

# **SETTLEMENT AGREEMENT**

Made as of November 10<sup>th</sup>, 2021

**Between:**

**ARTHUR REDUBLO and DONNA MOHER**

Plaintiffs

-and-

**8262900 CANADA INC. o/a CAREPARTNERS**

Defendant

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## RECITALS

- A. WHEREAS the Plaintiffs commenced a proposed class action in the Ontario Superior Court of Justice (the “**Court**”) on September 11, 2020, bearing Court File No. CV-20-00647324-00CP as against the Defendant (the “**Class Action**”);
- B. WHEREAS the Class Action asserts claims against the Defendant in relation to a cyber attack that occurred in or around June 11, 2018 whereby criminal third-party cyber attackers gained unauthorized and illegal access to the Defendant’s computer systems (the “**Cyber Attack**”);
- C. WHEREAS the Defendant denies all the allegations asserted by the Plaintiffs in the Class Action, and maintains that it has good and valid defences to the claims asserted therein, but has agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the claims made or which could have been made against it in the Class Action and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- D. WHEREAS the Defendant has agreed that, for the purposes only of effecting this settlement of the Class Action, it will consent to certification of this Action as a class proceeding with the Plaintiffs appointed as the representative plaintiffs;
- E. WHEREAS the Plaintiffs have reviewed and fully understand the terms of this Settlement Agreement and, based on Class Counsel’s analyses of the facts and law applicable to the Plaintiffs’ claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class;
- F. WHEREAS the Plaintiffs, Class Counsel, and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendant, or evidence of the truth of any of the Plaintiffs’ allegations against the Defendant, which the Defendant expressly deny, nor any admission by or evidence against the Defendant as to the merits of the claims asserted in the Class Action; and
- G. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled and dismissed with prejudice and without costs, subject to approval of the Court, on the following terms and conditions:

## ARTICLE I - DEFINITIONS

### 1.1 Definitions

- (a) **Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Defence Counsel, Class Counsel or the Claims Administrator, as the case may be, in which the Settlement Fund will be held for the benefit of the Class Members or the Defendant until distributed pursuant to the Distribution Protocol, or returned to the Defendant pursuant to the terms of this Agreement.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Claims Administrator, or otherwise, for the approval, implementation and operation of this Settlement Agreement including the costs of distribution of the Settlement Fund, the costs of all notices to the Class, and the costs of the claims administration, but excluding Class Counsel Fees.
- (c) **Affected Class Members** means those Class Members whose personal health information, or personal information was extracted from the Defendant's computer system as part of the Cyber Attack and was produced to the Canadian Broadcasting Corporation ("CBC").
- (d) **Claims Administrator** means such other entity or person appointed by the Court to administer this Settlement Agreement and any employees or agents thereof.
- (e) **Class** means all persons who are or were patients, non-unionized employees or contractors of CarePartners from January 1, 2010, to June 11, 2018, excluding (i) the defendant's officers and directors; and (ii) any person who validly opts out of the Class Action, and **Class Member** means any one thereof.
- (f) **Class Action** means the proposed class proceeding commenced by the Plaintiffs in the Ontario Superior Court of Justice bearing Court File No. CV-20-00647324-00CP.
- (g) **Class Counsel** means the law firms of Waddell Phillips Professional Corporation, Howie Sacks and Henry LLP and Schneider Law Firm.
- (h) **Class Counsel Fees** include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action.
- (i) **Common Issue** means was the Defendant negligent in the manner in which it maintained and protected its electronic information.
- (j) **Court** means the Ontario Superior Court of Justice.
- (k) **Defence Counsel** means the law firm of Tyr LLP.

- (l) **Defendant** means 8262900 Canada Inc. o/a CarePartners.
- (m) **Distribution Protocol** means the plan for distributing the Settlement Fund and accrued interest to the Class, as approved by the Court.
- (n) **Effective Date** means (i) the date upon which the ability to appeal from the anticipated Second Order expires - namely, thirty (30) days after the Second Order is granted, unless the motion is unopposed, in which case the date which is the first business day after the Second Order is granted; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final Order; but an appeal from the Second Order shall not include any appeal that concerns only the issue of Class Counsel's fees or disbursements for the purposes of establishing the Effective Date.
- (o) **Final** when used in relation to a court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (p) **First Order** means the proposed order of the Court granting the following relief: (1) the Court's approval of the Notice of Hearing; and plan for distribution thereof; and (2) the appointment of the Claims Administrator.
- (q) **Independent Review** means an independent review of the Records conducted by the Independent Reviewer solely in order to identify the Affected Class Members.
- (r) **Independent Reviewer** means a third party independent document review organization, agreeable to CarePartners with input from Class Counsel to be identified in advance of the settlement hearing, that will conduct an independent review of the Records to identify the Affected Class Members through the Independent Review.
- (s) **Notice of Hearing** means the condensed and short form of Notice of Hearing for Class Action Certification, Settlement Approval, and Counsel Fee Approval, approved by the Court to inform the Class of: (1) the date and location of the hearing to certify this action as a class proceeding and approve this Settlement Agreement; (2) the key terms of this Settlement Agreement; and (3) Class Counsel Fees request.
- (t) **Notice of Court Order** means the condensed, short and long form of Notice of Class Action Certification, Settlement Approval, and Counsel Fee Approval approved by the Court to inform the Class Members of (1) the certification of this action as a class proceeding, (2) approval of this Settlement Agreement; (3) approval of Class Counsel Fees; (4) the process by which Class Members may opt out; and (5) the process by which the Class Members may obtain compensation from the Settlement Fund.
- (u) **Opt Out Threshold** means three thousand (3,000) timely and valid opt outs by potential Class Members.

