

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

LARRY W. JANDER, RICHARD J.  
WAKSMAN, and all other individuals  
similarly situated,

Plaintiffs,

v.

RETIREMENT PLANS COMMITTEE OF  
IBM, RICHARD CARROLL, MARTIN  
SCHROETER, and ROBERT WEBER,

Defendants.

No. 1:15-cv-03781-WHP

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE is entered into by and between Named Plaintiffs, as defined in Section 1.22 below, on the one hand, and Defendants, as defined in Section 1.12 below, on the other. Capitalized terms and phrases have the meanings provided in Section 1 below or as specified elsewhere in this Settlement Stipulation.

**1. DEFINITIONS**

- 1.1. “Action” means *Jander et al. v. Retirement Plans Committee of IBM et al.*, No 1:15-cv-03781-WHP, a putative class action pending before the United States District Court for the Southern District of New York.
- 1.2. “IBM” means International Business Machines Corporation.
- 1.3. “IBM Stock Fund” means the investment option in the Plan that invests primarily in IBM common stock.
- 1.4. “CAFA” means the Class Action Fairness Act of 2005.
- 1.5. “Case Contribution Award” means any monetary amount ordered by the Court to be paid from the Qualified Settlement Fund in recognition of the Named Plaintiffs’ assistance in the prosecution of this Action and payable pursuant to Section 13.3. Defendants shall not take any position with respect to a Case Contribution Award and will leave this matter to the sound discretion of the Court.

1.6. “Claim” means any and all manner of claims, actions, causes of actions, potential actions, suits, controversies, costs, damages, losses, obligations, liabilities, judgments, and demands whatsoever, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory.

1.7. “Class Counsel” means Zamansky LLC.

1.8. “Class Notice” means the notice of (i) pendency of class action, certification of Class for Settlement purposes, and Settlement; (ii) Fairness Hearing; and (iii) motion for a Case Contribution Award and attorneys’ fees and reimbursement of litigation expenses, substantially in the form attached hereto as Exhibit 1.A.

1.9. “Class Period” means the period from January 21, 2014 through and including October 20, 2014.

1.10. “Complaint” means the Fourth Amended Class Action Complaint, filed in this Action on May 10, 2019 (Dkt. 75), and any other filed complaint preceding and thus superseded by the Fourth Amended Class Action Complaint.

1.11. “Court” means the United States District Court for the Southern District of New York.

1.12. “Defendants” means the Retirement Plans Committee of IBM, Richard Carroll, Martin Schroeter, and Robert Weber.

1.13. “Defendants’ Released Claims” means any and all Claims, including Unknown Claims that Defendants asserted, or could have asserted, against the Plaintiffs’ Releasees that arise out of or relate in any way to the institution, prosecution or settlement of the Action, except for claims relating to the enforcement of this Settlement Stipulation.

1.14. “Defendants’ Releasees” means Defendants named in the Complaint and IBM, and any and all of their related entities, including, without limitation, any and all of their past or present parents, subsidiaries, affiliates, predecessors, or successors, Successors-In-Interest, as well as any and all of its or their current or former officers, directors, employees, associates, members of their immediate families, agents or other persons acting on their behalf, co-fiduciaries, independent fiduciaries, or other fiduciaries who had any responsibilities with respect to the Plan, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.

1.15. “Effective Date of Settlement” means the date on which all of the conditions to Settlement set forth in Section 3 of this Settlement Stipulation have been fully satisfied or waived and the Settlement shall have become Final.

1.16. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.

1.17. “Fairness Hearing” means the hearing at or after which the Court will be asked to make a final decision, pursuant to Fed. R. Civ. P. 23(e), as to whether this Settlement Stipulation is fair, reasonable and adequate to settle the Plaintiffs’ Claims against Defendants and whether the Court should approve the Settlement.

1.18. “Financial Institution” means an FDIC insured bank at which Class Counsel will establish the Qualified Settlement Fund.

1.19. “Final” when referring to the Final Approval Order or any other judgment or court order means (i) if no appeal is filed, the expiration date of the time provided for filing or noticing of any appeal under the Federal Rules of Civil Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, the later of (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a *writ of certiorari* or other form of review, or the denial of a *writ of certiorari* or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant.

1.20. “Final Approval Order” means the order of dismissal with prejudice entered by the Court as contemplated in Section 3.3 of this Settlement Stipulation, which order shall be substantially in the form set out as Exhibit 2.

1.21. “Independent Fiduciary” means a fiduciary retained pursuant to Section 3.6 and that has no “relationship to” or “interest in” (as those terms are used in the Class Exemption referred to in Section 3.6) any of the Parties.

1.22. “Named Plaintiffs” means Larry W. Jander and Richard J. Waksman.

1.23. “Net Settlement Fund” means the Qualified Settlement Fund less any: (i) Taxes; (ii) Settlement Administration Expenses; (iii) costs awarded by the Court; (iv) attorneys’ fees awarded by the Court; and (v) Case Contribution Award.

1.24. “Notice Plan” means the issuance of the Class Notice and Summary Notice, as contemplated in Section 3.2.2.

1.25. “Parties” means Plaintiffs and Defendants.

1.26. “Person” means an individual, partnership, corporation or any other form of organization.

1.27. “Plaintiffs” means Named Plaintiffs and each and every Settlement Class member and their Successors-In-Interest.

