

COURT FILE NUMBER 1801-10956
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) RENÉE DELORME as Representative Plaintiff



DEFENDANT(S) His Majesty the King in the Right of Canada,
IBM Canada Limited.

A Class Proceeding under the *Class Proceedings Act*

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT NAPOLI SHKOLNIK CANADA
Attention: Clint Docken, K.C.
400, 1000 7 Avenue SW
Calgary, Alberta T2P 5L5
Ph: (403) 457-7778
Fax: 1-877-517-6373
Box: 7

James H. Brown & Associates
Attention: Nicole Keeler
2400 Sun Life Place
10123-99 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788

DATE ON WHICH ORDER WAS PRONOUNCED:	August 15, 2023
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER:	Justice Eamon

UPON THE APPLICATION of the Plaintiff; and on being advised that IBM Canada Limited consents to the order and Her Majesty the Queen in Right of Canada does not oppose the order; and on hearing the submissions from counsel for the Plaintiff and the counsel for the Defendants; and on reading the pleadings and materials filed; and on being advised that the Plaintiff and IBM Canada Limited have entered into a settlement agreement dated ● (the "Agreement");

✓ 21 April 2022 ✓

THIS COURT ORDERS that:

1. Except to the extent that they are set out in or modified by this Order, the definitions set out in the Agreement, as attached at Schedule "A", apply to and are incorporated into this Order.
2. In the event of a conflict between this Order and the Agreement, this Order shall prevail.
3. The Action is certified as a class proceeding for settlement purposes only as against IBM Canada Limited.

4. The Class is defined as:

All individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 to the date of this order.

5. Renee Delorme is appointed as the representative plaintiff for the Class.
6. The following issue is common to the Class:

Did IBM Canada Limited owe a duty of care to Class Members in respect of the Phoenix Pay System?

7. Any member of the Class who wishes to opt-out of the Action must do so by sending a signed written election to opt-out, together with the information required in the Agreement, to the Class Counsel, postmarked, couriered, faxed, or emailed on or before the end of the Opt-Out Period.

8. Any member of the Class who validly opts out of the Action is not bound by the Agreement.
9. The Agreement is fair, reasonable and in the best interests of the Settlement Class and is hereby given Settlement Approval pursuant to section 35 of the *Class Proceedings Act*, SA 2003, c 0-16.5 and shall be implemented in accordance with its terms and the terms of this Order.
10. This Order, including the Agreement, is binding upon the Parties and on every Settlement Class Member, whether or not the Settlement Class Member receives monetary compensation or value.
11. This Order, including the Agreement, is binding upon each such Settlement Class Member including those persons who are minors or mentally incapable, and the requirements of Rule 2.11 and Rule 2.19 of the Alberta Rules of Court are dispensed with in respect of this proceeding.
12. Upon the Effective Date, the Releasees are forever, finally and absolutely released by the Settlement Class Members from the Released Claims.
13. Upon the Effective Date, this Action is dismissed as against IBM with prejudice and without costs.
14. Upon the Effective Date, Settlement Class Members are barred from making any claims or taking or continuing any proceeding arising out of, or relating to, the Released Claims, except as otherwise expressly provided for in the Agreement, against any Releasee or Party.
15. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Action by the Federal Government or any other person or Party, against a Releasee, or by a Releasee against the Federal Government or any other person or Party (excepting (i) a claim by a Releasee pursuant to a policy of insurance, provided any

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such claim involves no right of subrogation against the Federal Government; and (ii) a claim in respect of a person who has validly and timely opted-out of the Settlement Classes) are barred, prohibited, and enjoined in accordance with the terms of this section.