- (v) **Other Actions** means any actions or court proceedings, other than the Class Action against any of the Releasees to the extent that such actions or proceedings relate to any claim asserted in the Class Action or that could have been asserted in the Class Action.
- (w) **Parties**, when capitalized, means the signatories to this Settlement Agreement, being the Plaintiffs and the Defendant, and **Party** means any one thereof.
- (x) **Records** means the electronic copies of documents received by the CBC from third parties claiming to be the perpetrators of the Cyber Attack and believed to have been stolen from the Defendants during the Cyber Attack.
- (y) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind whenever incurred (including compensatory, punitive or other damages or restitution), declaratory relief, liabilities of any nature whatsoever, including claims for contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them ever had, could have had, now have, or hereafter can, shall, or may have, relating in any way to the claims made and conduct alleged (or which could have been made or alleged) in the Class Action, including any and all claims of the Releasers relating to or arising out of the Cyber Attack. For greater certainty, the Released Claims do not include any claims unrelated to the Cyber Attack that any Class Members may have against CarePartners in respect of the personal care services CarePartners has provided to any class members.
- (z) **Releasees** means, jointly and severally, individually and collectively, the Defendant and its predecessors, successors, parents, subsidiaries, affiliates, Home and Community Care Support Services (formerly known as the Local Health Integration Networks) and its affiliates (including Health Shared Services Ontario, now part of Ontario Health), and the Canadian Broadcasting Corporation, and all of their respective past and current officers, directors, employees, shareholders, insurers, successors, assigns, administrators, associated and related companies, trustees, servants, representatives and agents.
- (aa) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members, and their respective successors, heirs, executors, administrators, trustees, insurers, assigns, or representatives of any kind.
- (bb) **Second Order** means the anticipated orders of the Court certifying the Class Action as a class proceeding, approving the terms of this Settlement Agreement, and approving Class Counsel Fees.
- (cc) **Settlement Agreement** means this agreement, including the recitals and schedules.

- (dd) ***Settlement Date*** means the date by which all Parties have executed the Settlement Agreement.
- (ee) ***Settlement Fund*** means, subject to Article 4.1(g) of this Settlement Agreement, the all-inclusive amount of Three Million Four Hundred Forty Thousand Canadian Dollars (CDN \$3,440,000.00), payable by the Defendant, plus any interest earned on the Settlement Fund after it has been transferred to Class Counsel and Defence Counsel pursuant to Article IV of this Settlement Agreement, pending payment of the Settlement Fund to the Class.

## **ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL**

### **2.1 Best Efforts**

The Parties shall use their best efforts to fulfill the terms of this settlement and to secure Court approval and implementation of the settlement including the final dismissal of the Class Action, with prejudice, and without costs.

### **2.2 Court Approval Required for Enforceable Agreement**

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless and until this Settlement Agreement is approved by the Court.

## **ARTICLE III - SETTLEMENT APPROVAL**

### **3.1 Motion for Approval of Notice of Hearing**

As soon as possible after this Settlement Agreement is executed, the Plaintiffs shall bring a motion for the Court's approval of the Notice of Hearing, the appointment of the Claims Administrator, and the proposed plan for distribution of the Notice of Hearing.

### **3.2 Motion for Second Order**

As soon as practicable after the Notice of Hearing is published, the Plaintiffs shall bring motions for orders certifying the Class Action as a class proceeding, approving this Settlement Agreement, and approving Class Counsel Fees.

### **3.3 Settlement of Common Issues**

The Parties agree that this proceeding shall be certified as a class proceeding against the Defendant solely for purposes of settlement and the approval of this Settlement Agreement by the Court. The Plaintiffs further agree that in the motion for certification as a class proceeding and approval of the Settlement Agreement, the only common issue that they will seek to define is the Common



Issue and the only class that they will assert is the Class. The Plaintiffs acknowledge that the Defendant agrees to the definition of the Common Issue for purposes of settlement only.

