SETTLEMENT AND ASSIGNMENT AGREEMENT

Claudia Schorrig and Jolene Sullivan, on their own behalf and on behalf of those similarly situated (the "Class"), hereby enter into this Settlement and Assignment Agreement (the "Settlement Agreement") with IBM Southeast Employees' Federal Credit Union (the "Credit Union"), Southeast Services Organization, Inc. ("SESO"), and Barry Hughes ("Hughes") collectively "Defendants") on the ___ day of October, 2011.

WHEREAS, the Class sued Defendants in the United States District Court for the Southern District of Florida, Case No. 09-CV-80973/RYSKAMP, alleging that: (a) Defendants owed a gate keeping duty to perform due diligence on third-party service providers before inviting them onto the premises of the Credit Union, so as to protect the Class from foreseeable harm; (b) Defendants breached that duty; and (c) the members of the Class all were harmed in the exact same fashion as a direct and proximate result of Defendants' failures (the "Lawsuit"); and

WHEREAS, at all relevant times, Defendants were insured by CUMIS Insurance Society, Inc. ("CUMIS");

WHEREAS, Defendants provided CUMIS with timely notice of the Lawsuit at the time that the Lawsuit was initially filed, and timely provided CUMIS with notice of all amendments to the complaint in the Lawsuit; and

WHEREAS, CUMIS has taken inconsistent positions with regard to its defense obligations during the course of the Lawsuit, in which CUMIS first disclaimed any obligation to either defend Defendants or indemnify them for the claims asserted in the Lawsuit; and

WHEREAS, it was not until the fourth generation of the Class's complaint against Defendants (the Third Amended Complaint) that CUMIS agreed to undertake the defense (but
not the indemnification) of Defendants, and only on a limited basis (up to $100,000) and subject to a reservation of rights; and

WHEREAS, Defendants challenged CUMIS’s coverage position, which prompted CUMIS to offer a complete defense in the Lawsuit up to the Policy limits, subject, however, to a reservation of rights and certain conditions that were contrary to the Policy terms and conditions and Florida law; and

WHEREAS, Defendants rejected CUMIS’s conditional defense; and

WHEREAS, at no time during the course of the Lawsuit did CUMIS ever agree to indemnify Defendants for the claims asserted in the Lawsuit; and

WHEREAS, because of the foregoing, CUMIS’s actions exposed Defendants to a potential judgment in the Lawsuit well in excess of the Policy limits, which judgment would have significant and grave consequences for Defendants and the Credit Union members;

WHEREAS, notwithstanding CUMIS’s bad faith actions, Defendants requested that CUMIS participate in and settle the Lawsuit at mediation; and

WHEREAS, CUMIS refused to protect Defendants from the claims asserted in the Lawsuit and refused to settle those claims contrary to its obligations under the Policy; and

WHEREAS, CUMIS refused to make any settlement offers to the Class, contrary to its obligations under the Policy; and

WHEREAS, CUMIS refused to settle the lawsuit on behalf of Defendants within the Policy limits although CUMIS had an opportunity to do so;

WHEREAS, CUMIS left Defendants to fend for themselves in the Lawsuit, leaving Defendants to protect their own interests, contrary to CUMIS’s obligations under the Policy exposing Defendants to substantial potential liability; and
WHEREAS, Defendants have otherwise complied with all insurance policy conditions; and

WHEREAS, the Class's damages equal or exceed $10,440,056.23 (ten million, four hundred forty thousand, fifty-six U.S. dollars and twenty-three cents) – which figure represents the Class members actual out-of-pocket losses in the amount of $8,158,211.11 plus pre-judgment interest through and including Friday, September 9, 2011 in the amount of $2,281,845.12 – and are increasing daily; and

WHEREAS, the Class and Defendants have entered into arm's length negotiations designed to conclude this Lawsuit against Defendants, and thus avoid protracted litigation, save expense, and prevent substantial liability against Defendants; and

WHEREAS, the Class and Defendants have taken into consideration the factual allegations underlying the claims, any applicable defenses thereto, the amount of the claims, the evidence in the case, the potential verdict range, and the public interest and related factors.