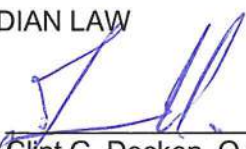
16. The Settlement Class shall not be entitled to claim or recover from the Federal Government that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise.
17. The Court shall determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.
18. This Court will retain continuing jurisdiction over the Settlement for the purposes of implementing, interpreting and enforcing the Agreement and this Order subject to the terms and conditions set out in the Agreement and this Order.
19. On notice to the Court, but without further order of the Court, the Parties to the Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Agreement.
20. The distribution of the Settlement Amount and any claim for Class Counsel Fees shall be the subject of further applications by the Plaintiff, on notice to IBM Canada Limited.
21. The manner of dissemination of the Notice of Certification and Settlement Approval shall be subject to a separate Order of this Court.
22. No Releasee shall have any responsibility, financial obligations, or liability whatsoever relating to the dissemination of the Notice of Certification and Settlement Approval, the administration of this Settlement, or any distribution that might be made of the Settlement Amount.

23. This Order may be executed in counterpart, electronically or by facsimile.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



J.C.Q.B.A

<p>CONSENTED TO this <u>5th</u> day of <u>May</u>, 2022 by</p> <p>GUARDIAN LAW</p> <p>Per:  Clint G. Docken, Q.C. Counsel for the Plaintiff</p>	<p>CONSENTED TO this ___ day of _____, 2022 by</p> <p>LENCZNER SLAGHT</p> <p>Per: _____ Paul-Erik Veel Counsel for the Defendant IBM Canada Limited</p>
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Schedule "A"

- 1 -

SETTLEMENT AGREEMENT

Made as of this 21st day of April, 2022

B E T W E E N:

Renee Delorme

Plaintiff

and

IBM Canada Limited

Defendant

WHEREAS the Plaintiff was an employee of the Federal Government;

AND WHEREAS the Plaintiff is the proposed representative plaintiff in the Action, which advances claims for alleged losses against the Federal Government and IBM relating to the Phoenix Pay System;

AND WHEREAS IBM has brought an application to strike the Plaintiff's claim against IBM as disclosing no reasonable cause of action;

AND WHEREAS the Parties wish to conclusively resolve the issues which were or could have been advanced against IBM in the Action;

NOW THEREFORE in consideration of the mutual agreements set forth below, the Parties agree as follows:

DEFINITIONS

1. In this Agreement, including the Recitals and Schedules hereto:

- (a) **Action** means the proposed class action styled as *Delorme v Her Majesty the Queen in Right of Canada et al* bearing Court file number 1801-10956 commenced in the Alberta Court of Queen's Bench at Calgary;
- (b) **Agreement** means this settlement agreement, including the recitals and schedules;
- (c) **Certification and Approval Order** means an order of the Court substantially in the form attached as Schedule A certifying the Action as a class proceeding for the sole purpose of giving effect to and implementing this Agreement, providing a process for Class Members to opt-out of the Action, approving this Agreement, declaring this Agreement to be binding upon all Settlement Class Members, and dismissing the Action with prejudice and without costs as against IBM;
- (d) **Class** means all individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 through until the date of settlement approval;
- (e) **Class Counsel** means Guardian Law Group LLP and James H. Brown and Associates;
- (f) **Class Counsel Fees** mean the fees, disbursements, costs, and all other applicable taxes or charges of Class Counsel;
- (g) **Class Member(s)** means, individually or collectively, any member or members of the Class;
- (h) **Common Issue** means: "Did IBM Canada Limited owe a duty of care to Class Members in respect of the Phoenix Pay System?"
- (i) **Court** mean the Alberta Court of Queen's Bench;
- (j) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Certification and Approval Order have expired or the Certification and Approval Order is affirmed upon a final disposition of all appeals;