1.28. “Plaintiffs’ Released Claims” means any and all manner of Claims, including Unknown Claims that Plaintiffs asserted in the Action or could have asserted individually and/or on behalf of the Settlement Class, in any forum, that arise out of or are based upon, in whole or in part, directly or indirectly, any allegations, transactions, facts, matters, occurrences, representations, actions, omissions, failures to act, statements or disclosures involved, set forth or referred to in the Complaint filed in the Action. Notwithstanding the foregoing, claims to enforce the

Settlement are not included in this definition.

1.29. “Plaintiffs’ Releasees” means Plaintiffs, and any and all of their related parties, including, without limitation, any and all members of their immediate families, agents or other persons acting on their behalf, attorneys, advisors, financial advisors, accountants, assigns, creditors, heirs, estates and legal representatives.

1.30. “Plan” means the IBM 401(k) Plus Plan.

1.31. “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund, proposed by Class Counsel, and approved by the Court. Subject to Section 12.4, the Plan of Allocation proposed by Class Counsel is set out in Exhibit 3.

1.32. “Preliminary Approval Order” means the order to be entered by the Court (i) preliminarily approving the Settlement Stipulation; (ii) preliminarily certifying the Settlement Class solely for Settlement purposes; (iii) preliminarily determining that the proposed form of Class Notice and Summary Notice fairly and adequately describes the terms and effect of this Settlement Stipulation, gives notice to the Settlement Class of the time and place of the hearing of the motion for final approval of the Settlement Stipulation, and describes how the recipients of the Class Notice may object to approval of the Settlement, the proposed manner of communicating the Class Notice and Summary Notice to the members of the Settlement Class is the best notice practicable under the circumstances, and the proposed provision of Class Notice and Summary Notice to potential members of the Settlement Class otherwise meets all of the requirements of Rule 23 of the Federal Rules of Civil Procedure and any other applicable law; and (iv) scheduling the Fairness Hearing. The Preliminary Approval Order shall be substantially in the form set out in Exhibit 1.

1.33. “Qualified Settlement Fund” is defined in Section 10.

1.34. “Settlement” means the settlement to be consummated under this Settlement Stipulation pursuant to the Final Approval Order.

1.35. “Settlement Administration Expenses” means the reasonable and actually incurred fees, costs and expenses associated with retaining an Independent Fiduciary, retaining the Settlement Administrator, establishing and maintaining the Qualified Settlement Fund at the Financial Institution, providing notices required by CAFA, providing Class Notice, publishing Summary Notice, implementing the Notice Plan, and distributing payments to Participants Without Active Plan Accounts at the time of distribution of the Final Individual Dollar Recovery, as defined in the Plan of Allocation.

1.36. “Settlement Administrator” means a third party retained by Class Counsel, subject to approval by Defendants and of the Court, to implement the Notice Plan, administer the Settlement, and distribute payments to Participants Without Active Plan Accounts at time of distribution of the Final Individual Dollar Recovery, as defined in the Plan of Allocation.

1.37. “Settlement Class” means all Persons who were participants in or beneficiaries of the Plan during the Class Period and whose Plan accounts included investments in the IBM Stock Fund.

1.38. “Settlement Payment” means the Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000.00) to be paid by Defendants to the Qualified Settlement Fund within thirty (30) calendar days after the later of (i) the preliminary approval by the Court of the Settlement, or (ii) the date on which Defendants’ counsel receives wire instructions for the Qualified Settlement Fund and the taxpayer identification number and IRS Form W-9 for the Qualified Settlement Fund.

1.39. “Settlement Stipulation” means this Settlement Agreement and Release between Plaintiffs and Defendants.

1.40. “Settlement Stipulation Execution Date” means the date the final signature of the Parties is affixed to this Settlement Stipulation.

1.41. “Successor-In-Interest” means a Person’s estate, legal representatives, heirs, successors or assigns, and any other Person who can make a legal claim by or through such Person.

1.42. “Summary Notice” means the form of notice substantially in the form attached hereto as Exhibit 1.B, which shall be published in *USA Today* and *PR Newswire*.

1.43. “Taxes” means (i) all federal, state, local and/or foreign taxes of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) arising with respect to the Qualified Settlement Fund as a separate taxpayer (including any taxes for any period during which the Qualified Settlement Fund does not qualify as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, if any); and (ii) the reasonable expenses and costs incurred by Class Counsel or the Settlement Administrator in connection with determining the amount of, and reporting and paying, any taxes owed by the Qualified Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

1.44. “Unknown Claims” means (i) any and all Plaintiffs’ Released Claims which any Plaintiff or any other Settlement Class member, or each of their agents or attorneys does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and (ii) any Defendants’ Released Claims which any Defendant or each of their agents or attorneys, or their current or former officers, directors or employees, does not know or suspect to exist in his, her or its favor at the time of the release of such claims, which in the case of both (i) and (ii) if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. The Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class members shall be deemed to have waived, and by operation of the Final Order, shall have waived expressly, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable or equivalent to California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**

**HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
THE DEBTOR OR RELEASED PARTY.**

Plaintiffs acknowledge, and shall be deemed by operation of law to have acknowledged, that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement, but that it is their intention to release and settle fully, finally, and forever any and all of the Plaintiffs' Released Claims, subject to the terms and conditions provided herein, and in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs and Defendants acknowledge, and each of the other Settlement Class members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

**2. RECITALS**

2.1. Class Counsel has conducted an extensive investigation into the facts, circumstances and legal issues associated with the allegations made in the Action. This investigation has included, *inter alia*: (a) inspecting, reviewing and analyzing documents produced by or otherwise relating to the IBM Stock Fund, Defendants, and the Plan, including documents produced in discovery and numerous public documents, including press releases and regulatory filings; and (b) researching the applicable law with respect to the claims asserted in the Action and the defenses and potential defenses thereto.