#### **ARTICLE IV - SETTLEMENT BENEFITS**

##### **4.1 Payment of Settlement Fund and Independent Review**

- (a) Within ten (10) days of the Second Order becoming Final, the Defendant shall pay or cause to be paid \$2,440,000 (less the Notice Amount referred to in section 9.2) of the Settlement Fund to Class Counsel in trust, and \$1,000,000 of the Settlement Fund to Tyr LLP, (the “**Holdback**”) for the benefit of the Class.
- (b) The Defendants' payment of the Settlement Fund will be in full satisfaction of the Released Claims against the Releasees.
- (c) The Defendant shall not have any obligation to pay to the Plaintiffs or to the Class any amount in addition to the Settlement Fund unless otherwise expressly provided for in this Agreement.
- (d) Class Counsel and Defence Counsel shall hold the Settlement Fund in trust in their Accounts and maintain the Accounts, as provided for in this Settlement Agreement.
- (e) Class Counsel shall transfer the Settlement Fund in its Account, less Class Counsel Fees and less any honorarium payable to the Plaintiffs, as approved by the Court, to the Account of the Claims Administrator within twenty (20) business days after the Second Order becomes Final.
- (f) The Independent Reviewer shall begin the Independent Review as soon as reasonably practicable after the Second Order becomes Final. The Independent Review will be conducted pursuant to the review protocol agreed between the Parties and as attached hereto as **Schedule A**. The Parties shall abide by the terms of the protocol attached as Schedule A with respect to the treatment of, and information retrieved from, the Records, and confirm that only the Independent Reviewer will have access to the Records.
- (g) Defence Counsel shall retain the Holdback pending the completion of the Independent Review. If the Independent Reviewer determines that the total number of Affected Class Members is 45,000 or more, Defence Counsel shall transfer the Holdback inclusive of accrued interest to the Account of the Claims Administrator within ten (10) business days of such determination. If the Independent Reviewer determines that the total number of Affected Class Members is less than 45,000, Defence Counsel shall transfer the Holdback plus any accrued interest to the Defendant, and, in that case, the Holdback and any accrued interest thereon shall be excluded from the Settlement Fund.
- (h) Class Counsel shall not pay out any of the Settlement Fund in its Account, except in accordance with this Settlement Agreement and as ordered or permitted under an order of the Court.

## **4.2 Taxes and Interest**

- (a) Subject to Article 4.1(g) and except where otherwise provided in this Settlement Agreement, all interest earned on the Settlement Fund after it is transferred to Class Counsel and Defence Counsel shall accrue to the benefit of the Class and shall become and remain part of the Settlement Fund.
- (b) Subject to Article 4.2(c), all Canadian taxes payable on any interest that accrues on the Settlement Fund in the Accounts or otherwise in relation to the Settlement Fund shall be the sole responsibility of the Class. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Fund in the Accounts, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Fund shall be paid from the claims Administrator's Account and deducted from the Settlement Fund.
- (c) The Defendant shall have no responsibility to make any income tax filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund, including after it has been transferred to Class Counsel, except with respect to interest earned in the Holdback if the Holdback is paid to the Defendant, or if this Settlement Agreement is terminated, in which case the interest earned on all of the Settlement Fund, shall be paid to the Defendant along with a return of the Settlement Funds and in such case, the Defendant shall be responsible for the payment of all taxes on such interest.

## **4.3 Litigation Compliance**

- (a) The Plaintiffs shall, as part of the resolution of the Class Action, consent to the dismissal of the Class Action on a with prejudice and without costs basis.
- (b) The Defendant shall consent to the dismissal of the Class Action on a with prejudice and without costs basis.

## **ARTICLE V - DISTRIBUTION OF THE SETTLEMENT FUND**

### **5.1 Distribution Protocol**

At the same time as the motion for certification and settlement approval, Class Counsel will seek a Court order for approval of the Distribution Protocol. The Distribution Protocol is set out at **Schedule B** hereto.

### **5.2 No responsibility for Administration, Independent Review or Fees**

Neither the Releasees nor Defence Counsel shall have any responsibility, obligations, financial or otherwise, or liability whatsoever with respect to the Independent Review, distribution of the Settlement Fund to the Class, any Administration Expenses and/or Class Counsel Fees.

