Plaintiffs therefore desire to settle proposed claims by the WVUH Settlement Class in the State Court, separate from both the proposed class settlement in the Federal Action and the Thomack/Jenkins Class in State Court.

N. Class Counsel have concluded that the Settlement embodied in this Settlement Agreement is fair,

reasonable, adequate, and in the best interests of the WVUH Settlement Class.

O. CIOX has also considered the risks and potential costs of continued litigation, on the one hand, and the benefits of the proposed Settlement, on the other hand, and desires to settle upon the terms and conditions set forth in this Settlement Agreement.

P. CIOX has agreed not to oppose certification of the Settlement Class in State Court as set forth herein, but only for the sole and exclusive purpose of compromising and settling the claims of the Plaintiffs and the Settlement Class on a class-wide basis, and not for any other purpose whatsoever, as set forth more fully herein.

Q. To facilitate the certification of the Settlement Class in State Court, CIOX agrees to join with the Federal Plaintiffs in filing an amended Joint Motion for Preliminary Approval in the Federal Action to modify the proposed settlement class definition therein, removing the WVU Medicine Entities from the list of released parties under the proposed class action settlement in the Federal Action, and then to pursue settlement of remaining claims separately without seeking a release of claims against the WVU Medicine Entities in the Federal Action.

R. This Settlement Agreement was reached as a result of extensive, arms-length negotiations between Class Counsel and counsel for Defendant.

S. The Parties shall seek preliminary approval of the Settlement Class on the Motion for Preliminary Approval Submission Date in State Court.

T. The Parties understand, acknowledge, and agree, subject to the approval of the State Court, that the execution of this Agreement constitutes the full and final settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against the Parties except to enforce the terms of the settlement and is not an admission of any wrongdoing or liability on the part of any of the Parties. It is the Parties' desire and intention to affect a full, complete, and final settlement and resolution of all existing disputes and claims in this Action as set forth herein.

III. Stay of Action and Motion for Order Directing Sending of Notice to the Class.

A. **Stay of Action.** Upon the signing of this Settlement Agreement by all Parties, the Parties agree to seek a continued stay of all proceedings in the State Actions and in the State Court pending the Motion for Preliminary Approval Submission Date, except those proceedings necessary to carry out or enforce the terms and conditions of this Settlement Agreement. The agreed stay of the Action shall be lifted automatically if this Agreement is terminated. However, the Parties agree to jointly advise Judge Copenhaver of Plaintiffs' counsel's concerns regarding the continued delay of justice for the parties in this case as well as the stayed actions in State Court. Accordingly, the Parties will jointly ask Judge Copenhaver to expeditiously issue a ruling on the Amended Joint Motion for Preliminary Approval that will be submitted by Defense Counsel and Plaintiff's Counsel, William Tiano, as promptly as reasonably possible after this Agreement is signed.

B. **Proposed Certification of Settlement Class.** Solely for the purposes of settlement, providing Class Notice, and implementing this Agreement, the Parties agree to request certification of the following Settlement Class:

Settlement Class: All patients, patients' agents, attorneys in a representative capacity, patients' authorized representatives, including, but not limited to, defense counsel or insurance companies who, with medical authorizations, on one or more occasions during the Class Period, sought, in writing, copies of medical records from one or more WVU Medicine Entities serviced by CIOX and who subsequently: (1) paid CIOX for copies of medical records and were not reimbursed for same, or (2) reimbursed their legal or authorized representative for the costs paid to CIOX and advanced on their behalf to obtain copies of medical records, which were then produced pursuant to West Virginia Code §§ 16-29-1, *et seq.* from a WVU Medicine Entity, as defined herein, during the Class Period. Excluded from the Settlement Class are (i) Class Counsel, including their respective law firms during the Class Period, (ii) any and all Persons that paid for the requested copies of medical records pursuant to a specific pricing agreement or a negotiated rate, and (iii) the Judge signing the Final Approval Order and Judgment, any judge or justice considering the State Action on appeal or remand (if applicable), and the current spouses and all other persons within the third degree of consanguinity to such judges/justices.

C. **Motion for Order Directing Sending of Notice to the Class.** On or after the Motion for Preliminary Approval Submission Date, the Parties shall file a Joint Motion for Preliminary Approval

of a Settlement Class, specifically including provisions that: (a) the State Court finds it will likely be able to approve the settlement reflected in this Agreement; (b) the State Court finds it likely will be able to certify the Settlement Class (for settlement purposes only); (c) appointing Plaintiffs as the representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class for purposes of sending notice to the Settlement Class and considering the settlement set forth in this Agreement; (d) approve the Notice of Pendency of Class Action and Proposed Settlement to be provided to the Settlement Class as described herein; (e) approve the forms of the Proof of Claim and Claim Information Disclosure to be provided to the Settlement Class as described herein; (f) find that the plan for disseminating Class Notice established pursuant to this Agreement and as directed by the State Court constitutes the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure; (g) direct that the Class Notice be distributed in accordance with this Agreement and as directed by the State Court; (h) establish a procedure for Persons in the Settlement Class to object to the settlement or exclude themselves from the Settlement Class, and set a date, no later than the final day of the Claim Period, after which no Person shall be allowed to object to the settlement or exclude himself or herself from the Settlement Class or seek to intervene in the Action; (i) pending final determination of whether the settlement should be approved, bar all Persons in the Settlement Class, directly, or on a representative basis, or in any other capacity, from commencing or prosecuting against any of the Released Parties any action, arbitration, or proceeding in any court, arbitration forum, or tribunal asserting any of the Released Claims; and (j) pending final determination of whether the settlement reflected in this Agreement should be approved, stay all proceedings in the State Court Action except those related to the effectuation of the settlement. The Order Directing Sending of Notice to the Class also will set the Final Approval Hearing to be held no earlier than two hundred and seventy (270) calendar days following the date of the first mailing of Notice to the Class members by the Claims Administrator as directed by the State Court. The Parties expressly acknowledge that the claims administration process will not be completed by the date of the

requested Final Approval Hearing. The Parties further expressly acknowledge that the Court will schedule the Final Approval Hearing as the Court deems appropriate.