2.2. Plaintiffs allege that Defendants breached their fiduciary duties under ERISA during the Class Period because Defendants allegedly knew or should have known that the IBM Stock Fund was an imprudent Plan investment option under ERISA. Specifically, Plaintiffs allege that during the Class Period, the price of IBM common stock was artificially inflated and Defendants should have issued public disclosures to the market concerning the alleged artificial inflation.

2.3. Defendants deny any and all liability to Plaintiffs and the Plan, and deny any and all allegations of wrongdoing made in the Action. Defendants deny that any breach of fiduciary duty occurred involving the IBM Stock Fund, that the price of IBM common stock was artificially inflated during the Class Period, and that the alleged breach caused the Plan or participants to suffer a loss. Defendants further contend that they acted prudently at all times and in all respects with regard to the Plan.

2.4. The initial complaint in the Action (Dkt. 1) was filed on May 15, 2015, and amended thereafter on August 13, 2015 (Dkt. 12). Defendants and IBM (then named as a defendant in the Action) moved to dismiss the amended complaint October 26, 2015. (Dkts. 19-21.) The Court granted the motion and dismissed the case on September 7, 2016 without prejudice. (Dkt. 34.) Plaintiffs filed a second amended complaint on October 21, 2016 against Defendants only. (Dkt. 38.) Defendants filed a motion to dismiss the second amended complaint on December 16, 2016. (Dkts. 43-45.) The Court granted the motion and dismissed the case with prejudice on September 29, 2017. (Dkt. 56.) Plaintiffs appealed.

2.5. On appeal, the U.S. Court of Appeals for the Second Circuit (the "Second Circuit") reversed the Court's order of dismissal on December 10, 2018. (*See* Dkt. 61.) On remand,

Plaintiffs filed a third amended complaint and, subsequently, the Complaint (Dkts. 74, 75), and the parties commenced discovery.

2.6. The Supreme Court of the United States granted Defendants' petition for a writ of certiorari on June 3, 2019, and the Court stayed all proceedings. (*See* Dkt. 79.) On January 14, 2020, the Supreme Court issued a *per curiam* opinion vacating the Second Circuit's decision and remanding the case for further proceedings. On June 22, 2020, the Second Circuit again reversed the Court's 2017 judgment and remanded the case for further proceedings consistent with its December 10, 2018 decision.

2.7. The Court lifted the stay September 11, 2020 (Dkt. 90) and entered a discovery scheduling order on September 23, 2020 (Dkt. 92). On December 18, 2020, the Court entered an order scheduling briefing on Plaintiffs' motion for class certification. (Dkt. 104.) On January 26, 2021, the Court granted a brief extension of all case deadlines to allow the parties to discuss potential mediation of the Action. (Dkt. 108.)

2.8. The Parties and their counsel participated in a mediation session via videoconference on February 15, 2021 with Robert A. Meyer of JAMS (the "Mediator") as well as subsequent discussions with the Mediator. These discussions ultimately resulted in the Settlement set forth in this Settlement Stipulation.

2.9. Class Counsel believe that the Settlement will provide a benefit to the Settlement Class, and that, when that benefit is weighed against the attendant risks of continuing the prosecution of the Action, the Settlement represents a fair, reasonable and adequate resolution of the claims of the Settlement Class against Defendants. In reaching this conclusion, Class Counsel has considered, among other things, the risks of litigation, the time necessary to achieve a final resolution through litigation, the complexity of the claims set forth in the Complaint and the benefit accruing to the Settlement Class under the Settlement.

2.10. Defendants desire to resolve fully and settle with finality the Action and all of Plaintiffs' Released Claims for themselves and the Plan, thereby avoiding the risk, expense, inconvenience, burden, distraction and diversion of its personnel and resources, and uncertainty of outcome that is inherent in any litigation, associated with the Action.

2.11. Plaintiffs and Defendants have thus reached this Settlement by and through their respective counsel on the terms and conditions set forth herein.

### **3. CONDITIONS TO EFFECTIVENESS OF THE SETTLEMENT**

3.1. Effectiveness of Settlement. The Settlement provided for in this Settlement Stipulation and the Defendants' obligations hereunder shall not become binding unless and until each and every one of the following conditions in Sections 3.2 through 3.8 shall have been satisfied or expressly waived pursuant to Section 15.5.

3.2. Court Approval. The Settlement contemplated under this Settlement Stipulation shall have been preliminarily and finally approved by the Court, as provided for in this Section 3.2. The Parties agree jointly to recommend to the Court that it approve the terms of this Settlement Stipulation and the Settlement contemplated hereunder. The Parties agree to undertake their best

efforts, including all steps and efforts contemplated by this Settlement Stipulation, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Stipulation) or otherwise, to carry out this Settlement Stipulation, including the following:

3.2.1. Motion for Preliminary Approval of Settlement and of Notices. The Court shall have approved the Motion for entry of the Preliminary Approval Order that Plaintiffs file by issuing the Preliminary Approval Order.