## **ARTICLE VI - TERMINATION OF SETTLEMENT AGREEMENT**

### **6.1 Right of Termination**

- (a) The Defendant shall, in its sole discretion, have the option to terminate this Settlement Agreement in the event that:
  - (i) A court refuses to grant an order dismissing the Class Action with prejudice and on a without costs basis;
  - (ii) The Court declines to approve any part of the Settlement Agreement that the Defendant deems material, or requires a change to the Settlement Agreement that the Defendant deems material as a pre-condition to approval;
  - (iii) The Court issues the Second Order, but it does not become Final or is altered on appeal in a manner deemed material by the Defendant, in its sole discretion (acting reasonably); or
  - (iv) The Opt Out Threshold is exceeded.
- (b) The Plaintiffs shall have the option to terminate the Settlement Agreement in the event that:
  - (i) There is non-payment in full of the Settlement Fund into the Class Counsel and Defence Counsel Accounts by the date set out above in Article 4.1;
  - (ii) The Court refuses to grant an order dismissing the Class Action with prejudice on a without costs basis;
  - (iii) The Court declines to approve of any material part of the Settlement Agreement or requires a material change to the Settlement Agreement as a pre-condition to approval; or
  - (iv) The Court issues the Second Order, but it does not become Final or is materially altered on appeal.
- (c) If the Defendant elects to terminate the Settlement Agreement pursuant to Article 6.1(a), or the Plaintiffs elect to terminate the Settlement Agreement pursuant to Article 6.1(b), a written notice of termination shall be provided by the terminating Party to the other Party's lawyers forthwith, and, in any event, no later than 10 business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Articles 6.2 and 6.3, and the related Definitions in Article 1, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise, including but not limited to any motion for certification of the Class Action, or trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.

- (d) Any order, ruling or determination made by the Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

## **6.2 If Settlement Agreement is Terminated**

If this Settlement Agreement is terminated, any order made by the Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties, except for the First Order, if it has been issued and the Notice of Hearing has already been published. For greater certainty, on termination any order certifying this proceeding as a class proceeding shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

Notwithstanding any other provision of this Settlement Agreement, the releases provided in favour of the CBC shall survive the termination of this Settlement Agreement, provided that CBC has complied with any court order to provide the Records for the purposes of the Independent Review Protocol.

## **6.3 Allocation of Monies in the Account Following Termination**

If the Settlement Agreement is terminated, Class Counsel or the Claims Administrator, as the case may be, shall return to the Defendant as directed in writing by the Defendant, all monies in their Account including accrued interest, but less any Administration Expenses that have been actually incurred as at the date of termination, including the costs of publishing the Notice of Hearing, the Notice of Court Order, or any other notices to the Class (collectively, the "Notices"), including the estimated costs of Administration Expenses to be incurred to provide notice to the Class that the Settlement Agreement has been terminated, if such notice is required by the Court. However, in the event the Settlement Agreement is terminated the Plaintiffs shall be responsible for 50% of the Administration Expenses that have been incurred.

# **ARTICLE VII - RELEASES AND DISMISSALS**

## **7.1 Release of Releasees**

Upon the Effective Date, and in consideration of the payment of the Settlement Fund and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall forever and absolutely release the Releasees from the Released Claims. The Parties agree that any Releasees who are not a Party to this Settlement Agreement (including but not limited to the local health integration networks) are third-party beneficiaries of this Settlement Agreement and the releases contained herein, and that the Parties intend to confer a benefit upon each of them which is enforceable by each of them.

## **7.2 No Further Claims**

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any

other person, any action, suit, cause of action, claim or demand against any Releasee or against any other persons who may claim contribution or indemnity, or other claims over relief, from any Releasees in respect of any Released Claim.

### **7.3 Dismissal of the Class Action**

The action will be dismissed on a with prejudice and without costs basis following the Settlement Approval Order becoming Final.

## **ARTICLE VIII - EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiffs or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, the Defendant will defend the Class Action and oppose certification of the action as a class proceeding.

Neither the certification of a Class pursuant to the terms of this Settlement Agreement nor the statement of the Common Issue shall constitute, or be construed as, an admission on the part of the Defendant that any the Class Action, or any other proposed class action, is appropriate for certification as a litigation class under any applicable law, or that the Common Issue or any other common issue is appropriate for certification on a contested basis in the Class Action or on any basis in any other proceeding.

### **8.2 Agreement Not Evidence**

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, except in a proceeding to approve or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

## **ARTICLE IX - NOTICE TO CLASS**

### **9.1 Results of Independent Review**

- (a) Upon conclusion of the Independent Review, the Independent Reviewer will produce to the Parties the Names List and Other Identifying Information Table, as defined in Schedule A.
- (b) The Defendant will use the information provided by the Independent Reviewer to prepare a list of last known addresses, including email address if known, for the Affected Class Members, which it will produce to Class Counsel and the Claims Administrator. The Defendant shall use reasonable efforts to prepare this list based on the information available to it in its records, but is not obliged to incur substantial and disproportionate cost in doing so.
- (c) The Claims Administrator will use the list prepared by the Defendant to provide the Notice of Court Order to the Affected Class Members, and for settlement distribution purposes, only.

### **9.2 Costs of Disseminating Notice**

Subject to section 6.3, the costs of disseminating the Notices to the Class shall be paid from the Settlement Fund, regardless of whether the Settlement is approved by the Court, or whether the Settlement Agreement is terminated. The Defendant will advance reasonable funds to Class Counsel for the purpose of disseminating the Notice of Hearing (the “**Notice Amount**”). The Settlement Funds actually advanced by the Defendant will be reduced by the Notice Amount.

### **9.3 Method of Disseminating Notices**

The Notices shall be disseminated pursuant to the Notice Plan attached as **Schedule C** as approved by the Court, or in a manner otherwise ordered by the Court.