NOW THEREFORE, the Class and Defendants hereby agree to the following:

1. **Submission and Application to the Court:** Because the Lawsuit is a class action, it cannot be settled without the approval of the Court, which must review the settlement against the prerequisites of Federal Rule of Civil Procedure 23. Accordingly, as soon as practicable after the execution of this Settlement Agreement, the parties shall jointly apply to the Court for an Order of Preliminary Approval which shall include provisions that:

   a. Preliminarily approve the settlement as within the range of reasonableness;

   b. Certify the Class for the purposes of effectuating the Settlement;

   c. Provide that a Notice of Pendency of Class Action, Proposed Settlement of Class Action, and Final Approval Hearing (the "Notice"), is approved, and further
provide that the distribution of the Notice substantially in the manner set forth in
the Preliminary Approval Order constitutes the best notice practicable under the
circumstances, meets the requirements of applicable law and due process, is due
and sufficient notice of all matters relating to the Settlement, and fully satisfies
the requirements of Rule 23 of the Federal Rules of Civil Procedure; and

d. Direct that a hearing (the “Final Approval Hearing”) be held to determine whether
the Court should: (1) approve the Settlement pursuant to Rule 23 of the Federal
Rules of Civil Procedure as fair, reasonable, adequate, and in the best interests of
the Class; (2) enter a Final Order upon terms consistent with this Settlement
Agreement; (3) approve any application of Class Counsel for an allowance of fees
and reimbursement of expenses; and (4) hear such other matters as the Court may
decem necessary and appropriate.

In the event the Court does not approve the settlement, this Settlement Agreement shall not
become effective and shall be void munc pro tunc, and the parties will resume the litigation
posture they were in as of September 9, 2011. The parties, however, intend for this Settlement
Agreement to resolve fully and completely the claims the Class has brought against Defendants
and shall endeavor to pursue preliminary and final approval of the settlement as expeditiously as
possible after the execution of this Settlement Agreement.

2. **NOTICE:** The parties agree that given the manageable size of the class, and the ready
availability of information related to the Class members and their claims, Class Counsel shall be
responsible for the administration of Notice and Settlement. Further, the parties agree that the
reasonable costs and expenses incurred in: (1) identifying the members of the Class and notifying
them by first-class mail of the pending Settlement; and (2) all costs of administration of the
settlement, will be paid from the Settlement Fund, defined below.

3. **Final Order:** If the settlement is approved by the Court, the parties shall promptly request the Court to enter a Final Order, which among other things:

   a. Approves the settlement, adjudges the terms thereof to be fair, reasonable, adequate, and in the best interests of the Class, directs consummation of the settlement in accordance with its terms and conditions, and reserves jurisdiction to supervise the consummation and administration of the settlement;

   b. Determines that the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process have been satisfied in connection with both class certification and the Class Notice;

   c. Approves of the dismissal of the settled claims;

   d. Awards to Class Counsel its reasonable attorney's fees and costs incurred in the prosecution of the Lawsuit; and

   e. Without affecting the finality of the Final Order, reserves the Court's jurisdiction over all of the parties hereto and the individual Class Plaintiffs for the administration of the terms of the settlement.

4. **Finality of Settlement:** The settlement shall be considered final for purposes of this Settlement Agreement: (1) upon entry of the Final Order approving the Settlement; and (2) upon the expiration of any applicable appeal period for the appeal of the Final Order without an appeal having been filed, or if an appeal is taken, upon entry of an order affirming the Final Order appealed from and the expiration of any applicable period for the reconsideration, rehearing, or appeal of such affirmance without any motion for reconsideration or rehearing or further appeal having been filed (the "Effective Date").
5. **CONSIDERATION:** In consideration of the promises set forth below, and without admitting any liability for any of the claims asserted in the Lawsuit, Defendants agree that the Class’s claims against them shall be finally resolved and that the parties agree that the settlement amount shall be $8,874,047.76 (eight million, eight hundred seventy-four thousand, forty-seven U.S. dollars and seventy-six cents) (“the Settlement Amount”). Of that Settlement Amount, Defendants shall make one and only one payment in the amount of $950,000 (the “Cash Payment”) via wire transfer to the Dimond Kaplan & Rothstein, P.A., Trust Account on or immediately after the Effective Date.

   a. After the Effective Date, Class Counsel shall administer the payment of the Cash Payment as well as any other collected funds (the “Settlement Fund”), net any attorneys’ fees and costs awarded and costs of administration to the Class, through the prosecution or settlement of any claims assigned by Defendants to the Class pursuant to this Settlement Agreement.

   b. No distribution shall occur prior to the Effective Date except pursuant to an Order of the Court.