3.2.2. Issuance of Class Notice and Summary Notice. On the date and in the manner set by the Court in its Preliminary Approval Order, Class Counsel shall have implemented the Notice Plan. The Parties shall confer in good faith with regard to the form of the Class Notice and Summary Notice in an effort to utilize cost effective forms of notice. Defendants, at their expense, shall provide reasonable cooperation with respect to the Class Notice, including by providing the last known participant addresses and contact information in electronic spreadsheet format to the extent Defendants have such information reasonably available, or may request such information from any of the Plan's service providers. Any data transferred by Defendants shall be subject to privacy and security standards imposed by Defendants.

3.2.3. Settlement Class Certification.

(a) The Parties shall stipulate to a certification of the Action as a class action for settlement purposes pursuant to Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure. If the Settlement does not become Final, then no Settlement Class will be deemed to have been certified by or as a result of this Settlement Stipulation, and the Action will for all purposes revert to its status as of February 15, 2021.

(b) The Court shall have certified the Action as a non-opt-out class action (preliminarily and finally) for settlement purposes pursuant to Rule 23(b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure, with the Settlement Class as defined in Section 1.37, Named Plaintiffs as the Settlement Class representatives, and appointing Class Counsel. This condition shall be satisfied if any member of the Settlement Class is named as the Settlement Class representative.

3.2.4. Motion for Final Approval of Class Action Settlement. On or before the date set by the Court in its Preliminary Approval Order, or such adjourned date set by the Court, Plaintiffs shall have moved for a Final Approval Order.

3.2.5. Fairness Hearing. On the date set by the Court in its Preliminary Approval Order, or such adjourned date set by the Court, the Parties shall participate in the Fairness Hearing during or after which the Court will determine by Final Approval Order whether: (i) the Settlement on the terms and conditions provided for in this Settlement Stipulation is fair, reasonable and adequate and should be approved by the Court; (ii) the Final Approval Order should be entered; (iii) the Class should be certified as a non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule

of Civil Procedure 23; (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice and Summary Notice to Settlement Class members; (v) the requirements of CAFA have been satisfied; (vi) the Plan of Allocation consistent with Section 12.4 shall be approved; (vii) to approve a Case Contribution Award to be paid from the Qualified Settlement Fund and, if so, the amount; (ix) to award attorneys' fees and further expenses to be paid from the Qualified Settlement Fund to Class Counsel and, if so, the amount, and (x) to approve payment from the Qualified Settlement Fund for Settlement Administration Expenses. The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order at the Fairness Hearing and will not do anything inconsistent with obtaining such a Final Approval Order.

3.3. Finality of Final Approval Order. The Final Approval Order shall have become Final.

3.4. Compliance with CAFA. The Court shall have determined that Defendants complied with CAFA and its notice obligations by providing appropriate federal and state officials with information about the Settlement.

3.5. Payment of the Settlement Payment. Defendants shall have deposited the Settlement Payment into the Qualified Settlement Fund as provided for in Section 10.

3.6. Approval by Independent Fiduciary.

3.6.1. Defendants may, in their sole discretion, make approval of the provisions of the Settlement Stipulation by an Independent Fiduciary a condition to the Settlement. Should Defendants elect to exercise this right, at least ten (10) days prior to the Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement in accordance with Prohibited Transaction Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632 (the "Class Exemption") and the amendment thereto, adopted June 15, 2010, by the United States Department of Labor, 75 Fed. Reg. 33,830. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement, then the Settlement Stipulation shall terminate and become null and void and the provisions of Section 14.2 shall apply; provided, however, that the Settlement Stipulation shall not terminate and become null and void and the provisions of Section 14.2 shall not apply if the Parties, through their counsel, agree in writing prior to the Fairness Hearing to modify the Settlement to satisfy objections by the Independent Fiduciary to the Settlement, or, at the sole election of Defendants, Defendants agree that Section 3.6 shall not be a condition precedent to the Settlement becoming Final.

3.6.2. The Independent Fiduciary's fees and expenses shall be paid by from, or reimbursed by, the Qualified Settlement Fund as a Settlement Administration Expense. The Independent Fiduciary shall acknowledge in writing that it is a fiduciary with respect to the Settlement of this Action on behalf of the Plan. Defendants and Class Counsel will comply with reasonable requests for non-privileged information made by the Independent Fiduciary that are for the purpose of reviewing and evaluating the Settlement Stipulation.

3.7. Dismissal of Action. The Action shall have been dismissed with prejudice as against Defendants.

3.8. No Termination. The Settlement shall not have terminated pursuant to Section 14.

3.9. Materiality of Settlement Conditions. The Parties expressly acknowledge that the Settlement is specifically conditioned upon the occurrence of each and every one of the foregoing conditions precedent prior to the Effective Date of Settlement, and that a failure of any condition set forth in Sections 3.2 through 3.8 at any time prior to the Effective Date of Settlement shall make this Settlement Stipulation, and any obligation to pay the Settlement Payment, or any portion thereof, null, void and of no force and effect.

#### **4. RELEASES AND COVENANTS NOT TO SUE**

4.1. Releases of Defendants' Releasees by Plaintiffs. Subject to Sections 4.6 and 14, upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class, and all Settlement Class members, absolutely and unconditionally release and forever discharge the Defendants' Releasees from any and all Plaintiffs' Released Claims that Plaintiffs directly, indirectly, derivatively or in any other capacity ever had, now have or hereafter may have.