D. **Notice.** Within forty-five (45) days (or such other time period as the Court may order) of the entry of an order allowing the Motion for Preliminary Approval of a Settlement Class and after all preliminary matters regarding notice have been completed, the Claims Administrator shall prepare the First Class Notice by mail with the consent of the Parties, and if the Parties cannot agree, the State Court shall determine, and send it to the Settlement Class, pursuant to this Agreement and as directed and approved by the Court by order.

IV. Benefits to the Settlement Class and Fees and Expenses of Class Counsel and Claims Administration.

A. **Settlement Fund.** If final approval of the Settlement is granted, CIOX will pay the Settlement Costs set forth herein which shall be deemed to be paid on behalf of itself and all WVU Medicine Entities, and the Released Parties as consideration under this Agreement to settle the claims set forth in the State Actions and resolve all Released Claims as defined herein. CIOX shall establish a “Class Settlement Fund” (or “Settlement Fund”), which will pay for the claims of the Class Members who timely submit a Valid Claim deemed eligible under the terms of this Agreement and other applicable expenses.

B. The Class Settlement Fund shall include the following Settlement Costs:

1. Attorneys’ Fees and Expenses. Class Counsel shall file an application with the Court for reasonable attorneys’ fees and expenses. Class Counsel and Plaintiffs agree not to seek more than, and CIOX agrees not to oppose a request that does not exceed, payment of reasonable attorneys’ fees and expenses of two hundred and fifty thousand dollars (\$250,000). The attorneys’ fees and expenses, as approved by the Court (the “Fee and Expense Award”), shall be paid to Class Counsel within thirty (30) days of entry of the Effective Date. CIOX shall have no responsibility for, and no liability whatsoever with respect to, the division or allocation of the Fee and Expense Award with respect to any person,

entity, or law firm who or that may assert some claim thereto. Any order or proceeding relating to the Fee and Expense Award shall not operate to terminate the Settlement or affect the finality or binding nature of the Settlement. If the Court determines to approve the Settlement but reserves decision on the Fee and Expense Award, any Party to this Agreement may request that the Court enter final judgment approving the Settlement pursuant to this Agreement.

2. Class Representative Service Awards. Class Counsel and Plaintiffs will seek, and CIOX agrees not to oppose, payment of a service award of \$10,000 to each WVUH Class Representative (\$20,000 total). The service awards to each WVUH Class Representative, as approved by the Court, shall be paid to the WVUH Class Representatives within thirty (30) days of the Effective Date (the “Service Award”).

3. Administration Costs. The fees and expenses of the Claims Administrator necessary to effectuate the Settlement, including but not limited to the fees and costs associated with sending the Class Notice, and reviewing the claims received, and all other reasonably necessary claims actions as deemed by the Claims Administer or the State Court, shall be paid by CIOX. Should the Court ultimately reject the settlement of this claim, the Administration costs will nevertheless be borne by CIOX.

4. Reimbursements to Class. The Class Settlement Fund shall be used to reimburse the Class Members who timely submit a Valid Claim in an amount equal to One Hundred Percent (100%) of the Disputed Fee Amount paid by the Class Member, plus statutory interest for seven (7) years for each Class Member involved in this settlement.

5. No interest will accrue after the Motion for Preliminary Approval of a Settlement Class is allowed or on payments made available through the Settlement in a timely fashion.

6. Only one Valid Claim will be honored per Qualifying Request, and any conflict between claims shall be decided by the Claims Administrator, with agreement of both Class Counsel and Defense Counsel.

7. Any amount remaining in the Settlement Fund after payment of the Settlement Costs shall

revert to CIOX.

V. Administration of the Settlement, Notice of Settlement and Claims Processing.

A. Administration Costs of the Settlement. The Claims Administrator shall administer the Settlement in accordance with the terms and conditions of this Settlement Agreement and as directed by the State Court.

B. Settlement Webpage. Prior to the sending of the first notice, the Claims Administrator shall establish a settlement webpage, relating to the Action and the settlement (the “Settlement Webpage”). The Settlement Webpage will contain a contact information page that includes the contact information for the Claims Administrator and addresses and email addresses for Class Counsel and Defense Counsel. The Settlement Webpage will also contain the Settlement Agreement, signed Order Directing Sending of Notice to the Class, Notice of Pendency of Class Action and Proposed Settlement, the Proof of Claim form available for copying and for completion, execution, and submission on-line on the Settlement Webpage, and other relevant filings submitted to the Court in connection with the Action and this settlement. The Settlement Webpage shall inform Persons who should receive the Class Notice of how they may obtain from the Claims Administrator additional information to assist in identifying their potentially Qualifying Requests (including but not limited to invoice number(s), invoices date(s) patient name(s), names of the WVU Medicine Entities, and amount(s) paid). The purpose of the Settlement Webpage is to maximize the publicity to the prospective Class Members, and to help facilitate the claims process for prospective Class Members to maximize the participation rate of as many Class Members as possible. Counsel for both parties will be given input into the substance of the Settlement Webpage in an effort to accomplish those goals. The Claims Administer shall act as directed by counsel and, in the event of a dispute, as directed by the State Court.