Defendants shall have no responsibility for any portion of the Settlement Amount, other than the Cash Payment referred to above.

6. **ADMINISTRATION AND CALCULATION OF CLAIMS; SUPERVISION AND DISTRIBUTION OF THE SETTLEMENT FUND:** Regarding the administration and calculation of claims and the supervision and distribution of the Settlement Amount, Class Counsel, or their authorized agents, shall administer and calculate the amounts payable to Class members and, after the Effective Date, shall oversee distribution of the Settlement Fund to all Class members. Class Counsel shall distribute the Settlement Fund on a pro-rata basis, based upon each Class member’s loss of
their investment in CMI bonds, in relation to the total amount lost by the Class as a whole of its investment in CMI bonds. Neither Defendants nor Defendants’ Counsel shall have any responsibility for, or control over, the administration of the Settlement Fund.

7. **ATTORNEY’S FEES AND COSTS:** At or before the Final Approval Hearing, Class Counsel shall apply for an award of: (1) attorney’s fees not to exceed thirty percent (30%) of the Settlement Fund at the time of Final Approval; and (2) reimbursement of their expenses and costs incurred in connection with this matter. All fee and cost awards shall be paid from the Settlement Fund. The fairness, reasonableness, and adequacy of the Settlement may be considered and ruled upon by the Court independently of any award of attorney’s fees and costs. No attorney representing the Class who has appeared in the Lawsuit shall apply to any court for any fees or disbursements except as provided for in this Settlement Agreement. All costs for administration of the Settlement shall be paid out the Settlement Fund.

Subject to the terms and conditions of this Settlement Agreement, such fees and costs shall be paid within five (5) business days after the Court executes an order awarding such fees and expenses (the “Fee and Expense Award”), provided, however, that such fees and costs shall in no event be paid before the Effective Date of this Settlement.

Class Counsel shall apply for an additional award of: (1) attorney’s fees not to exceed thirty percent (30%) of any additional funds collected by or on behalf of the Class through the prosecution or settlement of any of the claims assigned by Defendants to the Class pursuant to this Settlement Agreement by making a proper application to the Court.

8. **ASSIGNMENT OF CLAIMS:** Defendants hereby assign to the Class all right, title, and interest in any cause of action they may have against CUMIS or its agents or insurers, pursuant to the relevant insurance policies, Florida’s common law, and/or Section 624.155 of the Florida
Statutes, whether the cause of action is for claims arising from CUMIS's failure to resolve the Lawsuit when CUMIS could and should have done so had it acted fairly and honestly toward its insureds and with due regard for their interests; for attorneys' fees and costs; for breach of the applicable insurance policies; or otherwise.

9. **Right to Litigate Assigned Claims:** The parties agree that the Class may prosecute (or defend) any cause of action assigned under the terms of this Settlement Agreement directly, or as assignee, or in Defendants' names. Regardless of the style of the case, and regardless of whether joined as a party or otherwise, Defendants will cooperate with the Class by providing requested information.

10. **Reimbursement of Cash Payment:** Of every dollar up to $3,000,000 (three million U.S. dollars) recovered from CUMIS pursuant to this Settlement Agreement, thirty-one and two-thirds percent shall be paid to the Credit Union. Under this formula, the Credit Union's share of a $3,000,000 recovery would fully reimburse the Credit Union for its $950,000 Cash Payment. Every dollar in excess of $3,000,000 recovered from CUMIS pursuant to this Settlement Agreement, up to and including the full amount of the settlement, shall inure to the benefit of the Class be paid to the Class (net any attorneys' fees and costs awarded and costs of administration).

11. **Defendants' Attorney's Fees:** In addition to, and over and above, the sums described in Paragraph 10, the Class shall, on behalf of the Defendants, apply to the Court for an order awarding from CUMIS the reasonable attorneys' fees and costs Defendants incurred by Defendants in defending the Lawsuit, such fees and costs being limited to those that exceed $125,000 (which represents a combination of Defendants' deductible under the CUMIS coverage and certain defense costs already paid by CUMIS under a specific policy provision).
recovery of Defendants' defense fees and costs shall not affect the distribution of the Settlement Amount described in Paragraph 10.