4.2. Releases of the Plaintiffs' Releasees by Defendants. Subject to Sections 4.6 and 14, upon the Effective Date of Settlement, Defendants absolutely and unconditionally release and forever discharge Plaintiffs' Releasees and Class Counsel from any and all of Defendants' Released Claims.

4.3. Covenant Not to Sue Defendants' Releasees. Subject to Sections 4.6 and 14, upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class, covenant and agree (a) not to file against any Defendants' Releasees any Claim released under Section 4.1; and (b) that the foregoing covenant and agreement shall be a complete defense to any such Claims against any of Defendants' Releasees.

4.4. Covenant Not to Sue Plaintiffs' Releasees. Subject to Sections 4.6 and 14, upon the Effective Date of Settlement, Defendants covenant and agree (a) not to file against any Plaintiffs' Releasees any Claim released under Section 4.2; and (b) that the foregoing covenant and agreement shall be a complete defense to any such claims against any of the Plaintiffs' Releasees.

4.5. Plan's Release. Subject to Sections 4.6 and 14, upon the Effective Date of Settlement, the Independent Fiduciary's approval of the Settlement shall constitute a release of Plaintiffs' Released Claims that the Plan may have against Defendants' Releasees.

4.6. Claims Not Released. This Settlement Stipulation does not in any way bar, limit, waive or release any right by Plaintiffs to assert and/or recover any moneys resulting from any individual claim to vested benefits that are otherwise due under the terms of the Plan.

## **5. COOPERATION**

Defendants shall use their best efforts to provide Class Counsel with the names and last known addresses of Settlement Class members in electronic spreadsheet format (to the extent Defendants have such information) as soon as reasonably possible upon entry of the Preliminary Approval Order. No charge against the Qualified Settlement Fund shall be made by Defendants for the gathering or the provision of such information. Such information shall be used to deliver the Class Notice and to implement the Settlement, including the Plan of Allocation, and for no other purpose.

## **6. NONDISPARAGEMENT**

The Parties agree to take no action in connection with the Settlement that is intended to, or that would reasonably be expected to, harm the reputation of any other Party or IBM (including IBM's officers, directors, employees, agents or attorneys), or that would reasonably be expected to lead to unfavorable publicity for any other Party or IBM.

## **7. STATEMENTS TO THE PUBLIC**

The Parties agree that any public comments from the Parties and their counsel regarding the Settlement, other than IBM's disclosures and any other disclosures required by law, will not substantially deviate from words to the effect that the Parties have reached a mutually acceptable resolution by way of a mediated settlement and both sides are satisfied with this resolution.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1. No Assignment. Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any of Plaintiffs' Released Claims against any of the Defendants, and further covenant that they will not assign or otherwise transfer any interest in any of Plaintiffs' Released Claims.

8.2. No Surviving Claims. Plaintiffs represent and warrant that they shall have no surviving Claim or cause of action against any of the Defendants' Releasees with respect to the Plaintiffs' Released Claims.

8.3. Voluntariness.

8.3.1. The Parties each represent and warrant that they are voluntarily entering into this Settlement Stipulation as a result of arm's-length negotiations among their counsel; in executing this Settlement Stipulation they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; they are not relying upon and have not been influenced to any extent whatsoever in executing this Settlement Stipulation by any representations, statements or omissions pertaining to any of the foregoing matters by any other Party or its representatives; they knowingly waive any claim that this Settlement Stipulation was induced by any

misrepresentation or nondisclosure; and each Party assumes the risk of mistake as to facts or law.

8.3.2. The Parties each represent and warrant that they have carefully read the contents of this Settlement Stipulation; they have made such investigation of the facts pertaining to the Settlement, this Settlement Stipulation and all of the matters pertaining thereto as they deem necessary; and this Settlement Stipulation is signed freely by each Person executing this Settlement Stipulation on behalf of each of the Parties.

8.4. Signatories' Authority. Each individual executing this Settlement Stipulation on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Stipulation on behalf of, and fully bind, each principal which such individual represents or purports to represent.

## **9. NO ADMISSION OF LIABILITY**

The Parties understand and agree that this Settlement Stipulation embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Stipulation, including the furnishing of consideration for this Settlement Stipulation, shall be deemed to constitute any wrongdoing by any of the Defendants, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This Settlement Stipulation and the payment made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Moreover, Defendants specifically deny any and all such liability or wrongdoing. Neither the fact nor the terms of this Settlement Stipulation shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Settlement Stipulation or arising out of or relating to the Final Approval Order.

## **10. SETTLEMENT CONSIDERATION – THE QUALIFIED SETTLEMENT FUND**

10.1. The Qualified Settlement Fund is an account maintained at the Financial Institution which account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds therein are distributed pursuant to this Settlement Stipulation and/or further order(s) of the Court, and into which the Settlement Payment shall be deposited and held in escrow.