C. Procedure and Format of Class Notice. Notice of Pendency of Class Action and Proposed Settlement, Proof of Claim Form, and Claim Information Disclosure in substantially the forms attached

hereto as Exhibits B, C and D, shall be disseminated by mail to all Persons identified on the Class List as having submitted a potentially Qualifying Request, to the extent possible after the addresses provided by CIOX have been run through the National Change of Address Database and other actions as decided by the Claims Administrator and/or as directed by the State Court, as set-forth below. In addition, the Notice of Pendency of Class Action and Proposed Settlement and the Proof of Claim Form will be available to download on the Settlement Webpage. Further, notice of the settlement shall be disseminated through newspaper advertisements placed for a two-week period in no more than two newspapers of general circulation in Wood, Berkeley and Jefferson Counties in West Virginia. Notice of settlement shall not be disseminated through forms or mediums not specified herein unless agreed by the parties. The Class Notice shall inform Persons who received the Class Notice that they may obtain from the Claims Administrator additional information to assist in identifying their potentially Qualifying Requests (including but not limited to invoice number(s), invoice date(s), patient name(s), requestor name(s), names of the WVU Medicine Entities, and amount(s) paid).

The Claims Administrator will send the first Class Notice to the Requestors, who will have 60 days to submit a Valid Claim. Then, within 30 days thereafter, the Claims Administrator will send the second Class Notice to the Patients (excluding any Qualifying Request from a non-plaintiff attorney for which a Valid Claim has been submitted), who will have 60 days to submit a Valid Claim. The Claims Administrator shall make no more than two attempts for each Qualifying Request (as determined by Claims Administrator) to provide notice to Class Members (one notice to the Requestors and one notice to the Patients, subject to the above-referenced exclusion). However, if events arise which show a justifiable need for a third attempt to provide notice to particular Class Member(s), which shall be decided by the Court if the parties are unable to agree, then the Claims Administrator may make a third attempt to provide notice. In the event the Claims Administrator receives the Class Notice returned by the USPS as undelivered, the Claims Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Claims

Administrator shall conduct an address search using a skip trace/locator database, such as Interactive Data, LLC, and re-mail the Class Notice to the subsequently obtained address. Only one re-mailing will be required. Neither the Claims Administrator nor the parties have an obligation to make further attempts to locate or send Class Notice to members of the Settlement Class whose Class Notice is returned by the USPS a second time. Furthermore, neither the Claims Administrator nor the parties will be responsible for the failure of the USPS to timely deliver or return a Class Notice.

D. Eligibility. To be eligible to receive a settlement payment under this agreement (“Settlement Payment”), Class Members must (i) fall within the herein defined Settlement Class; (ii) not opt-out of the Settlement; (iii) not be deemed ineligible under any other provision of this Agreement; and (iv) submit a Valid Claim. If a Person submitted a Qualifying Request through an authorized agent (typically the Person’s attorney), the authorized agent advanced the payment of the Disputed Fee Amount, and the Person reimbursed the authorized agent for such Disputed Fee Amount, the Person shall be the eligible Claimant/Class Member. If a Person submitted a Qualifying Request through an authorized agent (typically the Person’s attorney), the authorized agent advanced the payment of the Disputed Fee Amount, and the Person did not reimburse the authorized agent for such Disputed Fee Amount, the authorized agent shall be the eligible Claimant/Class Member; there also may be other hybrid situations in which multiple Persons paid for a portion of the Per-Page Fee which will be addressed as received by the Claims Administer in consultation with counsel and/or the State Court if necessary.

E. Proof of Claim. To be eligible to receive a Settlement Payment, Claimants must submit one or more Proofs of Claim within the Claim Period. Completed Proofs of Claim are to be submitted by mail, electronic mail, or submitted electronically via the Settlement Webpage as allowed to the Claims Administrator. CIOX will have no obligation to honor any Proof of Claim received with a postmark dated after the end of the Claim Period, even if such claim otherwise would be valid. CIOX will have no obligation to honor any Proof of Claim that is submitted through the Settlement Webpage after the Claim Period ends. CIOX will have no obligation to honor any Proof of Claim that is mailed to an

address other than that of the Claims Administrator. However, if time still remains for the submission of claims, the Claims Administrator shall promptly contact the person or entity submitting the claim and advise such person or entity of the error or other insufficiency of the Proof of Claim so that the person or entity can cure such error or insufficiency by properly submitting a valid Proof of Claim. In submitting a Proof of Claim, Class Members or their counsel or other authorized representative must fully complete all portions of said Proof of Claim (with the exception of the Claimant ID No.). Any disputes relative to the validity or invalidity of any Proof of Claim forms based upon the foregoing are subject to the dispute resolution process set-forth in Section V(F).