12. **COVERAGE ACTION CLASS ATTORNEY'S FEES:** In addition to, and over and above, the sums described in Paragraphs 10 and 11, the Class shall seek to recover, pursuant to Section 627.428 or 624.155 of the Florida Statutes, the reasonable attorney's fees and costs the Class shall incur in prosecuting an action against CUMIS. Any fees or costs recovered under this paragraph that are specifically allocable to the Kaplan Zeena law firm's work on behalf of the Credit Union with regard to the claims and litigation with or against CUMIS shall be paid to the Credit Union.

13. **ACKNOWLEDGEMENT OF JURISDICTION:** Defendants previously filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry 109) acknowledging the Court's subject matter jurisdiction over this action pursuant to the 28 U.S.C. § 1332(d) (the "Class Action Fairness Act"), but requesting that the Court decline to accept subject matter jurisdiction pursuant to the Class Action Fairness Act's "interests of justice" exception. Defendants shall, within forty-eight (48) hours of the execution of this Settlement Agreement by the final signer, file a notice with the Court withdrawing their pending Motion to Dismiss for Lack of Subject Matter Jurisdiction. However, in the event that approval of this Settlement Agreement is not obtained, the parties agree that Defendants may re-file the subject Motion to Dismiss with the consent of the Class.

14. **TERMINATION OF SETTLEMENT:** Defendants shall have the right to terminate the settlement of the Lawsuit, and thus void this Settlement Agreement, in the event that Class members whose claims' aggregate value exceeds $500,000 (five hundred thousand U.S. dollars) timely request exclusion from (i.e., opt out of) the Settlement.
15. **ASSIGNMENT OF RECOVERY:** Defendants, by this Settlement Agreement, assign one hundred percent (100%) of their interest in any damages recovered in any action brought pursuant to this Settlement Agreement against CUMIS or any of its agents or insurers, except as expressly provided above. Defendants shall have no interest in any attorney's fees or costs awarded in connection with any lawsuit filed by the Class pursuant to this Settlement Agreement, except as expressly provided above.

16. **COOPERATION AGREEMENT:** Upon request, Defendants shall provide reasonable cooperation to the Class in the pursuit of any claims or lawsuits against CUMIS or its agents or insurers, including: (1) delivering any necessary documentation upon request, provided that Defendants have possession or control of the requested documentation; (2) attending depositions; (3) attending any reasonably necessary conferences or meetings called by the Class; and (4) otherwise providing information requested by the Class incident to any lawsuit filed pursuant to this Settlement Agreement, including, subject to appropriate protection, information which might be classified as privileged, the parties understanding that this provision is not intended to constitute a waiver of any applicable privileges held by Defendants or the Class. If the Class believes that Defendants are refusing to provide reasonable cooperation in violation of the terms of this paragraph, the Class shall provide the Defendants with written notice requesting that Defendants cure by providing reasonable cooperation, and the Defendants shall have five (5) business days to do so. This covenant to cooperate is a material inducement to this Settlement Agreement.

17. **CLASS'S RIGHT TO INITIATE AND PROSECUTE CLAIMS:** The Class shall have the sole discretion on whether to pursue, or continue, any lawsuit contemplated under this Settlement Agreement and the choice of any cause of action to be brought in such lawsuit. The Class shall
further have sole authority to compromise, resolve or try any action pursuant to this Settlement Agreement. Similarly, the Class may determine whether or not to appeal an adverse decision, or to defend any appeal taken by any adverse party.

18. **Execution of Release in Favor of Defendants:** In consideration of the undertakings described above, but expressly excepting the obligations created by, and the rights expressly reserved within, this Settlement Agreement, the Class releases and forever discharges Defendants, and any and all of their representatives, employees, employers, officers, directors, stockholders, attorneys, predecessors, successors, assigns, subsidiaries, partners, affiliates, present and former agents, and subcontractors, from any and all claims, debts, liabilities, demands, obligations, costs, attorneys’ fees, actions and causes of action of every nature and character and description which the Class has held or now holds, whether known or unknown, as a result of the Lawsuit; the Class understands and expressly agrees that this Settlement Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributable to any past actions or omissions of Defendants and any and all of their present and former agents, representatives, employees, employers, officers, directors, stockholders, attorneys, predecessors, successors, assigns, subsidiaries, parents and affiliates, as a result of the Lawsuit, whether set forth in any pleading or charge referred to herein or not, and that any and all rights granted to the Class under any state law or federal law or regulation limiting the nature of this release are hereby expressly waived. This release shall become effective on the date on which the Court enters a Final Order approving the Settlement Agreement in accordance with the terms hereof.