10.2. The Parties agree that the Qualified Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and Class Counsel or the Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Qualified Settlement Fund. Class Counsel or the Settlement Administrator also shall be solely responsible for causing payment to be made from the Qualified Settlement Fund of any Taxes owed with respect to the Qualified Settlement Fund. Defendants' Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Class Counsel or the Settlement Administrator the statement described in Treasury Regulation

§ 1.468B-3(e). Class Counsel or the Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

10.3. The Parties agree that the Qualified Settlement Fund shall be used to pay any and all: (a) Taxes, (b) Settlement Administration Expenses, (c) Case Contribution Award awarded by the Court, and (d) attorneys’ fees and expenses awarded by the Court. Defendants shall have no responsibility for the administration of the Qualified Settlement Fund or for payment of any costs and/or expenses referenced in items (a) through (d) of this Section 10.3. The balance remaining in the Qualified Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Settlement Class members pursuant to the Plan of Allocation.

10.4. Any tax returns prepared for the Qualified Settlement Fund (as well as the election set forth therein) shall reflect that all Taxes on the income earned by the Qualified Settlement Fund shall be paid out of the Qualified Settlement Fund as provided herein. Defendants’ Releasees shall have no responsibility or liability for the acts or omissions of Class Counsel or the Settlement Administrator or their agents with respect to the payment of Taxes, as described herein.

10.5. Sole Monetary Contribution. The Settlement Payment shall be the full and sole monetary contribution and consideration made by or on behalf of Defendants’ Releasees in connection with the Action and the Settlement. The Settlement Payment specifically satisfies any and all claims for costs and attorneys’ fees by Class Counsel, Case Contribution Award to Named Plaintiffs, Settlement Administration Expenses, and Taxes, in addition to any amounts to be distributed to Settlement Class members pursuant to this Settlement Stipulation. Except as set forth in Section 12, as otherwise specified in this Settlement Stipulation, or as provided for in any applicable contract of insurance, the Parties shall bear their own costs and expenses (including attorneys’ fees) in connection with effectuating the Settlement and securing all necessary Court orders and approvals with respect to same.

## **11. RESOLUTION OF DISPUTES**

If Plaintiffs and Defendants disagree as to whether each and every condition set forth in Section 3 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for mediation to the Mediator. No portion of the Settlement Payment shall be distributed (unless already paid) in the event of such a dispute until it is resolved.

## **12. SETTLEMENT ADMINISTRATOR; PAYMENT OF CLASS NOTICE, SUMMARY NOTICE AND SETTLEMENT ADMINISTRATION EXPENSES; PLAN OF ALLOCATION**

12.1. The Settlement Administrator shall discharge its duties under Class Counsel’s supervision and subject to the jurisdiction of the Court. Except as otherwise expressly provided

herein, the Defendants' Releasees shall have no responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any Person, including, but not limited to, the Settlement Class members, in connection with any such administration. Class Counsel shall cause the Settlement Administrator to implement the Notice Plan.

12.2. Following entry of the Preliminary Approval Order, Class Counsel may pay from the Qualified Settlement Fund, without further approval from the Defendants or further order of the Court, all Settlement Administration Expenses actually and reasonably incurred. In the event that the Settlement is terminated pursuant to the terms of this Settlement Stipulation, all Settlement Administration Expenses actually paid or incurred will not be returned or repaid to the Defendants.

12.3. Except as provided in Sections 12.2 and 13, no distribution of any part, or all, of the Qualified Settlement Fund shall be made until the Financial Institution has received: (a) a joint notice signed by Class Counsel and by counsel for Defendants directing that the Qualified Settlement Fund be disbursed; or (b) a Court Order, directing that the Qualified Settlement Fund be disbursed.

12.4. Plan of Allocation. The distribution of the Net Settlement Fund to the Settlement Class members shall be made in accordance with the Plan of Allocation to be proposed by Class Counsel and approved by the Court.

12.4.1. Prior to submission to the Court along with a motion for entry of the Preliminary Approval Order, Plaintiffs shall provide a copy of the Plan of Allocation to Defendants for review and comment. Defendants shall have no responsibility or liability for calculating the amounts payable to the Settlement Class members. Nor shall Defendants have any responsibility or liability for distributing the Net Settlement Fund to the Settlement Class members.

12.4.2. Any and all expenses of the implementation of the Settlement and of the Plan of Allocation shall be paid from the Qualified Settlement Fund.

12.4.3. Notwithstanding anything in this Settlement Stipulation to the contrary, the Plan of Allocation is a matter separate and apart from the Settlement between the Parties, and no decision by the Court concerning the Plan of Allocation shall affect the validity of the Settlement Stipulation or finality of the proposed Settlement in any manner.

12.4.4. The Settlement Administrator shall be responsible for implementing the Plan of Allocation. Upon the calculations being completed and reviewed by Class Counsel: (a) Class Counsel shall direct the Settlement Administrator to provide the calculations to the Recordkeeper and Trustee, as defined in the Plan of Allocation; (b) Class Counsel shall direct the Financial Institution to disburse the Net Settlement Fund applicable to Participants With Active Plan Accounts at the time of distribution of the Final Individual Dollar Recovery, as defined in the Plan of Allocation, to the Recordkeeper and Trustee, as defined in the Plan of Allocation, for distribution in accordance with the Plan of Allocation; and (c) Class Counsel shall direct the Settlement Administrator to disburse the Net Settlement Fund applicable to Participants Without Active Plan Accounts at the

time of distribution of the Final Individual Dollar Recovery, as defined in the Plan of Allocation, directly to such Settlement Class members.

12.4.5. In the event that Defendants or Class Counsel determine that it is necessary to modify the Plan of Allocation, Class Counsel and Defendants shall jointly discuss such modification and determine whether the modification is reasonable and appropriate under the circumstances. The Parties will jointly petition the Court for approval of any such material modification.

