

## FINAL AUTHORIZING RESOLUTION

(IBM 2018 Project)

At a regular meeting of the Dutchess County Industrial Development Agency (the “Agency”), held at 8:00 a.m. at 3 Neptune Road, Poughkeepsie, New York on the 18th day of December, 2018, the following members of the Agency were:

Present: Charles Daniels III, Chairman  
Timothy Dean, Vice Chairman  
Mark Doyle, Secretary/Treasurer  
Stacey M. Langenthal  
Alfred D. Torreggiani

Absent: Donald R. Sagliano

Also Present: Sarah Lee, Executive Director  
Marilyn Yerks, Chief Financial Officer  
Donald Cappillino, Counsel  
Elizabeth A. Cappillino, Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain industrial development facility (IBM 2018 Facility) and the leasing of the Equipment to International Business Machines Corporation as more particularly described below:

### **RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, IMPROVEMENT, REPAIR, REFURBISHING, INSTALLATION, FURNISHING AND EQUIPPING OF A CERTAIN FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.**

#### **RECITALS**

**WHEREAS**, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “Act”), the Dutchess County Industrial Development Agency (the “Agency”) was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing and equipping certain facilities as authorized by the Act; and

**WHEREAS**, International Business Machines Corporation, a business corporation duly organized and existing under the laws of the State of New York, having offices at New Orchard Road, Armonk, New York (the “Company”) previously applied to the Agency for financial assistance and on April 17, 2018, the Agency adopted a resolution (the “Initial Preliminary Resolution”) which contemplated an extension of an agreement between the Company and the Agency dated as of March 1, 2013 (the “Prior Agreement”); and

**WHEREAS**, in connection with the Initial Preliminary Resolution, the Company and the Agency entered into a Preliminary Agreement dated as of April 17, 2018 (the “**Initial Preliminary Agreement**”); and

**WHEREAS**, the term of the Prior Agreement expired prior to any extension of the term of the Prior Agreement between the Company and the Agency; and

**WHEREAS**, as a result of the expiration of the Prior Agreement, the Company has submitted a new application to the Agency in connection with a project consisting of the acquisition, leasing, furnishing, equipping, and installing of certain interests in personal property including computer hardware, software, software as a service, computer related services, hardware and software maintenance, furniture, furnishing, and data processing, telecommunications, networking and other related equipment and any service, maintenance, and repair agreements in connection with any of the foregoing (the “**Equipment**”) to be located in the approximately 170,000 square foot Datacenter which is located at 2455 South Road, Poughkeepsie, Dutchess County, New York in Building #710 (the “**Facility**”), for use by the Company for the purpose of data processing, networking and other information technology services, as well as infrastructure upgrades for continued data center viability and for possible new missions (the “**Project**”) and the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “**Financial Assistance**”); and

**WHEREAS**, the Agency by resolution duly adopted on October 24, 2018 (the “**Preliminary Resolution**”), decided to proceed under the provisions of the Act; and

**WHEREAS**, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a Bill of Sale, dated the Closing Date (the “**Bill of Sale**”); and

**WHEREAS**, the Agency has agreed to lease the Equipment to the Company pursuant to a certain Equipment Lease and Project Agreement dated as of November 1, 2018 (the “**Equipment Lease**”) by and between the Agency and the Company; and

**WHEREAS**, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of exemptions from sales and use taxes in an amount not to exceed \$8,531,250 in connection with the purchase, lease, transfer, use, service, maintenance or repair of the Equipment, building materials, services or other personal property with the respect to the Equipment; and

**WHEREAS**, given the nature of the Project and the very long history of exemption benefits that the Agency has granted to the Company as a vital component to the Dutchess County economy, the Agency and the Company have negotiated an enhanced fee schedule whereby the Company will pay the Agency’s administrative fee as set forth herein; and

**WHEREAS**, the Agency has determined to waive the requirements of its Policy for Recapture and/or Termination of Financial Assistance for Projects without a Real Property Tax

PILOT with respect to this Project while retaining certain recapture requirements as set forth herein; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “SEQRA”), the Agency has determined in its October 24, 2018 Preliminary Resolution in this matter that this project is a Type II action under SEQRA and therefore will not have a significant adverse impact on the environment; and

**WHEREAS**, in compliance with §859-a of the Act the Agency on November 12, 2018 held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on November 1, 2018 of a notice of the public hearing; and

**WHEREAS**, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated herein.

**NOW, THEREFORE, BE IT RESOLVED**, by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Project constitutes a “project”, as such term is defined in the Act; and

(c) The public hearing held by the Agency on November 12, 2018, concerning the grant of financial assistance as set forth herein and the nature and location of the Project was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views on the location and nature of the Project to be heard; and

(d) The Project will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The Project is reasonably necessary to induce the Company to maintain and expand their business operations in the State of New York and to discourage the Company from removing their facility to a location outside the state and to preserve the competitive position of the Company in their respective industry; and

(f) The Project will serve the Agency’s public purposes as set forth in the Act by preserving or increasing the number of permanent, private sector jobs in Dutchess County and the State of New York.