*Provided however,* that nothing contained herein shall operate to release or waive any claims the Class might have or herein acquire against CUMIS under this Settlement Agreement,
or any of CUMIS's affiliates, subsidiaries, reinsurers partners, shareholders, associates, employees, servants, agents or brokers for claims which arise out of the claims referenced in this Settlement Agreement, including, but not limited to, any claims which may be made directly or indirectly to satisfy the amount of the settlement approved by the Court in the Lawsuit, and further provided that nothing contained herein shall operate to release any obligations of the parties to this Settlement Agreement arising under this Settlement Agreement.

19. **Separate Consideration for Assignment:** The assignment contemplated under this Settlement Agreement is given prior to any release or discharge of any liability for payment on this Settlement Agreement and as a condition precedent to the waiver of any deficiency action against Defendants, should a lawsuit against CUMIS be resolved by compromise settlement for an amount less than the Settlement Amount. This assignment is further given in consideration of the Class's subsequent agreement to forebear further proceedings in the lawsuit, and in consideration of cooperation by Defendants as provided for in this Settlement Agreement.

20. **Class Responsible for Litigation of Assigned Claims:** Any action brought by or against CUMIS or its agents or insurers pursuant to this Settlement Agreement shall be prosecuted or defended by the Class, and the Class will bear full financial responsibility for the prosecution and defense of such action.

21. **Disclosure of Terms:** The Class shall attach this Settlement Agreement to its Motion for Preliminary Approval of the Settlement so as to comply with the prerequisites of Federal Rule of Civil Procedure 23, and the parties may disclose the terms of this Settlement Agreement to nonparties as ordered or required by a court of competent jurisdiction.
Executed and agreed to by:

By:  
Claudia Schorrig  
(date)

STATE OF FLORIDA  
COUNTY OF Palm Beach  
SS.

SWORN TO AND SUBSCRIBED before me this 20th day of October, 2011, by  
Claudia Schorrig

☐ Is personally known to me; or  
☐ Produced as identification:  

My Commission Expires:  
Notary Public

TRACY HYDE  
Commission # EE 008911  
Expires November 3, 2014

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STATE OF FLORIDA

COUNTY OF Palm Beach

SWORN TO AND SUBSCRIBED before me this 24 day of October, 2011, by Jolene Sullivan, who DID/DID NOT take an oath and who:

☐ Is personally known to me; or
☐ Produced as identification: __________________________

My Commission Expires: __________________________

Notary Public

________________________

TRACY HYDE
Commission # EE 039111
Expires November 8, 2014
Endorsed The True Copy Inscence 60-18-719
By: ____________________________

IBM Southeast Employees' Federal Credit Union

STATE OF FLORIDA

) SS.

COUNTY OF PALM BEACH

) SS.

SWORN TO AND SUBSCRIBED before me this 6th day of October, 2011, by

Lary McCants, who DID NOT take an oath and who:

☑ Is personally known to me; or

☐ Produced as identification:

My Commission Expires: ____________________________

Notary Public

CAROLYN E. KRANZ
Notary Public - State of Florida
Commission Expires Dec 25, 2011
Commission No. 739354
Bonded Through National Notary Assn.
STATE OF FLORIDA

COUNTY OF PALM BEACH

SWORN TO AND SUBSCRIBED before me this 6th day of October, 2011, by Larry McCants, who DID/DID NOT take an oath and who:

☐ Is personally known to me; or
☐ Produced as identification: ______________________

My Commission Expires: ______________________

Notary Public

CAROLYN E. KRANZ
Notary Public - State of Florida
Commission Expires Dec 26, 2011
Commission # DD 739034
Bonded Through National Notary Assn.
STATE OF FLORIDA  
COUNTY OF SUMTER  

SWORN TO AND SUBSCRIBED before me this 10th day of OCT., 2011, by  

By: _____________________________  
Barry Hughes  

My Commission Expires: 1/18/14  

Notary Public  

CINZIA DIBERNARDO  
Notary Public, State of Florida  
My Comm. Expires Jan. 8, 2014  
No. DD949978