F. Invalid Proof of Claim. A Proof of Claim shall be deemed invalid and shall not be eligible for compensation under this Agreement if (i) neither the Claimant nor anyone authorized to obtain the records on the Claimant's behalf appears on the Class List during the Class Period; (ii) the Claimant was reimbursed, either directly or indirectly for the Disputed Fee Amount; or (iii) a claim for the particular Qualifying Request has already been approved to be paid to another Class Member. Furthermore, any Proof of Claim that is materially false or incomplete, shall be deemed invalid and shall not be eligible for compensation under this Agreement. However, if a Proof of Claim is incomplete and time still remains for the submission of claims, the Claims Administrator shall promptly contact the person or entity submitting the claim and advise such person or entity of the error or other insufficiency of the Proof of Claim so that the person or entity can cure such error or insufficiency by properly submitting a valid Proof of Claim. Any disputes relative to the validity or invalidity of any Proof of Claim forms based upon the foregoing are subject to the dispute resolution process set-forth in Section V(F).

G. Claims Report. Within forty-five (45) calendar days after the expiration of the Claim Period, the Claims Administrator will provide to CIOX and Class Counsel a report (the "Claims Report") providing notice of those Proofs of Claim submitted and eligible for a Settlement Payment as well as those denied as invalid or otherwise ineligible for a Settlement Payment and stating the reason(s) for the denial. Class Counsel will have thirty (30) calendar days after receiving the Claims Report from the

Claims Administrator to dispute any such denied claims. Claims that are not timely disputed will remain denied. The parties will attempt in good faith to resolve any disputes as to the propriety of accepted or denied claims and, should they fail to resolve any such dispute, either party may submit the dispute to the Court for summary and non-appealable resolution within sixty (60) calendar days of receiving the Claims Report; otherwise, the claims will remain denied. All disputes related to Proofs of Claim timely submitted to the Court for resolution and determined to be valid by the Court shall be deemed eligible for a Settlement Payment in accordance with this Agreement, and those determined to be invalid by the Court shall be deemed ineligible for a Settlement Payment in accordance with this Agreement.

H. Payment of Eligible Claims. Class Members who timely submit one or more Valid Claims and are eligible for Settlement Payment(s) hereunder shall, provided the Effective Date has occurred, receive payment via a check in the amount of the Settlement Payment(s), sent to the Person(s) designated as the Claimant(s)/Class Member(s) on the Proof of Claim. Each check mailed shall bear a conspicuous legend indicating that it will be void if not cashed within one hundred and eighty (180) calendar days after issuance. If a Settlement Payment check is returned because the address was invalid, the Claims Administrator shall re-mail the Settlement Payment check using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Claims Administrator shall conduct an address search using a skip trace/locator database, such as Interactive Data, LLC, and re-mail the Settlement Payment check to the subsequently obtained address. If a Settlement Payment check is returned again, no further efforts need be made to deliver such check, subject to the direction of the State Court. If a Settlement Payment check becomes void or is undeliverable, by no fault of CIOX or the Claims Administrator, the Class Member shall forfeit the right to payment, but this Agreement shall in all other respects, including the Releases contained herein, be fully enforceable against the Class Member.

I. Payment of Disputed Claims. Settlement Payments to Class Members eligible for a Settlement Payment under this Agreement, including Settlement Payments on disputed claims determined to be

valid by the Court, shall be made by the later of thirty (30) calendar days after the date on which Defendant receives notice of the Court's resolution of the disputed claim or within thirty (30) calendar days after the Effective Date, whichever is later.

J. Failure to Submit a Valid Claim. Any Class Member who does not submit a Valid Claim or does not timely cash the Settlement Payment check sent to them, shall not be entitled to a Settlement Payment, but shall nonetheless remain a Class Member and be bound by this Agreement and the Releases contained herein, unless a timely opt-out is filed in accordance with the terms set forth herein.

K. Tax Requirements. Any Person or entity that receives a Settlement Payment pursuant to this Agreement shall be solely responsible for taxes or tax-related expenses owed or incurred by that Person or entity by reason of that Settlement Payment. Such taxes and tax-related expenses shall not be paid from the Settlement Fund. The Released Parties are not, and will not be, obligated to compute, estimate, or pay any taxes on behalf of any Plaintiff, any Class Member, Class Counsel, or the Claims Administrator. Class Counsel are not and will not be obligated to compute, estimate, or pay any taxes on behalf of any Plaintiff, Settlement Class Member, or the Settlement Administrator.

VI. Objections and Opt-Outs.

A. Objections to the Settlement.

1. **Objecting to the Settlement.** Class Members who do not timely request exclusion and have a Qualifying Request possess the right to object to the proposed settlement by filing an objection in writing with the Clerk of the State Court no later than the final day of the Claim Period. The objection must also be mailed to each of the following, postmarked by the last day to file the objection:

a. Class Counsel:

David J. Romano, Esq.
Romano Law Office, LC
363 Washington Avenue
Clarksburg, WV 26301

David E. Goddard, Esq.