### **9.4 Publicity**

Except as otherwise required for the purpose of approving this settlement and notifying the Class of the settlement:

- (a) the Plaintiffs agree that they shall issue a press release substantially in the form attached hereto as **Schedule D** and that any public statements made by Class Counsel or the Plaintiffs shall be consistent with the press release;
- (b) in respect of any communications permitted under 9.4 (a) the Parties shall act in good faith to ensure that any public statements, comments or communications of any kind about any descriptions of the settlement and the terms of this Settlement Agreement are balanced, fair and accurate; and

- (c) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Court or as may be required under any applicable law.

## **ARTICLE X - CLASS COUNSEL AND ADMINISTRATION FEES**

### **10.1 Counsel Fees and Plaintiffs' Honoraria**

- (a) Class Counsel will seek the Court's approval to fix Class Counsel Fees, and that the Class Counsel Fees and Administration Expenses may be paid from the Settlement Fund contemporaneously with approval of this Settlement Agreement before transferring the balance of the Settlement Fund to the Claims Administrator.
- (b) Class Counsel will seek the Court's approval for an honorarium to be paid to the Plaintiffs in the amount of CAD \$5,000 each on a *quantum meruit* basis for the contributions that they have made in the prosecution of this Class Action for the benefit of the Class as a whole (the Plaintiffs' Honorarium), which, if approved, may also be paid from the Settlement Fund before transferring the balance of the Settlement Fund to the Claims Administrator.

### **10.2 Administration Expenses**

The Defendant shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of Class Counsel, the Plaintiffs or the Class, all of which shall be paid from the Settlement Fund, as approved by the Court.

## **ARTICLE XI - MISCELLANEOUS**

### **11.1 Motions for Directions**

- (a) Class Counsel, Defence Counsel, or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol at any time.
- (b) CBC may apply to the Court for directions in respect of the implementation or application of the Independent Review Protocol, on notice to the Parties. Any motion in relation to the Records that contemplates a deviation from the Independent Review Protocol shall be made on notice to the CBC.
- (c) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

### **11.2 Headings, etc.**

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

### **11.3 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **11.4 Governing Law**

This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and Canada.

### **11.5 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

### **11.6 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiffs and the Defendant. The Parties recognize that those provisions relating to the Independent Review Protocol, and those provisions providing releases in favour of the CBC, may not be modified or amended without the written consent of the CBC.

### **11.7 Binding Effect**

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, the Class Members, the Defendant, the Releasors, and the Releasees once it is approved by a Final order of the Court. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors, once it is approved by Final order of the Court.



### **11.8 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **11.9 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

### **11.10 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, a French translation of the Notices shall be prepared, the cost of which shall be paid for from the Settlement Fund. The Parties agree that such translation is for the convenience of French speaking Class Members.

### **11.11 Recitals**

The Recitals to this Settlement Agreement form part of the Settlement Agreement.

### **11.12 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Independent Reviewer Protocol
- (b) **Schedule B** – Distribution Protocol
- (c) **Schedule C** – Notice Plan
- (d) **Schedule D** – Draft Press Release

### **11.13 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) They or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;
- (c) They or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

#### **11.14 Authorized Signatures**

Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of their respective client(s).

Dated at Toronto, Ontario this 10th day of November, 2021

**ARTHUR REDUBLO and DONNA MOHER**

Plaintiffs

By their lawyers,

**WADDELL PHILLIPS PROFESSIONAL CORPORATION  
HOWIE SACKS & HENRY LLP  
SCHNEIDER LAW FIRM**

Per:   
**Margaret L. Waddell**

Dated at Toronto, Ontario this 10th day of November, 2021

**8262900 CANADA INC. o/a CAREPARTNERS**

By its lawyers,

**Tyr LLP**

Per:   
**James Bunting**

## **SCHEDULE A - INDEPENDENT REVIEW PROTOCOL**

All capitalized terms shall have the meaning ascribed to them in the Settlement Agreement dated November 10, 2021 between the Plaintiffs Arthur Redublo and Donna Moher, and the Defendant 8262900 Canada Inc. o/a CarePartners, in respect of the Class Action (the “**Settlement**”), unless otherwise defined.

Pursuant to the Settlement, the Independent Reviewer will (i) instruct its team to carry out the Independent Review and (ii) produce the Names List and Other Identifying Information Table, both as defined below. This protocol sets out the procedures to be followed in carrying out these functions.

### **I – The Review Procedure**

The Records will be delivered directly to the Independent Reviewer by the lawyers for the CBC.

The Independent Reviewer will upload the Records into a review platform that has access restricted to only those members of the Independent Reviewer’s review team assigned to the project. The Records will then be reviewed to identify any information that identifies or could lead to the identification of Affected Class Members.