- (k) **Federal Government** means the defendant, Her Majesty the Queen in Right of Canada;
- (l) **IBM** means IBM Canada Limited;
- (m) **Notice of Certification and Settlement Approval** means the form(s) of notice as may be agreed to by the Plaintiff and IBM and approved by the Court, which informs the Class of the principal elements of this Agreement, the certification of the Action as a class proceeding, approval of this Agreement, and the right to opt-out of the Action;
- (n) **Opt-Out Period** means the period of time commencing on the date on which the Notice of Certification and Settlement Approval is first sent to any Class Member and ending sixty (60) days thereafter, or such other period as approved by the Court;
- (o) **Parties** mean the Plaintiff, the Settlement Class Members, and IBM;
- (p) **Plaintiff** means Renee Delorme;
- (q) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Court would have apportioned to the Releasees;
- (r) **Released Claims** mean any and all manner of claims, crossclaims, counterclaims, demands, actions, suits, charges, demands, obligations, debts, setoffs, rights of recovery, causes of action, or liabilities for obligations of any kind whatsoever whether class, individual or otherwise in nature, whether personal or subrogated, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, asserted or unasserted, personal or subrogated, liquidated or unliquidated, in law or equity, under statute, regulation, ordinance, contract, or otherwise in nature—for relief of any kind—including without limitation compensatory, punitive or other damages, declaratory or injunctive relief, liabilities of any nature whatsoever, interest, costs, expenses, penalties, and lawyers' fees (including Class Counsel Fees)—that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or

hereafter can, shall, or may have at any time in the future, relating in any way to any conduct occurring anywhere, from the beginning of time relating in any way to the Phoenix Pay System—including, without limitation, the development, implementation, maintenance, or administration of the Phoenix Pay System by IBM Canada and/or the Federal Government, and all claims that were raised or which could have been raised in the Action. For purposes of clarity, Released Claims include, but are not limited to, claims that arise after the Effective Date;

- (s) **Releasees** mean jointly and severally, individually and collectively, IBM and its past, present, and future, direct and indirect, parents, subsidiaries, affiliates, joint venturers, and related entities, including all of their respective former, present, and future principals, officers, directors, employees, supervisors, shareholders, members, representatives, partners, agents, lawyers, insurers, reinsurers, subrogees, successors, executors, administrators, beneficiaries, and assigns;
- (t) **Releasers** mean individually and collectively, the Plaintiff and each of the Settlement Class Members and their respective predecessors, next of kin, wards, agents, representatives of any kind, insurers, beneficiaries, successors, heirs, executors, administrators, and assigns, whether or not such Settlement Class Members receive any portion of the Settlement Amount;
- (u) **Settlement Amount** means the sum of CDN \$100,000;
- (v) **Settlement Class** mean all Class Members, except persons who validly opt-out of the Settlement Class in accordance with the Certification and Approval Order;
- (w) **Settlement Class Member(s)** means, individually or collectively, any member or members of the Settlement Class;
- (x) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class Members.

BEST EFFORTS TO EFFECT SETTLEMENT

2. The Parties shall use their best efforts to effect the terms of this Agreement and the settlement described herein, including securing the Certification and Approval Order in accordance with this Agreement, and shall coordinate in making any presentations to the Court regarding the Agreement.

3. All motions, pleadings, filings, reports, forms, and other documents related to approval or implementation of this Agreement and settlement shall be provided to IBM for review prior to submission or transmission to the Court. This includes, but is not limited to, the motion for the Certification and Approval Order.

PAYMENT OF SETTLEMENT AMOUNT

4. Within 15 days of the Effective Date, IBM will pay the Settlement Amount to Class Counsel to be held in the Trust Account in accordance with the terms of this Agreement.

5. Class Counsel shall maintain the Trust Account as provided for in this Agreement. Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Agreement and any related Orders of the Court.

6. All interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Trust Account.

7. The Releases shall bear no risk related to the management or investment of the Trust Account. The Releasees shall not be required to deposit additional funds as a result of investment or other losses to the Trust Account.

THE CERTIFICATION AND APPROVAL ORDER

8. At a time mutually agreed to by the Plaintiff and IBM after this Agreement is executed, and which is as soon as practical, the Plaintiff shall bring an application before the Court for the Certification and Approval Order. The Certification and Approval Order shall be substantially in the form set out in Schedule A to this Agreement.

9. The Parties agree that the Action shall be certified solely for purposes of settlement of the Action against IBM and the approval of this Agreement by the Court.

10. The only common issue the Plaintiff shall seek to certify in connection with such application shall be the Common Issue.

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

11. At the same time the Plaintiff applies for the Certification and Approval Order, the Plaintiff shall also apply for approval of a Notice of Certification and Settlement Approval in a form that has been approved by IBM.