Goddard Law
7 Chenoweth Dr., Ste. C
Bridgeport, WV 26330

Richard A. Monahan, Esq.
Bordas & Bordas, PLLC
1358 National Road
Wheeling, WV 26003

b. Defense Counsel:

Javier F. Flores, Esq.
Dinsmore & Shohl LLP
101 Arch Street, Suite 1800
Boston, MA 02110

Russell D. Jessee, Esq.
Steptoe & Johnson PLLC
707 Virginia Street East
Charleston, WV 25301

c. Claims Administrator:

American Legal Claim Services, LLC
Binder v. Ciox Health
c/o Settlement Administrator
PO Box 23489
Jacksonville, FL 32241

2. **Content of the Objection.** A written objection may be submitted by a Class Member and must include: (i) the full name, address, phone number and email address (if applicable) of the Class Member, the name of the patient(s) for whom the records were requested, if the objecting Class Member is not the patient, and the invoice number(s) associated with the request(s) for records, (ii) a detailed description of the grounds for the objection; (iii) all documents or writings that such Class Member desires the Court to consider; and (iv) a statement of whether the objecting Class Member intends to appear at the Final Approval Hearing in person or through counsel. The Class Member must sign the objection for such objection to be valid, unless represented by counsel admitted to practice in West Virginia, in which case counsel shall be required to sign.

3. **Appearance at Final Approval Hearing.** Any Class Member wishing to appear in person

or through counsel at the Final Approval Hearing must have stated such intention in a timely filed and served objection.

4. Failure to Properly Object to Settlement. Any Class Member who fails to object in accordance with the foregoing shall be deemed to have waived his or her objections and forever be barred from making any objections in the Action subject however to the direction of the State Court.

B. Requests for Exclusion/Opt Out from the Settlement.

1. Opting Out of the Settlement. Persons who qualify as Class Members shall be given the opportunity to opt out of the Settlement Class. Each Person who qualifies as a Class Member who wishes to opt out of the Settlement Class shall do so by serving a written opt-out request to each of the following, via first class mail, postage pre-paid, postmarked no later than the final day of the Claim Period:

a. Class Counsel:

David J. Romano, Esq.
Romano Law Office, LC
363 Washington Avenue
Clarksburg, WV 26301

David E. Goddard, Esq.
Goddard Law
7 Chenoweth Dr., Ste. C
Bridgeport, WV 26330

Richard A. Monahan, Esq.
Bordas & Bordas, PLLC
1358 National Road
Wheeling, WV 26003

b. Defense Counsel:

Javier F. Flores, Esq.
Dinsmore & Shohl LLP
101 Arch Street, Suite 1800
Boston, MA 02110

Russell D. Jessee, Esq.
Steptoe & Johnson PLLC
707 Virginia Street East
Charleston, WV 25301

c. Claims Administrator:

American Legal Claim Services, LLC
Binder v. Ciox Health
c/o Settlement Administrator
PO Box 23489
Jacksonville, FL 32241

2. Content of the Exclusion Request. Exclusion requests must: (i) be signed by the Person or their attorney; (ii) include the full name and address of the Person requesting exclusion, the name of the patient for whom the records were requested if the Person was not the patient, the invoice number(s) associated with the request for records; (iii) be timely postmarked and mailed to the address designated in the Class Notice; and (iv) include the following statement: “I/we request to be excluded from the proposed class settlement in “*Binder v. The Charles Town General Hospital d/b/a Jefferson Med. Ctr., City Hospital, Inc. d/b/a Berkeley Med. Ctr., West Virginia University Hospitals, Inc., West Virginia United health System, Inc., West Virginia University Hospitals – East, Inc.*, Civil Action No. 15-C-530, pending in the Circuit Court of Berkley County, West Virginia” or “*James and John Smith, as co-administrators of the Estate of Donald F. Smith v. Camden-Clark Mem. Hosp. Corp.*, Civil Action No. 14-C-829, Circuit Court of Wood County, West Virginia.” No request for exclusion will be honored as valid unless all the prerequisites described above are adhered to in full, subject to the direction of the State Court. For any Person who qualifies as a Class Member and who has more than one claim, the exclusion request must specify each separate claim. Class Counsel will keep any such opt-out information confidential and will use it only for purposes of determining whether a person has properly opted out. All Persons who qualify as Class Members and who do not opt-out in accordance with the terms set forth herein will be deemed Class Members, and will, in turn, be bound by all determinations and judgments in the Action.

3. Effect of Submitting a Valid Opt-Out Notice. All Persons who qualify as Class Members who exclude themselves from the Settlement Class will not be eligible to receive any Settlement

Payment, will not be bound by any further orders or judgments entered for or against the Settlement Class and will preserve their ability to independently pursue any claims they may have against Defendant or the Released Parties by filing their own lawsuit at their own expense. This is true even if the settlement set forth in this Agreement is not ultimately approved by the Court.

4. **Defendant's Right to Withdraw/Terminate.** If the number of Qualifying Requests held by Persons who qualify as Class Members but who opt out of the Settlement Class exceeds fifteen percent (15%) of the total Qualifying Requests held by the Settlement Class (excluding any insurance companies and defense law firms), then CIOX, in its sole discretion, will have the right to terminate the settlement set forth in this Agreement. CIOX shall have twenty (20) calendar days after the deadline for opt-outs within which to exercise its right to terminate, by filing written notice of the same with the Court and duly serving Plaintiffs and Class Counsel with same. If CIOX terminates the settlement, certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. The Parties will be returned to their positions *status quo ante* with respect to the Action as if the settlement had not been entered into, with the Parties agreeing to refrain from opposing any resultant and reasonable application to further extend the discovery period.

VII. Final Approval Order and Judgment.

A. **Final Approval Hearing.** The Parties agree that they will request the State Court to enter the Final Approval Order and Judgment after the Final Approval Hearing, which shall take place as soon as practicable but not earlier than two hundred and seventy (270) calendar days after the date that the First Notice is mailed by the Claims Administrator, which constitutes the beginning of the Claims Period.