12.4.6. All inquiries by Settlement Class members concerning the amount distributed to a particular Settlement Class member shall be handled in the first instance by Class Counsel. Class Counsel and Defendants shall work cooperatively to resolve any such inquiries.

### **13. ATTORNEYS' FEES AND EXPENSES; CASE CONTRIBUTION AWARD**

13.1. Application for Fees, Expenses, and Case Contribution Award. Class Counsel shall petition the Court no later than June 25, 2021 or twenty-one (21) days prior to the Fairness Hearing, whichever is earlier, for an award of attorneys' fees and approval of a Case Contribution Award, and for reimbursement of expenses, to be paid from the Qualified Settlement Fund. The Case Contribution Award and attorneys' fees, if any amounts are awarded by the Court, shall be paid from the Qualified Settlement Fund. Defendants expressly agree not to contest or take any position with respect to any application for attorneys' fees and expenses incurred by Class Counsel with respect to this Settlement, and acknowledge that these matters are left to the sound discretion of the Court. The Parties expressly agree that the Court's disposition of the application for a Case Contribution Award and attorneys' fees and expenses will not be a reason to terminate the Settlement.

13.2. Disbursement of Fees and Expenses. Attorneys' fees and expenses as awarded by the Court shall be payable to Class Counsel from the Qualified Settlement Fund on the Effective Date of Settlement.

13.3. Disbursement of Case Contribution Award. The Case Contribution Award, if any, shall be payable from the Qualified Settlement Fund on the Effective Date of Settlement and shall be in addition to any portion of the Net Settlement Fund the Named Plaintiffs would otherwise be entitled to receive as Settlement Class members.

### **14. TERMINATION OF THE SETTLEMENT STIPULATION**

14.1. Termination by Defendants. Defendants may terminate this Settlement Stipulation in the following circumstances:

14.1.1. Before the issuance of the Final Approval Order, a Settlement Class member brings a Plaintiffs' Released Claim against any of the Defendants' Releasees, or notifies any of the Defendants' Releasees that it intends to file such a Plaintiffs' Released Claim, and the Parties are unable to consolidate such action with the Action and bring it within the scope of this Settlement Stipulation.

14.2. Automatic Termination. This Settlement Stipulation shall automatically terminate, and thereupon become null and void, in the following circumstances:

14.2.1. If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Stipulation shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final, provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith to cure any deficiency identified by the Court, and further provided that if necessary to cure any such deficiency, Class Counsel shall re-submit within a reasonable time the Preliminary or Final Approval Motion with an additional or substitute Settlement Class member as a named Class representative. Any such cure of any deficiency must be agreed to expressly in writing by the Parties.

14.2.2. If the Court issues an order in the Action modifying the Settlement Stipulation, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Stipulation as modified by the Court or by the Parties, then, provided that no appeal is then pending from such ruling, this Settlement Stipulation shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this Section.

14.2.3. If the Second Circuit reverses the Court's order approving the Settlement, and if within ninety-one (91) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Stipulation as modified by the Second Circuit or by the Parties, then, provided that no appeal or petition for review is then pending from such ruling, this Settlement Stipulation shall automatically terminate, and thereupon become null and void, on the ninety-first day after issuance of the Second Circuit order referenced in this Section.

14.2.4. If the Supreme Court of the United States reverses or remands a Second Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Stipulation as modified by the Supreme Court or by the Parties, then this Settlement Stipulation shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the Supreme Court order referenced in this Section.

14.2.5. If an appeal is pending of an order declining to approve the Settlement Stipulation or modifying this Settlement Stipulation, this Settlement Stipulation shall not be terminated until final resolution or dismissal of any such appeal, except by written agreement of the Parties.

14.3. Consequences of Termination of the Settlement Stipulation. If the Settlement Stipulation is terminated and rendered null and void for any reason, the following shall occur:

14.3.1. Within three (3) days after the date of termination of the Settlement Stipulation, Class Counsel shall notify the Settlement Administrator in writing to return to Defendants any unspent monies received from the Settlement Payment (plus interest accrued

thereon), and direct the Settlement Administrator to effect such return as soon as possible.

14.3.2. The Action shall for all purposes with respect to the Parties revert to its status as of February 15, 2021.

14.3.3. All Releases given or executed pursuant to the Settlement Stipulation shall be null and void; none of the terms of the Settlement Stipulation shall be effective or enforceable, except those provisions providing for reimbursement as set forth in Section 14.3.1; neither the fact nor the terms of the Settlement Stipulation shall be offered or received in evidence in this Action or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Stipulation.

## **15. MISCELLANEOUS PROVISIONS**

15.1. **Jurisdiction.** The Court shall retain jurisdiction over all Parties to resolve any dispute that may arise regarding this Settlement Stipulation or the orders and Class Notice referenced in Section 3, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability or termination of the Settlement Stipulation or of the Plan of Allocation. The Final Approval Order shall expressly retain jurisdiction as set forth in this Section.

15.2. **Governing Law.** This Settlement Stipulation shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case New York State Law will apply without regard to conflict of law principles.

15.3. **Severability.** The provisions of this Settlement Stipulation are not severable.

15.4. **Amendment.** Before entry of a Final Approval Order, this Settlement Stipulation may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of a Final Approval Order, this Settlement Stipulation may be modified or amended only by written agreement signed by or on behalf of all Parties, and approved by the Court.