(g) Based upon representations of the Company and Company Counsel, the Project will conform with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Project is located; and

(h) It is desirable and in the public interest for the Agency to approve the requested financial assistance for this Project; and

(i) The Equipment Lease will be an effective instrument whereby (1) the Agency leases the Equipment to the Company; (2) the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Project and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (3) the Agency and the Company set forth the circumstances in which the Agency may recapture some or all of the benefits granted to the Company in the event any enumerated Recapture Event (as defined therein) occurs.

Section 3. Subject to (i) the Company executing the Equipment Lease and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the Project Work and appoints the Company as the true and lawful agent of the Agency.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Equipment to the Company pursuant to the Equipment Lease; and (ii) execute, deliver and perform the Equipment Lease.

Section 5. The Agency is hereby authorized to acquire title to the personal property described in Exhibit A to the Equipment Lease and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 6. The form and substance of the Equipment Lease (in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 7. Recapture Provisions. The Agency hereby waives the application of its Policy for Recapture and/or Termination of Financial Assistance for Project without a Real Property Tax PILOT, but the Agency hereby retains recapture rights under the terms and conditions of the Equipment Lease, of which Section 5.2 relating to recapture rights is attached hereto and made a part hereof as Exhibit A, upon the occurrence of a Recapture Event as defined therein.

Section 8. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agents, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$105,000,000, which result in New York State and local sales and use tax exemption benefits (“**sales and use tax exemption benefits**”) not to exceed \$8,531,250. The Agency agrees to consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional

purchases of property or services, and, to the extent required, after the Agency authorizes and conducts any supplemental public hearing(s).

Section 9. Administrative Fee. The Agency hereby authorizes a modified Agency administrative fee schedule and the administrative fee will be paid by the Company as follows:

- (a) Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$87,500.00) due on the Closing Date (as defined in the Lease Agreement);
- (b) One Million Three Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$1,312,500.00) due on or before May 15, 2019;
- (c) One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) due on or before May 15, 2020; and
- (d) One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) due on or before May 15, 2021.

The Executive Director is hereby authorized to enter an agreement with the Company regarding the terms of the Company's payment of the administrative fee as may be appropriate in the judgment of the Executive Director and Agency Counsel and Transaction Counsel.

Section 10.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are hereby authorized, on behalf of the Agency, to execute and deliver the Equipment Lease, in substantially the form thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director and Agency Counsel and Transaction Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Vice Chairman, any member of the Agency or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Equipment Lease). The Agency hereby appoints each Member of the Agency, Agency Counsel and Transaction Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

Section 11. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver

all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 12. This resolution shall take effect immediately.

The following resolution was duly moved by Timothy Dean, seconded by Alfred D. Torreggiani, discussed and adopted with the following members voting:

Charles Daniels III, Chairman	VOTING	“AYE”
Timothy Dean, Vice Chairman	VOTING	“AYE”
Mark Doyle	VOTING	“AYE”
Stacey M. Langenthal	VOTING	“AYE”
Donald R. Sagliano	being	Absent
Alfred D. Torreggiani	VOTING	“AYE”

Adopted: December 18, 2018

STATE OF NEW YORK     )  
   ) ss.:  
COUNTY OF DUTCHESS    )

I, the undersigned Secretary of the Dutchess County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Dutchess County Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 18th day of December, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Equipment Lease contained in this transcript of proceedings is in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 18th day of December, 2018.



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Mark Doyle, Secretary

(SEAL)

## EXHIBIT A

### Section 5.2. Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Equipment Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event after the Closing Date, but on or before [December 31, 2021], the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below).

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Equipment Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term “**Recapture Event**” shall mean:

(i) The Company receives Sales Tax Savings in connection with the Project Work in violation of any of the provisions of Section 5.1 hereof or Section 875 of the GML; provided, however, that the foregoing shall constitute a Recapture Event with respect to such unauthorized Sales Tax Savings only. It is further provided that failure to repay such authorized Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits; or

(d) Reserved.

(e) Reserved.

(f) Reserved.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at



a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.2, from amounts received by the Agency pursuant to this Section 5.2.

(i) Reserved.