B. **Final Approval Order and Judgment.** Following the Final Approval Hearing, the Parties will request the State Court to enter the Final Approval Order and Judgment, which will, *inter alia*: (a) certify the Settlement Class, (b) approve this Agreement as presented and without modification (except insofar as the Parties have agreed to such modification); (c) find that the settlement reflected in this Agreement

is fair, just, equitable, reasonable, adequate, and in the best interests of the Settlement Class; (d) direct the Parties to consummate the Agreement in accordance with its terms; (e) dismiss with prejudice all claims against Defendant in the State Actions as specifically identified herein, without fees or costs except as provided in this Agreement; (f) declare that the Class Notice fully complied with the requirements of due process and Rule 23 of the West Virginia Rules of Civil Procedure; constituted the best notice practicable under the circumstances, and was due and sufficient notice to all Persons entitled to notice of the settlement in this Action; (g) declare that Plaintiffs and the Class Members who have not opted out are bound by this Agreement, including the release of claims set forth herein; (h) permanently enjoin Plaintiffs and the Class Members who have not opted out from prosecuting any Released Claims against the Released Parties; and (i) reserves continuing jurisdiction over the construction, interpretation, implementation, and enforcement of this Agreement and over the administration and distribution of the Settlement Payments. Entry of the Final Approval Order and Judgment shall not be conditioned on or delayed by the Court's failure to approve an attorneys' fees and expenses payment to Class Counsel.

C. Failure of Conditions. If, for any reason, all of the conditions as set-forth in the Effective Date are not met and this settlement fails to become effective, or the Judgment is not entered, any and all orders, judgments, and/or dismissals entered or to be entered pursuant to this Agreement shall be vacated, certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. The Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into and the case may proceed to other proceedings in State Court.

D. Effect if Settlement is Not Approved, Agreement is Terminated. If the State Court does not approve the settlement, certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. The Parties will be returned to their positions *status quo ante* with respect to the Action as if the settlement had not been entered into. The legal fees and expenses for each party will be borne by that party, but the

Claims Administration costs will be borne by CIOX and the case may proceed to other proceedings in State Court.

E. **Evidentiary Preclusion.** If the settlement set forth in this Agreement is not approved as presented, or CIOX withdraws from the settlement as set forth above, the Parties agree that neither the settlement terms nor any publicly disseminated information regarding the settlement, including, without limitation, the negotiations of the Agreement, the Agreement, any settlement terms, Class Notice, court filings, orders, and public statements, may be used as evidence to prove or disprove the amount of any claim or the liability of CIOX in the State Actions, pursuant to Rule 408 of the *West Virginia Rules of Evidence*. The consequences of this evidentiary preclusion are subject to any rulings by a court presiding over the State Actions on the admissibility of facts developed independently of the settlement set forth in this Agreement.

VIII. Releases.

A. Upon the entry of the Final Approval Order and without any further action by the State Court or by any Party to this Agreement, Plaintiffs, on their own behalf and on behalf of each Class Member, on behalf of their respective heirs, executors, administrators, representatives, agents, attorneys, partners, clients, successors, predecessors-in-interest, assigns, affiliates, and any authorized users of their accounts acknowledge full satisfaction of and fully, finally, and forever settle with, release, and discharge the Released Parties of and from all Released Claims. Subject to Court approval of this Agreement, all Class Members shall be bound by this Agreement and all their claims shall be dismissed with prejudice and released even if they never received personal notice of the Action or the settlement or submitted a Proof of Claim.

B. The State Court Plaintiffs, on their own behalf and on behalf of each Class Member, acknowledge that they are aware that they may hereafter discover facts in addition to or different from those facts which they now know or believe to be true with respect to the subject matter of the settlement, but that

it is their intention to release fully, finally, and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts, unless evidence finding fraud or bad faith conduct on the part of CIOX, the WVU Medicine entities, and/or the Claims Administrator is discovered by the State Court.

C. The releases contained herein shall apply to and bind all members of the Settlement Class who do not opt out including, but not limited to, those Class Members whose Class Notices are returned undeliverable, those who do not negotiate checks sent to them, and/or those for whom no current address can be found through reasonable efforts.

D. CIOX shall be entitled to keep any non-negotiated or undeliverable Settlement Payment checks and shall have no obligation to honor them, except as set forth herein, as well as any portions of the Settlement Fund remaining following payment of Attorney Fees and Expenses, Administration Costs, Class Representative Service Awards, and Reimbursement to Class.

IX. Representations and Warranties.

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

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

C. The State Court Plaintiffs represent and warrant that they are entering into the Agreement on

behalf of themselves individually and as proposed representatives of the Settlement Class of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. The State Court Plaintiffs represent and warrant that they have reviewed the terms of the Agreement in consultation with Class Counsel and believe them to be fair and reasonable, and they covenant that they will not file an Opt-Out request from the Settlement Class or object to the Agreement.

D. The State Court Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that the State Court Plaintiffs have or may have arising out of the Actions or pertaining to their fees paid as otherwise referred to in this Agreement, and no portion of any recovery or settlement to which the State Court Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than the State Court Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement.

E. No Party relies or has relied on any statement, representation, omission, inducement, or promise of the other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement or entering the Settlement provided for herein, except as expressly stated in this Agreement which include but not limited to any statements and production of documents relating to the accuracy and validity of any identification and payment information regarding any patient or any other persons or entities' whose requests, invoices, payments or any other information that formed and induced and was relied upon by the Settlement Class and their counsel to agree to the settlement as described herein. Provided however, any deliberate conduct, fraud, or bad faith by CIOX, Plaintiffs or their agents may be grounds to take all legal action under the law including the voiding of this settlement agreement.