15.5. **Waiver.** The provisions of this Settlement Stipulation may be waived only by an instrument in writing executed by the waiving party. The waiver by any Party of any breach of this Settlement Stipulation shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Stipulation.

15.6. **Construction.** None of the Parties hereto shall be considered to be the drafter of this Settlement Stipulation or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

15.7. **Principles of Interpretation.** The following principles of interpretation apply to this Stipulation:

15.7.1. Headings. The headings of this Settlement Stipulation are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Stipulation.

15.7.2. Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

15.7.3. Gender. Definitions apply to the masculine, feminine and neuter genders of each term defined.

15.7.4. References to a Person. References to a Person are also to the Person's permitted successors and assigns.

15.7.5. Terms of Inclusion. Whenever the words "include," "includes" or "including" are used in this Settlement Stipulation, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

15.8. CAFA Notices. Defendants will provide notices pursuant to CAFA through their counsel or the Settlement Administrator or other third party administrator, and the costs of engaging any such third party administrator for this purpose shall constitute Settlement Administration Expenses.

15.9. Further Assurances. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Stipulation.

15.10. Survival. All representations, warranties and covenants set forth in this Settlement Stipulation shall be deemed continuing and shall survive the Effective Date of Settlement.

15.11. Notices. Any notice, demand or other communication under this Settlement Stipulation (other than notices to Settlement Class members) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, delivered by reputable express overnight courier, or sent by email transmission, with confirmation of receipt:

IF TO NAMED PLAINTIFFS:

Jacob H. Zamansky  
Samuel Bonderoff  
Edward Glenn Jr.  
ZAMANSKY LLC  
50 Broadway, 32nd Floor  
New York, NY 10004  
Telephone: (212) 742-1414  
Facsimile: (212) 742-1177  
jake@zamansky.com

samuel@zamansky.com  
eglenn@zamansky.com

IF TO DEFENDANTS:

Lesley Bark  
Counsel, IBM Corporate Litigation  
1 North Castle Drive  
Armonk, New York 10504  
Telephone: (914) 765-4731  
bark@us.ibm.com

Lawrence Portnoy  
Michael S. Flynn  
Lindsay Schare  
DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 701-5800  
lawrence.portnoy@davispolk.com  
michael.flynn@davispolk.com  
lindsay.schare@davispolk.com

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

15.12. Entire Agreement. This Settlement Stipulation contains the entire agreement among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements relating to the subject matter hereof that were previously agreed upon orally or in writing by any of the Parties. No representations, agreements, understandings, or inducements (whether written, unwritten, verbal or otherwise) shall affect the construction or enforcement of this Settlement Stipulation (including all Claims released herein), it being agreed that the rights of the Parties hereto against any opposing party hereto shall be governed exclusively by this Settlement Stipulation.

15.13. Counterparts. This Settlement Stipulation may be executed by exchange of faxed or scanned executed signature pages, and any signature transmitted by facsimile or by email attachment for the purpose of executing this Settlement Stipulation shall be deemed an original signature for purposes of this Settlement Stipulation. This Settlement Stipulation may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

15.14. Binding Effect. This Settlement Stipulation binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and Successors-in-Interest.

IN WITNESS WHEREOF, the Parties have executed this Settlement Stipulation on the dates set forth below.

**FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS**

Dated this \_\_\_ day of April, 2021.

By: \_\_\_\_\_  
Samuel Bonderoff

Jacob H. Zamansky  
Edward Glenn Jr.  
ZAMANSKY LLC  
50 Broadway, 32nd Floor  
New York, NY 10004  
Telephone: (212) 742-1414  
Facsimile: (212) 742-1177  
samuel@zamansky.com  
jake@zamansky.com  
eglenn@zamansky.com

**FOR DEFENDANTS**

Dated this 2 day of April, 2021.

By: \_\_\_\_\_  
Lesley Bark

Counsel, IBM Corporate Litigation  
1 North Castle Drive  
Armonk, New York 10504  
Telephone: (914) 765-4731  
bark@us.ibm.com

Lawrence Portnoy  
Michael S. Flynn  
Lindsay Schare  
DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 701-5800  
lawrence.portnoy@davispolk.com  
michael.flynn@davispolk.com  
lindsay.schare@davispolk.com

IN WITNESS WHEREOF, the Parties have executed this Settlement Stipulation on the dates set forth below.

**FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS**

Dated this 2nd <sup>April</sup> ~~March~~ 2, 2021.

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

Samuel Bonderoff

Jacob H. Zamansky  
Edward Glenn Jr.  
ZAMANSKY LLC  
50 Broadway, 32nd Floor  
New York, NY 10004  
Telephone: (212) 742-1414  
Facsimile: (212) 742-1177  
samuel@zamansky.com  
jake@zamansky.com  
eglenn@zamansky.com

**FOR DEFENDANTS**

Dated this \_\_\_th day of March \_\_, 2021.

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

Lesley Bark

Counsel, IBM Corporate Litigation  
1 North Castle Drive  
Armonk, New York 10504  
Telephone: (914) 765-4731  
bark@us.ibm.com

Lawrence Portnoy  
Michael S. Flynn  
Lindsay Schare  
DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, NY 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 701-5800  
lawrence.portnoy@davispolk.com  
michael.flynn@davispolk.com  
lindsay.schare@davispolk.com