The Independent Reviewer will instruct its review team to review the Records in an expedient manner. The Independent Reviewer may exclude from the review any types of documents if, after review of several such documents, the Independent Reviewer is satisfied that this type of document will not contain any information that identifies or could lead to the identification of Affected Class Members. If multiple documents are identifiable as relating to the same Affected Class Member (e.g. if the documents are identifiable as all coming from the same patient or employee file, or otherwise relate to the same patient or employee), the Independent Reviewer need only review the related documents sufficient to identify the Affected Class Member, and their contact information.

The review team will record any clear identifying information as described below. However, the Independent Review is not intended to catalogue all identifying information contained in each Record if the documents relate to an already identified Affected Class Member, nor is the Independent Reviewer required to scour each document or reformat or extract files that are not readily readable.

The scope of the Independent Reviewer’s activities shall be limited to those set out in this review protocol, and in particular shall not include any activities designed to extract information beyond any identifying information of potential class members that is apparent on the face of the Records as set out in this protocol (including but not limited to any information relating to the authors or origins of the Records, or individuals who have previously accessed the Records) or to communicate any information to the parties beyond the deliverables outlined in this review protocol. The scope of the Independent Reviewer’s activities shall not go beyond what is set out in this review protocol.

In accordance with this focus, reviewers should undertake a two-step approach to reviewing the Records and recording relevant information therein.

## 1. Records Containing Names

- a. Identification: First, determine if the Record under review lists the name of an individual (patient or employee) to whom the document pertains. For example, a patient intake form might list the name of a patient followed by their contact information and health card number, or a T4 tax slip might identify an employee's name, contact information and earnings. If the reviewer can identify a name on the Record, there is no need to examine the document further or identify other personal information, unless the individual's contact information is readily identifiable on the same document.
- b. Recording Names and Contact Information: Upon identification of an individual's name, the reviewer will perform three tasks: (i) tag the document to the category "Name", as configured on the Independent Reviewer's document review platform; (ii) type the full name in the "Notes" section of the document review platform, and their address or email address ("**Contact Information**"), if it is shown on the document; (iii) enter the full identified name and the Contact Information in an Excel spreadsheet created to record identified names and Contact Information.

## 2. Records Containing Other Identifying Information

- a. Identification: If a Record does not identify the name of the individual it concerns, the reviewer should then examine the document for "**Other Identifying Information**" as defined and described in the table below. If the reviewer can identify Other Identifying Information in a Record, there will be no need to examine the document further. If the document contains no Other Identifying Information, the reviewer can conclude that the document is irrelevant.
- b. Recording Other Identifying Information: Upon identification of Other Identifying Information, the reviewer will perform three tasks: (i) tag the document to a "OHIP Number", "Employee Number", "SIN Number", "Address", or "Financial Information" category, as configured on the Independent Reviewer's document review platform; (ii) type the details of the identifying information in the "Notes" section; and (iii) enter the Other Identifying Information in an Excel spreadsheet created to record such information. If the document contains no Other Identifying Information, it should be marked "Not Relevant".

### Table of "Other Identifying Information"

Other Identifying Information constitutes the five (5) categories of information described below.

Type	Description
OHIP Number	Each eligible resident of the Province of Ontario that registers for the

	Ontario Health Insurance Plan (OHIP) is assigned a unique 10-digit health number, which may be followed by a single letter or two letter version code.
Employee Number	In Canada, an Employee Number is a unique number ascribed to each employee by employers for record-keeping and bookkeeping purposes.
SIN	A Social Insurance Number (SIN) is a 9-digit number required to work in Canada and/or access government programs and benefits.
Financial Information	In the context of this review, Financial Information will include any of the following: (i) a credit card number or (ii) bank account number.
Address	It is possible that some documents may not include an Affected Class Member's name, but may have their mailing address or an email address on the document.

## **II – Preparation of the Independent Review Deliverables**

Following completion of the Independent Review, the Independent Reviewer shall prepare two deliverables, which will be provided to Class Counsel and to the lawyers for the Defendant.

1. **The Names List:** the Excel spreadsheet list of all names and associated contact information identified by reviewers in accordance with step 1 of the review procedure described above.
2. **The Other Identifying Information Table:** the Excel spreadsheet list including (i) the information tag (i.e. “OHIP Number”, “Employee Number”, “SIN”, “Address”, or “Financial Information”), and (ii) the Other Identifying Information identified by reviewers in accordance with step 2 of the review procedure described above.

## **III – Use of Data Analytics Tools and Processes**

The Independent Reviewer may use its professional judgment to apply such data analytics tools and processes as it determines reasonable and defensible to enhance the quality and efficiency of the Independent Review process.

## **IV Instructions**

The Independent Reviewer may seek directions from Class Counsel should any questions arise during the course of the review. If necessary, Class Counsel will consult with the lawyers for CBC or Defence Counsel before providing such instructions.