X. Miscellaneous Provisions.

A. Material Modification of Settlement. In the event the terms or conditions of this Settlement Agreement are materially modified by any court, any Party may declare this Settlement Agreement null and void in its sole discretion to be exercised within fourteen (14) days after receiving notice of such a material modification. For purposes of this paragraph, material modifications include, but are not limited to, any modifications to the definitions of the Settlement Class, Class Members, Released Claims, Released Parties, Releasing Parties, changes to the Notice Plan and procedure described in this Settlement Agreement, any modifications to the terms of the settlement consideration or that would otherwise substantially increase the cost to be incurred by CIOX pursuant hereto, including those costs set-forth in Section IV.

B. Settlement Not Evidence Against Parties. Neither this Agreement nor any act performed or document executed in furtherance of the settlement: (1) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties; or (2) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties or as to the insufficiency of any settlement entered by Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, arbitration, or other tribunal. The Released Parties may file the Agreement and/or the Judgment in any action that may be brought against them to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, standing, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense, claim, or counterclaim.

C. Entire Agreement. This Agreement, together with the Exhibits hereto, constitutes the entire agreement between and among the Parties with respect to the settlement of the Action. This Agreement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by or on behalf of the State Court Plaintiffs, the Settlement Class, CIOX, and their respective attorneys, or at the direction of the State Court. Such a writing may be executed in

counterparts.

D. No Affect on Non-Parties to Settlement. The parties agree that this settlement will have no impact on any other litigation or claims against the WVU Medicine Entities, or any other medical provider who is not specifically covered by this Settlement Agreement, relative to release of information requests which were not processed or invoiced by CIOX. Instead, this Settlement Agreement is intended to affect only the claims made against the WVU Medicine Entities, for medical records requests that were fulfilled by CIOX, during the time frames set forth in this Settlement Agreement.

E. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defense Counsel, without notice to Class Members, except that the Claims Administrator shall ensure that such dates are posted on the Settlement Webpage.

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

G. Cooperation. The Parties and their respective counsel agree to work cooperatively to prepare and execute all documents that may reasonably be necessary to effectuate the terms of this Agreement.

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

I. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the West Virginia.

J. Construing the Agreement. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party, in consultation with his, her, or its attorneys, has cooperated

in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party. In addition, no Party may seek to rescind this Agreement on the grounds of mistake, whether of fact or law.

K. Signatures. This Agreement may be signed in one or more counterparts and may be signed by electronic signature.

L. Binding on Successors. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Plaintiffs, Settlement Class Members, and CIOX.

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

N. Taxes. No opinion concerning the tax consequences of the Agreement to any State Court Plaintiffs or Settlement Class Member is given or will be given by CIOX or CIOX's counsel; nor is any Party or their counsel providing any representation or guarantee regarding the tax consequences of the Agreement as to any State Court Plaintiffs or Settlement Class Member. Each State Court Plaintiff (including Class Counsel) and Class Member is responsible for his/her/its tax reporting and other obligations respecting the Agreement, if any.

O. Waiver. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver, by that Party or by any other Party, of any other prior or subsequent breach of this Agreement.

P. Provisions Deemed Invalid. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall be ineffective but shall not in any way invalidate or otherwise affect any other provision.

Q. Retention of Jurisdiction. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

[Remainder of this page intentionally left blank]

WHEREFORE, INTENDING TO BE BOUND, THE PARTIES, INDIVIDUALLY OR BY THEIR DULY AUTHORIZED AGENTS AND UNDERSIGNED COUNSEL, HAVE SET THEIR HAND AND SEAL AND EXECUTED THIS AGREEMENT AND RELEASE, EFFECTIVE THE LAST DAY SIGNED BY ALL PARTIES HERETO:

Dated: oct 6, 2023

PLAINTIFF RUSSELL G. BINDER



Russell G. Binder

Dated: _____, 2023

**PLAINTIFF JAMES SMITH, as Co-Administrator of
the Estate of Donald F. Smith**

James Smith

Dated: _____, 2023

**PLAINTIFF JOHN SMITH, as Co-Administrator of
the Estate of Donald F. Smith**

John Smith

Dated: _____, 2023

DEFENDANT CIOX HEALTH, LLC

By: _____

Its: _____

[Remainder of this page intentionally left blank]

WHEREFORE, INTENDING TO BE BOUND, THE PARTIES, INDIVIDUALLY OR BY THEIR DULY AUTHORIZED AGENTS AND UNDERSIGNED COUNSEL, HAVE SET THEIR HAND AND SEAL AND EXECUTED THIS AGREEMENT AND RELEASE, EFFECTIVE THE LAST DAY SIGNED BY ALL PARTIES HERETO:

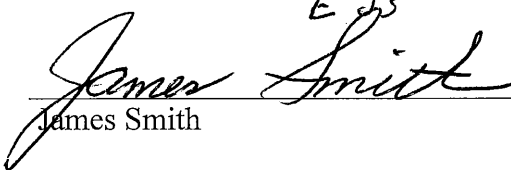
Dated: _____, 2023

PLAINTIFF RUSSELL G. BINDER

Russell G. Binder

Dated: 10-25, 2023

**PLAINTIFF JAMES SMITH, as Co-Administrator of
the Estate of Donald K. Smith**

E JS


James Smith

Dated: 10-25, 2023

**PLAINTIFF JOHN SMITH, as Co-Administrator of
the Estate of Donald K. Smith**
E JS

John Smith

Dated: _____, 2023

DEFENDANT CIOX HEALTH, LLC

By: _____

Its: _____

[Remainder of this page intentionally left blank]