12. The Notice of Certification and Settlement Approval will be distributed in such manner as the Plaintiff may propose and IBM may agree, subject to approval of the Court. The Releasees shall not be required to take any steps to disseminate the Notice of Certification and Settlement Approval, nor shall the Releasees be required to contribute to the costs of effecting any dissemination of the Notice of Certification and Settlement Approval as the Court might order.

13. The Plaintiff shall disseminate such other notices as the Court might require in connection with the implementation of this Agreement. The Releasees shall not be required to take any steps to disseminate any such notices as might be ordered by the Court, nor shall the Releasees be required to contribute to the costs of effecting such dissemination of any such notices as might be ordered by the Court or to any other costs or fees associated with administration or implementation of this Agreement.

14. It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by IBM in performance of this Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offence.

OPTING OUT

15. At the same time the Plaintiff applies for the Certification and Approval Order, the Plaintiff shall also apply for approval of an opt-out request form in a form that has been approved by IBM.

16. A Class Member may opt-out of the Action by sending a signed opt-out request form in a form approved by the Court by pre-paid mail, courier, fax, or email to Class Counsel at an address and coordinates to be identified in the Notice of Certification and Settlement Approval.

17. Opt-out requests must contain:

- (a) A statement requesting that the person opting out be excluded from the Settlement Class; and
- (b) The full name, current address, telephone number, and e-mail address of the person who is opting out.

18. An opt-out request may be, but is not required to be, in substantially the form approved by the Court, provided the opt-out request contains all or substantially all of the information listed in paragraph 17 of this Agreement.

19. An opt-out request will only be effective if the executed opt-out request is postmarked or emailed to Class Counsel on or before the end of the Opt-Out Period.

20. Within twenty-one (21) days of the end of the Opt-Out Period, Class Counsel shall notify IBM of each person, if any, who has opted out of the Action.

DISTRIBUTION OF SETTLEMENT AMOUNT

21. At a time solely within the discretion of Class Counsel, which may be at the same time the Plaintiff moves for the Certification and Approval Order, the Plaintiff will seek an Order on notice to IBM regarding the manner of distribution of the Settlement Amount. The Plaintiff agrees to seek an Order that the Settlement Amount, net of Class Counsel Fees, be paid cy-pres to Food Banks Canada.

22. The approval of this Agreement is not conditional upon any particular distribution of the Settlement Amount. For greater certainty, the Court approving or failing to approve any particular manner of distribution of the Settlement Amount shall not be grounds for either the Plaintiff or IBM to terminate this Agreement.

RELEASE AND DISMISSAL

23. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors finally, fully, forever, and absolutely release and forever discharge and release the Releasees from the Released Claims. The Parties intend that the releases in this Agreement be interpreted and enforced broadly and to the fullest extent permitted by law. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including without limitation through the Claim Process, any distribution from the Settlement Amount.

24. The Releasors shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, whether before any court, tribunal, administrative agency, regulatory body, or other body in any jurisdiction, 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 person who may claim contribution or indemnity, or other claims over for relief, from any Releasee relating in any way to any Released Claims, except for the continued prosecution of the Action against the Federal Government or participation in similar such action proceeding in Quebec.

25. Each Releasor may hereafter discover facts other than or different from those which he or she knows or believes to be true with respect to Released Claims. Nevertheless, each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

26. Upon the Effective Date, the Action shall be dismissed as against IBM with prejudice and without costs.

27. Notwithstanding any other provision of this Agreement, nothing in this Agreement will prevent Releasees from pleading this Agreement as a full and complete defence to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to

any of the Released Claims and may be filed, offered, and received into evidence, and otherwise used for such defence.

BAR ORDER

28. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating in any way to Released Claims which were or could have been brought in the Action by the Federal Government or any other person or Party against a Releasee, or by a Releasee against the Federal Government or any other person or Party (excepting (i) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against the Federal Government; and (ii) a claim brought by a person who has validly and timely opted-out of the Settlement Class) are barred, prohibited, and enjoined in accordance with the terms of this section.

29. The Settlement Class Members shall not be entitled to claim or recover from the Federal Government that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest or costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise. The Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action, and any determination by the Courts in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.