### **III – Deletion of the Records**

The Independent Reviewer shall not provide copies of or information from the Records, or any portion thereof, to any person, except as expressly permitted by this review protocol, or without the express written consent of the parties and the CBC. Following delivery of the spreadsheets to the lawyers, and confirmation from the lawyers that the spreadsheets are in satisfactory form, the Independent Reviewer shall permanently delete or otherwise destroy the Records and any and all copies of the Records from its review platform or otherwise in its possession, and will confirm same to Class Counsel, the lawyers for the Defendant, and to the lawyers for CBC in the form of a statutory declaration.

**SCHEDULE B - DISTRIBUTION PROTOCOL AND ADMINISTRATOR'S  
GUIDELINES**

1. The Claims Deadline shall be 90 days after the date the Claims Administrator commences the noticing program by emailing and mailing the short form Notice of Certification and Settlement Approval to the Affected Class Members.
2. Only Affected Class Members who are listed in the Final Affected Class Member List will qualify to receive compensation under the Settlement.
3. All Affected Class Members who submit a valid Claim Form by the Claims Deadline are Eligible Class Members and will be entitled to an equal share of the net Settlement Fund.
4. The Claims Administrator shall determine whether a claimant is an Eligible Class Member using the Final Affected Class Member List and comparing that List to the Claim Forms received by the Claims Deadline or any extension thereof.
5. The Claims Administrator will promptly provide notice to any claimant who is not on the Final Affected Class Member List that they are not an Eligible Class Member and therefore not entitled to receive a payment under the Settlement (the "Disqualification Notice").

There will be no right of appeal from the decision of the Claims Administrator with respect to qualification or disqualification as an Eligible Class Member.

6. The Claims Administrator shall have the absolute discretion to accept otherwise valid claim forms received within 25 days after the Claims Deadline, if the Affected Class Member provides a reasonable explanation for the delay in the submission of the claim form arising from circumstances beyond the Affected Class Member's control. The decision of the Claims Administrator to accept or reject any late claim forms shall not be subject to review or appeal.
7. Claims may be made on behalf of the Estate of any deceased Affected Class Member by the Executor of the Estate providing proof of death of the Affected Class Member, and their appointment as Executor in a form satisfactory to the Claims Administrator in its sole discretion. If an Estate claim is accepted for a deceased Affected Class Member, the payment shall be made to the Executor on behalf of the Estate as the Executor may direct.
8. As soon as possible following the expiry of the Claims Period, inclusive of the 25-day extension, the Claims Administrator will distribute the net Settlement Funds to the Eligible Class Members on a pro rata basis by sending to each Eligible Class Member an electronic fund transfer. Eligible Class Members may elect to receive their payment by cheque, in which case the total amount to be paid to them will be reduced by \$5.00 to account for the additional administration costs.
9. Six months after the last cheque has been delivered to Eligible Class Members, any uncashed settlement cheques shall be stale-dated. Any amount remaining in the Settlement

Fund shall then be paid, *cy-près*, to the Public Interest Advocacy Centre to be allocated towards its services in respect of consumer privacy issues.

10. The Claims Administrator will report to the Court regarding the disposition of the Net Settlement Fund to Eligible Class Members, including the number of Eligible Class Members to whom payments were made, the payment of the Settlement Administration Expenses, and the distribution of any remaining Settlement Fund *cy-pres*, to the Public Interest Advocacy Centre. The report to the Court shall be delivered to Class Counsel, the lawyers for the Defendants and to the Court as soon as practicable after the completion of the Settlement administration.



**SCHEDULE C - NOTICE PLAN****A. Notice of Proposed Settlement and Approval Hearing (Settlement Hearing Notice)**

1. Class Counsel will publish a provincial press release in English advising of the hearing for consent certification of the action as a class proceeding for settlement purposes, and for approval of the settlement. The press release will briefly outline the key features of the settlement, and include a link to Class Counsels' web pages dedicated to the proceeding.
2. Class Counsel will post an update to their firm websites advising of the hearing for certification of the action for settlement purposes and for approval of the settlement (the Settlement Hearing). The update will set out the key terms of the proposed settlement, explain the procedure for opting out of the Action if the settlement is approved, and explain the process for objecting to the proposed settlement, or the proposed class counsel fees. Class Counsel will post the Notices of the Settlement Hearing (the Settlement Hearing Notices) in English on their websites, as well as the executed Settlement Agreement. Once filed with the court, Class Counsel will also post a link to the Plaintiffs' motion record for settlement approval and Class Counsel's motion record for fee approval.
3. Class Counsel will post links to the Settlement Hearing Notices on their Twitter and LinkedIn accounts.
4. Class Counsel will email the Settlement Hearing Notices to all putative class members who have contacted them about this action.
5. The Defendant will mail or email the Settlement Hearing Notices to the 908 living patients whose information was attached to the June 11, 2018 Team Orangeworm email, and whom it contacted directly to advise of the cyber-breach.
6. The Defendant will email the Settlement Hearing Notices to all non-unionized employees and contractors of CarePartners employed in the period from January 1, 2010, to June 11, 2018.
7. The Defendant will email the Settlement Hearing Notices to all living patient class members for whom it has a readily available email address. Alternatively, the Defendant will provide a list of such individuals to Class Counsel including name, address and email address, and Class Counsel will then email the Settlement Hearing Notices to these individuals.
8. Within 30 days of the Court's order approving this Notice Protocol, the Defendant will provide to Class Counsel in Excel spreadsheet format a list of all those putative class members referenced in #5 - #7, above, including the putative class members' name, contact information, and email address, where available.
9. The Defendant will post the Settlement Hearing Notices in English on the homepage of their website.