WHEREFORE, INTENDING TO BE BOUND, THE PARTIES, INDIVIDUALLY OR BY THEIR DULY AUTHORIZED AGENTS AND UNDERSIGNED COUNSEL, HAVE SET THEIR HAND AND SEAL AND EXECUTED THIS AGREEMENT AND RELEASE, EFFECTIVE THE LAST DAY SIGNED BY ALL PARTIES HERETO:

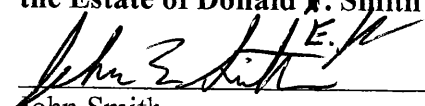
Dated: _____, 2023 **PLAINTIFF RUSSELL G. BINDER**

Russell G. Binder

Dated: _____, 2023 **PLAINTIFF JAMES SMITH, as Co-Administrator of
the Estate of Donald F. Smith**

James Smith

Dated: 11-25, 2023 **PLAINTIFF JOHN SMITH, as Co-Administrator of
the Estate of Donald F. Smith**



John Smith

Dated: _____, 2023 **DEFENDANT CIOX HEALTH, LLC**

By: _____

Its: _____

[Remainder of this page intentionally left blank]

WHEREFORE, INTENDING TO BE BOUND, THE PARTIES, INDIVIDUALLY OR BY THEIR DULY AUTHORIZED AGENTS AND UNDERSIGNED COUNSEL, HAVE SET THEIR HAND AND SEAL AND EXECUTED THIS AGREEMENT AND RELEASE, EFFECTIVE THE LAST DAY SIGNED BY ALL PARTIES HERETO:

Dated: _____, 2023 **PLAINTIFF RUSSELL G. BINDER**

Russell G. Binder

Dated: _____, 2023 **PLAINTIFF JAMES SMITH, as Co-Administrator of
the Estate of Donald F. Smith**

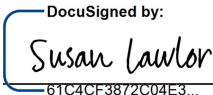
James Smith

Dated: _____, 2023 **PLAINTIFF JOHN SMITH, as Co-Administrator of
the Estate of Donald F. Smith**

John Smith

Dated: 10/19/2023, 2023 **DEFENDANT CIOX HEALTH, LLC**

By: Susan Lawlor

Its:  DocuSigned by:
Susan Lawlor
61C4CF3872C04E3...

AGREED AS TO FORM:

Dated: October 12, 2023

Attorney for Plaintiffs:
ROMANO LAW OFFICE, LC

By: David J. Romano
David J. Romano

Dated: 10/12, 2023

Attorney for Plaintiffs:
GODDARD LAW

By: David E. Goddard
David E. Goddard

Dated: _____, 2023

Attorney for Plaintiffs:
BORDAS & BORDAS

By: _____
Richard A. Monahan

Dated: _____, 2023

Attorney for CIOX Health, LLC:
DINSMORE & SHOHL LLP

By: _____
Javier F. Flores

Dated: _____, 2023

Attorney for CIOX Health, LLC:
STEPTOE & JOHNSON PLLC

By: _____
Russell D. Jessee

AGREED AS TO FORM:

Dated: _____, 2023

Attorney for Plaintiffs:
ROMANO LAW OFFICE, LC

By: _____
David J. Romano

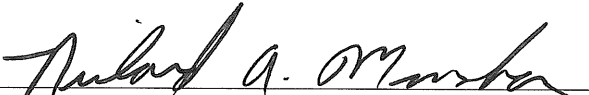
Dated: _____, 2023

Attorney for Plaintiffs:
GODDARD LAW

By: _____
David E. Goddard

Dated: October 30, 2023

Attorney for Plaintiffs:
BORDAS & BORDAS

By: 
Richard A. Monahan

Dated: _____, 2023

Attorney for CIOX Health, LLC:
DINSMORE & SHOHL LLP

By: _____
Javier F. Flores

Dated: _____, 2023

Attorney for CIOX Health, LLC:
STEPTOE & JOHNSON PLLC

By: _____
Russell D. Jessee

AGREED AS TO FORM:

Dated: _____, 2023

**Attorney for Plaintiffs:
ROMANO LAW OFFICE, LC**

By: _____
David J. Romano

Dated: _____, 2023

**Attorney for Plaintiffs:
GODDARD LAW**

By: _____
David E. Goddard

Dated: _____, 2023

**Attorney for Plaintiffs:
BORDAS & BORDAS**

By: _____
Richard A. Monahan

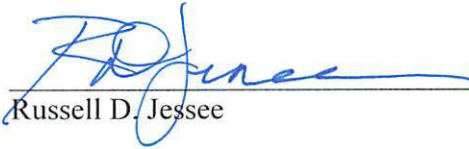
Dated: October 20, 2023

**Attorney for CIOX Health, LLC:
DINSMORE & SHOHL LLP**

By: _____
Javier F. Flores

Dated: Oct. 20, 2023

**Attorney for CIOX Health, LLC:
STEPTOE & JOHNSON PLLC**

By: _____
Russell D. Jessee