EFFECT OF SETTLEMENT

30. The Parties acknowledge that IBM denies the truth of the allegations in the Action and denies any liability or wrongdoing whatsoever.

31. The Plaintiff and IBM expressly reserve all of their rights if this Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, including rights in opposition to certification of any class. Further, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement,

and any action taken to carry out this Agreement, shall not be deemed, construed or interpreted to be an admission by IBM or any Releasee (or evidence thereof) of any violation of any statute or law, of any wrongdoing, or of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiff or any other person.

32. Whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (i) by the Parties in a proceeding to approve or enforce this Agreement; (ii) by a Releasee to defend against the assertion of any Released Claims; (iii) by a Releasee in any insurance-related proceeding; or (iv) as otherwise required by law or as provided in this Agreement.

33. Except insofar as such a term is prohibited by law, Class Counsel will hereafter not institute, continue, maintain, assert, participate in or be involved with, 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 person who may claim contribution or indemnity, or other claims over for relief, from any Releasee which relates to or arises from the Released Claims, except for the continued prosecution of the Action against the Federal Government and the related Quebec action.

34. In the event that this Agreement is not finally approved, is terminated in accordance with its terms, or otherwise fails to take effect, this Agreement shall, subject to an agreement by the Plaintiff and IBM to the contrary, be null and void and of no force and effect and any order certifying or authorizing a class proceeding shall be set aside and the Parties agree that all Parties shall be put in the position they were in before this Agreement was executed and nothing in this Agreement shall prejudice any position that any of the Parties or any Releasee may take on any issue in the Action or any other litigation.

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

35. Class Counsel may on notice to IBM seek the Court's approval of Class Counsel Fees contemporaneous with seeking the Certification and Approval Order, or at such other time as they shall determine in their sole discretion. Class Counsel Fees, in such amount as may be approved by the Court, shall be paid solely from the Settlement Amount. IBM shall take no position on such an application.

36. The failure of the Court to approve a request for Class Counsel Fees has no impact or effect on the rights and obligations of the Parties to this Agreement and shall not be grounds for either the Plaintiff or IBM to terminate this Agreement.

37. Except for payment of the Settlement Amount, the Releasees shall not be liable for or required to pay any amounts, damages, costs, fees, disbursements, or taxes arising in any way under this Agreement or the Action, including but not limited to Class Counsel Fees and other any costs, fees, disbursements, or taxes of the Plaintiff or any Settlement Class Members, including any expenses or costs incurred by any lawyers, experts, advisors, agents, or representatives of the Settlement Class Members. No Releasee shall have any responsibility, financial obligations, or liability whatsoever relating to the dissemination of the Notice of Certification and Settlement Approval, the administration of this Settlement, or any distribution that might be made of the Settlement Amount.

38. Releasees do not warrant to Plaintiff, Settlement Class Members, or Class Counsel any tax benefits or consequences arising from this Agreement or any of the payments made pursuant to this Agreement. All federal, provincial, and local taxes owed by Plaintiff, Settlement Class Members, or Class Counsel on any of the amounts paid pursuant to this Agreement are the responsibility of Plaintiff, Settlement Class Members, and Class Counsel, and not the Releasees.

TERMINATION OF AGREEMENT

39. The Plaintiff may terminate this Agreement only in the event that:

- (a) The Court declines to grant the Certification and Approval Order substantially in the form attached as Schedule A, or if any such Certification and Approval Order

is modified, overturned, or reversed in whole or in part on appeal, provided that a modification or reversal on appeal of any Class Counsel Fees or expenses awarded by the Court shall not provide any termination right.

40. IBM may terminate this Agreement in the event that:
- (a) The Court declines to grant the Certification and Approval Order substantially in the form attached as Schedule A, or if any such Certification and Approval Order is modified, overturned, or reversed in whole or in part on appeal, provided that a modification or reversal on appeal of any Class Counsel Fees or expenses awarded by the Court shall not provide any termination right, unless such modification or reversal has the effect of increasing IBM's financial obligation under this Agreement;
 - (b) The Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Agreement, or the scope of the Settlement Class is modified, overturned, or reversed in any way on appeal;
 - (c) The Court, or another Court on appeal, makes a further Order in respect of this Action which imposes obligations on IBM or deprives IBM of benefits that are materially inconsistent with the terms of this Agreement; or
 - (d) The total number of Class Members who opt-out of the Action exceeds 10% of the total number of Class Members.