**B. Notice of Certification and Settlement and Approval (Certification and Settlement Approval Notice)**

1. Class Counsel will publish a provincial press release in English advising of the certification of the action as a class proceeding for settlement purposes and approval of the settlement. The press release will be substantially in the form of Schedule D to the Settlement Agreement.
2. Class Counsel will post an update to their firm websites advising of the certification of the action for settlement purposes and approval of the settlement. The update will set out the key terms of the settlement, explain the procedure for opting out of the Action and the opt out deadline, and explain the process for applying to receive a portion of the settlement proceeds. Class Counsel will post the long form and short form notices that the action has been certified and the settlement approved (the Certification and Settlement Approval Notices) in English on their websites, and the executed Settlement Agreement.
3. Class Counsel will post links to the Certification and Settlement Approval Notices on their Twitter and LinkedIn accounts.
4. The Defendant will post the short form Certification and Settlement Approval Notices in English on the homepage of their website.
5. The Claims Administrator will create a dedicated webpage for this settlement, which will include information about the Settlement Agreement, the certification of the action for settlement purposes and approval of the settlement. The webpage will explain the procedure for opting out of the Action and the opt out deadline and will explain the process for applying to receive a portion of the settlement proceeds. The webpage will include both the short form and long form Certification and Settlement Approval Notices in English.
6. After the Independent Review is completed, the Claims Administrator will be provided with the Names List created by the Independent Reviewer.
7. The Defendant will provide to the Claims Administrator an Excel spreadsheet listing all unionized employees and its Officers and Directors. The Claims Administrator will delete from the Names List any unionized employees and the Officers and Directors to create the **“Updated Names List”**.
8. After the Independent Review is completed, the Defendant will complete its obligations under Article 9.1(b) of the Settlement Agreement to identify the Affected Class Members and their last known contact information from the Other Identifying Information Table and will add to the Other Identifying Information Table the names of such Affected Class Members and their last known contact information to create the **“Updated Other Identifying Information Table”**.
9. The Defendant will provide the Updated Other Identifying Information Table to the Claims Administrator and to Class Counsel as soon as it is prepared. The Claims Administrator will then delete any unionized employees and Officer and Directors from the Updated

Other Identifying Information Table to create the “**Final Other Identifying Information Table.**”

10. The Claims Administrator will merge the Final Other Identifying Information Table with the Updated Names List, removing any duplicate entries and any entries where no contact information has been identified, (the “**Final Affected Class Member List**”) and will provide a copy to Class Counsel.
11. The Claims Administrator will use the Final Affected Class Member List to email the short form Certification and Settlement Approval Notices in English to class members listed on this List and will mail the short form Certification and Settlement Approval Notices in English to any Affected Class Member on this List for whom no email is available.

**SCHEDULE D – DRAFT PRESS RELEASE****SETTLEMENT OF CLASS ACTION REGARDING CAREPARTNERS  
CYBER ATTACK**

**Toronto ON.** A privacy breach class action brought against CarePartners has been certified as part of a settlement of the claim. The Ontario Superior Court has approved an amount of up to \$3,444,000 in settlement of the action.

The class action relates to a cyber-attack that targeted CarePartners' computer systems in or around June 11, 2018. The class action alleges that the personal information of patients and staff was inappropriately accessed as a result of the cyber-attack. Some of the information was removed and ultimately produced to the Canadian Broadcasting Corporation by the hackers in an attempt to extort a ransom from CarePartners. The personal information that was accessed by the hackers may include detailed medical records, financial information, employment records, and personal contact information, among other things.

At the time of the cyber-attack, CarePartners was the custodian of records relating to approximately 237,000 patients and had over 4,500 employees and contractors. Under the terms of the settlement, any patient or non-unionized employee whose personal health information, or personal information was produced to the CBC may make a claim for compensation. The amount of compensation to which the class member will be entitled will depend on the number of affected persons.

More information about this class action and the terms of the settlement are available at [www.carepartnersclassaction.ca](http://www.carepartnersclassaction.ca) or <https://www.hshlawyers.com/expertise/mass-tort-class-action-litigation/carepartners-class-action-lawsuit/>. The representative plaintiffs, Arthur Redublo and Donna Moher are represented by the Toronto law firms of Howie, Sacks & Henry LLP, Waddell Phillips PC, and Schneider Law Firm.