41. To exercise a right of termination under paragraphs 39 or 40, a terminating party shall deliver a written notice of termination pursuant to paragraphs 39 or 40 of this Agreement within thirty (30) days of the ground for termination becoming known to the terminating party. Upon delivery of such a written notice, this Agreement shall be terminated, shall be null and void and have no further force or effect, and shall not be binding on the Parties.

42. If this Agreement is not approved, is terminated by the Plaintiff or IBM in accordance with its terms, or otherwise fails to take effect for any reason, all orders made in respect of this

Agreement shall be set aside and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future.

43. If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 31-32, 34, and 42, and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Agreement. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

MISCELLANEOUS

44. The Plaintiff and Class Counsel shall not make or cause to be made any public statement or comment regarding this settlement or Agreement until after the motion for Certification has been filed with the Court.

45. The Plaintiff and Class Counsel agree not to disparage, criticize, or denigrate Releasees (individually or collectively) to any person or entity (including but not limited to any media outlet, television station or program, radio station or program, newspaper, magazine, website, editor, reporter, journalist, photo-journalist, interviewer, author, columnist, blogger, mobile application (e.g., Facebook, Twitter, Instagram), writer, or current or former employee or customer of any Releasee regarding any matter related to the Agreement or the Action.

46. Excluding the communications authorized by the Court-approved plan for issuing Notice of Certification and Settlement Approval, all Parties and their counsel will mutually agree upon the content of all website postings and communications to public-facing third parties regarding any matter related to this Agreement or any of the allegations in the Action. The foregoing does not apply to Defendants' communications with their employees, auditors, or regulatory bodies.

47. The Plaintiff or IBM may apply to the Court for directions in respect of the interpretation, implementation, and administration of this Agreement.

48. All applications contemplated by this Agreement shall be on notice to both the Plaintiff and IBM.

49. In this Agreement:
- (a) The division of the Agreement into paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
 - (b) The terms “this Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.
50. In the computation of time in this 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 statutory holiday, the act may be done on the next day that is not a holiday.
51. The Court shall retain exclusive jurisdiction over this Agreement and the Parties hereto.
52. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Alberta.
53. This 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 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 Agreement, unless expressly incorporated herein.
54. This Agreement may not be modified or amended except in writing and on consent of the Plaintiff and IBM.

55. This Agreement shall be binding upon, and enure to the benefit of the Plaintiff, IBM, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by IBM shall be binding upon all of the Releasees.

56. This 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 Agreement.

57. This 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 Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Agreement.

58. The recitals to this Agreement are true and form part of the Agreement.

59. The Schedules annexed hereto form part of this Agreement.

60. Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

FOR THE PLAINTIFF AND FOR CLASS COUNSEL:

Clint Docken, Q.C./Mathew Farrell
Guardian Law Group LLP
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Tel: 403-457-7778
Fax: 1-877-517-6373
Email: cdocken@guardian.law

FOR IBM:

Suite 2600
Toronto, Ontario M5H 3P5
Tel: (416) 865-3096
Fax: (416) 865-9010
Email: lc Curry@litigate.com and pveel@litigate.com

61. Each of the Parties hereby affirms and acknowledges that:
- (a) He, she, 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 this Agreement;
 - (b) The terms of this Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
 - (c) He, she, or the Party's representative fully understands each term of this 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, beyond the terms of this Agreement, with respect to the first Party's decision to execute this Agreement.
62. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified above their respective signatures below.
63. The Parties have executed this Agreement as of the date on the cover page.

Date: May 5th 2022

Emilia Ph
Witness

Renée Delorme
RENEE DELORME

Date: _____

IBM CANADA LIMITED

Per:

Name:

Position: