

# Exhibit A

**AMENDMENT TO CLASS ACTION SETTLEMENT AGREEMENT**

The Class Action Settlement Agreement (“Settlement Agreement”) entered into by the Parties on December 16, 2021 (attached as Exhibit A) is hereby amended to correct certain minor and inadvertent errors. Capitalized terms and phrases have the meanings provided in the Settlement Agreement unless noted below.

1. “Global Technology,” “Growth Stock,” and “Mid-Cap Value” are stricken from, and “New Income” and “U.S. Treasury Intermediate” are added to, the definition of “Challenged Funds” in §1.10.

2. §3.1.6 and §3.1.8 of the Settlement Agreement specify provisions to be included in the Preliminary Approval Order, but include deadlines and some terminology that are inconsistent with those in the Preliminary Approval Order attached as Exhibit A to the Settlement Agreement and entered by the Court. To eliminate this inconsistency, these two sections are replaced in their entirety with the following:

§3.1.6 Provide that any objections to the Settlement Agreement shall be heard, and any papers submitted in support of those objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any notice of an attorney’s intent to appear on behalf of the objector or supporting documents must be filed at least twenty-eight calendar days prior to the scheduled Fairness Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to speak no later than ten days before the Fairness Hearing.

§3.1.8 Provide that any Party may file a response to an objection by a Class member at least seven calendar days before the Fairness Hearing.

IN WITNESS WHEREOF, the Parties have executed this Amendment to Class Action Settlement Agreement on the date or dates set forth below.

***FOR NAMED PLAINTIFFS AND THE CLASS***

Dated this 18th day of February 2022.

By: 

J. Brian McTigue  
James A. Moore  
**MCTIGUE LAW LLP**  
bmctigue@mctiguelaw.com  
jmoore@mctiguelaw.com

By: 


Mary J. Bortscheller  
**COHEN MILSTEIN SELLERS & TOLL, PLLC**  
mbortscheller@cohenmilstein.com

***Class Counsel***

***FOR ALL DEFENDANTS***

Dated this the \_\_\_\_ day of February 2022.

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

  
Brian D. Boyle  
**O'MELVENY & MYERS LLP**  
1625 Eye Street NW  
Washington, DC 20006

*Attorneys for Defendants*

# Exhibit A

## **SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives on behalf of themselves and all Class members, and Defendants, as defined in § 1 below. Capitalized terms and phrases have the meanings provided in § 1 below or as specified elsewhere in this Settlement Agreement.

### **1. DEFINITIONS**

1.1. “Action” means *Feinberg et al. v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-427-JKB, a class action pending in the United States District Court for the District of Maryland.

1.2. “Active Account” means a participant or beneficiary account in the Plan that has neither been closed nor had all assets distributed.

1.3. “Administrative Expenses” means fees and expenses of the Settlement Administrator and Escrow Agent incurred in administering the Settlement Agreement, including all fees, expenses, and costs associated with providing the Settlement Notice to the Class; all fees, expenses, and costs associated with distributing funds to Former Participants under the Plan of Allocation; and related tax expenses. Administrative Expenses shall be paid from the Gross Settlement Amount. Excluded from Administrative Expenses are any fees and costs billed by the Independent Fiduciary; any other costs incurred by Class Counsel, Defendants, or the Plan in effectuating the Settlement Agreement (including all fees, expenses, and costs incurred by Class Counsel, Defendants, or the Plan in connection with distributing settlement proceeds to Current Participants under the Plan of Allocation); and the Parties’ respective legal expenses.

1.4. “Allocation Method” means the calculation method for allocating the Net Settlement Amount to Class members based on their holdings in the Plan during the Class Period. The Allocation Method is set forth in the Plan of Allocation which Class Counsel shall include as an attachment to their motion for preliminary approval of the settlement.

1.5. “Attorneys’ Fees and Expenses” means the amount awarded by the Court as compensation for the services provided by Class Counsel.

1.6. “Beneficiary” means a person who is entitled to receive a benefit under the Plan upon the death of a Plan participant. A Beneficiary includes, but is not limited to, a surviving spouse, domestic partner, or child of a Plan participant, or other individual or entity designated by the participant, or determined under the terms of the Plan to be entitled to a benefit.

1.7. “Brokerage Window” means a Plan option Defendants have agreed for the first time to offer to Plan participants as a condition of this Settlement, as further described in § 7 below. The Brokerage Window will allow Plan participants to invest in a variety of non-T. Rowe Price funds.

1.8. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

1.9. “Calendar days” has the meaning given in Federal Rule of Civil Procedure 6 and such days shall be computed as defined by that Rule.

1.10. “Challenged Funds” means (i) the following thirty-one T. Rowe Price Funds that Plaintiffs contend should have been removed at the inception of the Class Period: Balanced, Corporate Income, Emerging Europe, Emerging Markets Bond, Emerging Markets Stock, Equity Income, Equity Index Trust-C, Extended Equity Market Index, GNMA, Global Infrastructure, Global Real Estate, Global Technology, Growth Stock, Growth and Income, High Yield, Inflation Protected Bond, International Discovery, International Stock, International Value Equity, Mid-Cap Value, Overseas Stock, Real Estate, Science and Technology, Short-Term Bond, Spectrum Growth, Spectrum Moderate Allocation, Summit Cash Reserves Fund, Summit GNMA, Total Equity Market Index, U.S. Treasury Long-Term, Value, and U.S. Treasury Money Fund; and (ii) the following eight T. Rowe Price Funds that were added to the Plan during the Class Period and Plaintiffs contend should not have been added: Dynamic Global Bond (added 1/1/2016), Emerging Markets Discovery Stock (added 10/1/2016), Emerging Markets Local Currency Bond (added 6/1/2011), Floating Rate (added 8/1/2011), Institutional Frontier Markets Equity (added 8/1/2015), Institutional Global Value Equity (added 7/1/2014), International Disciplined Equity (added 8/1/2017), and Real Assets (added 6/1/2012). (In some cases, these funds include multiple versions or types, e.g., when what was originally offered in the Plan was a mutual fund but was later replaced with a similar collective trust version of the same strategy).

1.11. “Class” means the certified class in this Action, with the definition modified with the underlined text in order for there to be a determinate class in order to send Class Notice before any final approval of the Settlement and to make clear the Parties’ intent to include in the Class anyone, including beneficiaries, that had a balance in a Plan account during the Class Period:

All participants and beneficiaries in the T. Rowe Price U.S. Retirement Program who had a balance in their plan account at any time from February 14, 2011 through the date of entry of the order preliminarily approving the Settlement. Any individual Defendants, any members of the T. Rowe Price Board of Directors, the Management Committee, the Management Compensation Committee, and their beneficiaries and immediate families are excluded from the class.

1.12. “Class Counsel” for purposes of this agreement means McTigue Law LLP and its attorneys J. Brian McTigue and James A. Moore and Cohen Milstein Sellers & Toll PLLC and its attorneys Mary J. Bortscheller and Scott M. Lempert.

1.13. “Class Member Distribution” means the Settlement payment that a Class member is entitled to receive pursuant to the Plan of Allocation.

1.14. “Class Period” means the period from February 14, 2011 through the date the Preliminary Approval Order is entered by the Court.

1.15. “Class Representatives” means Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich.

1.16. “Company” means T. Rowe Price Group, Inc., and its subsidiaries.

1.17. “Complaint” means the Second Amended Class Action Complaint, Dkt. No. 84, the First Amended Class Action Complaint, Dkt. No. 32, and the Class Action Complaint, Dkt. No. 1.

1.18. "Confidentiality Agreement" means the stipulated protective order entered by the Court on February 19, 2019, Dkt. No. 69.

1.19. "Court" means the United States District Court for the District of Maryland.

1.20. "Current Participant" means a Class member who has an Active Account in the Plan as of the date the Preliminary Approval Order is entered by the Court.

1.21. "Defendants" means the following defendants named in the Complaint: (i) T. Rowe Price Group, Inc.; (ii) T. Rowe Price Associates, Inc.; (iii) T. Rowe Price Trust Company; (iv) the T. Rowe Price Group, Inc. Management Committee; (v) T. Rowe Price Group, Inc. Management Compensation Committee, (vi) T. Rowe Price Group Inc. Board of Directors, and (vii) Preston Athey, Steve Banks, Celine Dufetel, Eric Gee, Michael McGonigle, Kenneth Moreland, Larry Puglia, and Meredith Stewart.

1.22. "Defense Counsel" means O'Melveny & Myers LLP.

1.23. "Effective Date" or "Settlement Effective Date" means the date on which the Final Approval Order and final judgment are entered by the Court as set forth in § 4 of this Settlement Agreement and the Settlement shall have become Final.

1.24. "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended, including all regulations promulgated thereunder.

1.25. "Escrow Agent" means the custodian of the Qualified Settlement Fund, which shall be selected by Class Counsel.

1.26. "Fairness Hearing" means the hearing scheduled by the Court to consider any objections from Class members to the Settlement Agreement; Class Counsel's petitions for Attorneys' Fees and Expenses, and Service Awards to Class Representatives; and whether to finally approve the settlement under Federal Rule of Civil Procedure 23.

1.27. "Final" means, with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing, or certiorari or any other proceedings for review ("Review Proceeding") has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and completed disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand. For avoidance of doubt, the Parties agree that absent an appeal or other attempted Review Proceeding, the period after which the Final Approval Order becomes Final is thirty-five calendar days after its entry by the Court.

1.28. "Final Approval Order" means the order and final judgment, in substantially the form attached as Exhibit B, approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Action with prejudice.

1.29. "Former Participant" means a Class member who maintained a balance in the Plan during the Class Period, but who does not have an Active Account as of the date the Preliminary Approval Order is entered by the Court.



1.30. “Gross Settlement Amount” means the sum of seven million dollars (\$7,000,000), contributed to the Qualified Settlement Fund in accordance with § 5. As of the Effective Date, no portion of the Gross Settlement Amount shall be returned to Defendants.

1.31. “Independent Fiduciary” means the independent fiduciary that has no relationship to or interest in any of the Parties, selected by the Plan Administrator, with the consent of Class Counsel (which consent shall not unreasonably be withheld).

1.32. “Net Settlement Amount” means the Gross Settlement Amount plus any returns accrued on the same while held in the Qualified Settlement Fund, minus: (a) all Attorneys’ Fees and Expenses paid to Class Counsel as approved by the Court; (b) all Service Awards as authorized by the Court; (c) all Administrative Expenses; and (d) a contingency reserve reasonably determined by Class Counsel that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the first full calendar year of the Settlement Period, (3) an amount estimated for adjustments of data or calculation errors, and (4) an amount estimated for payment of necessary taxes of interest earned on the Qualified Settlement Fund.

1.33. “Party” or “Parties” means the Plaintiffs and Defendants, either individually or collectively.

1.34. “Plaintiffs” or “Named Plaintiffs” means Michelle Bourque, James Collins, David G. Feinberg, Daniel Fialkoff, Thomas Henry, Jitesh Jani, Sital Jani, Daniel Newman, Farrah Qureshi, Maria Stanton, and Regina Widderich.

1.35. “Plan” means the T. Rowe Price U.S. Retirement Program.

1.36. “Plan Administrator” means the current administrator of the Plan.

1.37. “Plan of Allocation” means the methodology for allocating the Net Settlement Amount, and any amendment, that Class Counsel shall include as an attachment to their motion for preliminary approval of the settlement. Defendants shall have no responsibility or liability for the Plan of Allocation.

1.38. “Plan Data” means reasonably accessible data in the possession, custody, and control of Defendants that is necessary to implement the Plan of Allocation, including, for each Class member, their first name, middle name or initial (if available in the Plan Recordkeeper’s records), and last name; most current address available in the Plan Recordkeeper’s records; T. Rowe Price email address (in the case of Class members who are current employees of the Company) or most current email address available in the Plan Recordkeeper’s records, if any (in the case of Class members not currently employed by the Company); the Social Security number (or last four digits thereof); and individual Plan account allocations to Plan investment options during the Class Period on a quarterly basis.

1.39. “Plan Recordkeeper” means the current recordkeeper of the Plan.

1.40. “Preliminary Approval Order” means the order, in substantially the form attached as Exhibit A, entered by the Court granting preliminary approval of the Settlement.

1.41. "Qualified Domestic Relations Order" means, for the purposes of this Agreement, a Qualified Domestic Relations Order as defined in 29 U.S.C. § 1056(d)(3)(K).

1.42. "Qualified Settlement Fund" means the settlement fund escrow account to be established by Class Counsel and maintained by the Escrow Agent in accordance with § 5 herein (within the meaning of Treas. Reg. § 1.468B-1) in which the Gross Settlement Fund is deposited.

1.43. "Released Claims" means all claims, rights, demands, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, and description whatsoever, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type (known or unknown), whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, that Plaintiffs' or any and all members of the Class, in his, her, or their capacity as a participant in the Plan, ever had, now have, or may have or otherwise could, can, or might assert, against the Released Parties (a) that were asserted in the Complaint or Action or that, whether or not pleaded in the Complaint or Action, could be predicated on the same allegations, acts, omissions, facts, events, matters, conduct, or transactions alleged in the Complaint or Action, or (b) that relate to or challenge:

- (i) the selection, oversight, monitoring, or retention of the Plan's investment options;
- (ii) fees, costs, or expenses charged to, paid by, or reimbursed by the Plan, directly or indirectly, in connection with the Plan's mutual fund or collective trust fund investments;
- (iii) investment advice relating to the Plan, or to its investments or fees;
- (iv) the Administrative Budget Contribution provided for under § 4.12 of the Plan Document, including without limitation the formulation, calculation, or allocation thereof;
- (v) the Special Payment referenced in § 8.1 of this Settlement Agreement, including without limitation the calculation or allocation thereof;
- (vi) any provision or amendment of the Plan Document with respect to investment options to be offered under the Plan, or the timing thereof;
- (vii) any direction to calculate, calculation of, and/or method or manner of allocating the Qualified Settlement Fund to the Plan or any member of the Class in accordance with the Plan of Allocation; and/or
- (viii) the approval by the Independent Fiduciary of the Settlement Agreement unless brought against the Independent Fiduciary alone.

"Released Claims" specifically exclude:

- (i) any rights or duties arising out of the Settlement Agreement, including the enforcement of the Settlement Agreement;
- (ii) claims of individual denial of Plan benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), that do not fall within §§ 1.43(a)-1.43(b) above;
- (iii) wages, labor, or employment claims unrelated to the Plan; and
- (iv) claims arising exclusively from conduct after the close of the Class Period.

For the avoidance of doubt, nothing in this Settlement Agreement shall release, or be construed to release, any claim whatsoever brought on behalf of any person or entity other than a member of the Class or the Plan against the Released Parties, or the Released Parties against a member of the Class or Class Counsel.

1.44. "Released Parties" means (a) Defendants; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s), (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future members of their respective boards of trustees or boards of directors, committees, agents, officers, employees, independent contractors, representatives, attorneys, administrators, fiduciaries (with the exception of the Independent Fiduciary), accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, associates, members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan's fiduciaries, administrators, recordkeepers, service providers, consultants, and other parties-in-interest.

1.45. "Service Award" means any amount determined by the Court, but not to exceed \$15,000 for each Class Representative, which shall be paid from the Gross Settlement Amount directly to each Class Representative.

1.46. "Settlement" or "Settlement Agreement" means the agreement between Plaintiffs and Defendants embodied in this document.

1.47. "Settlement Administrator" means an independent contractor selected and retained by Class Counsel which shall operate under the supervision of Class Counsel.

1.48. "Settlement Notice" or "Class Notice" means the Notice of Class Action Settlement to be sent to Class members identified by the Settlement Administrator following the Court's issuance of the Preliminary Approval Order in substantially the form attached as Exhibit A. The Settlement Notice also shall inform Class members of a Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Class member satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Class Counsel for award of Attorneys' Fees and Expenses; (c) payment of and reserve for Administrative Expenses; and (d) Service Awards to Class Representatives.

1.49. "Settlement Period" means the period lasting ten years after the Settlement Effective Date.

1.50. "Settlement Website" means the website to be established by Class Counsel within seven calendar days of entry of the Preliminary Approval Order and in accordance with § 3.

1.51. "Special Payment" means the \$6,623,238 payment by T. Rowe Price Group, Inc., in January 2019 to more than five thousand Plan participants.

1.52. "T. Rowe Price Funds" means the T. Rowe Price-sponsored and/or -advised investment options offered in the Plan during the Class Period.

1.53. "Unknown Claims" means any and all Released Claims which the Named Plaintiffs or the Class members do not know or suspect to exist in their favor as of the Settlement Effective Date, which if known by the Named Plaintiffs or Class members might have affected their decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Settlement Effective Date, the Named Plaintiffs and Defendants shall expressly waive, and each Class member shall be deemed to have waived, and by operation of the Court's entry of the Final Approval Order shall have expressly waived, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code or by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Section 1542 of the California Civil Code provides, in relevant part:

A general release does not extend to claims which 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.

Named Plaintiffs and Defendants acknowledge, and the Class members by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims within the definition of Released Claims was separately bargained for and was a key element of the Settlement.

## 2. RECITALS

2.1. On February 14, 2017, David G. Feinberg filed a complaint on behalf of himself and similarly situated participants in the Plan, alleging that defendants breached their fiduciary duties and engaged in prohibited transactions in connection with defendants' offering of solely T. Rowe Price Funds in the Plan. On July 21, 2017, Plaintiffs filed an Amended Complaint in which Mr. Feinberg was joined as Named Plaintiff by the ten additional Named Plaintiffs. The operative complaint is the Second Amended Complaint (Dkt. No. 84).

2.2. On May 17, 2019, the Court certified the Action as a class action pursuant to Fed. R. Civ. P. 23(b)(1). (Dkt. No. 83).

2.3. On January 9, 2020, the Court referred this matter to Magistrate Judge A. David Copperthite for a settlement conference. (Dkt. No. 133). On June 10, 2020, Judge Copperthite canceled a settlement conference after receiving communications from the Parties but invited the Parties to contact his chambers if they believed a settlement conference would be of assistance. (Dkt. No. 141).

2.4. On February 10, 2021, the Court denied in large part the Parties' motions for summary judgment. (Dkt. No. 201). However, the Court indicated that on the record before it at that time, it believed it "likely" that a fact-finder would find facts favorable to Defendants' position. *Id.* at 17.

2.5. On February 25, 2021, the Court set a September 13, 2021 date for a bench trial. (Dkt. No. 206).

2.6. On April 13, 2021, the Parties participated in a Settlement Conference mediated by Magistrate Judge Copperthite, but it did not result in a settlement.

2.7. In July 2021, the Parties resumed settlement negotiations mediated by Magistrate Judge Copperthite. These negotiations resulted in an agreement in principle to settle the Action on July 23, 2021. Disputes arose during the finalization process, and the disputes were mediated with private mediator Robert Meyer of JAMS, with the result that the terms and conditions of the Parties' agreement are now memorialized in this Settlement Agreement.

2.8. The Class Representatives and Class Counsel consider it desirable and in the Plan's and Class members' best interests that the Action be settled upon the terms set forth below. The Class Representatives and Class Counsel believe that such terms are fair, reasonable, and adequate and that this Settlement will result in benefits to the Plan and the Class.

2.9. Defendants deny all allegations of wrongdoing and deny all liability for the claims in this Action. Defendants maintain that the Plan has been managed, operated, and administered at all times in compliance with ERISA and applicable laws and regulations. This Settlement Agreement, and the prior negotiations between the Parties, shall in no event constitute, be construed as, or be deemed evidence of, or an admission or concession of, any wrongdoing, fault, or liability of any kind by Defendants.

2.10. Plaintiffs assert that all the claims asserted in this Action are meritorious. This Settlement Agreement, and the prior negotiations between the Parties, shall in no event constitute, be construed as, or be deemed evidence of, or an admission or concession of, any lack of merit of any kind by Plaintiffs with respect to the claims asserted.

2.11. The Parties have concluded that it is desirable that the Action be finally settled on behalf of the Class upon the terms and conditions set forth in this Settlement Agreement.

2.12. Therefore, the Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows.

### **3. REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS**

3.1. Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Approval

Order in substantially the form attached hereto as Exhibit A. The proposed Preliminary Approval Order to be presented to the Court would, if entered, among other things:

- 3.1.1 Approve the text of the Settlement Notice for mailing or sending by electronic means to Class members identified by the Settlement Administrator to notify them of the Settlement, the Fairness Hearing, and the Settlement Website.
- 3.1.2 Determine that under Rule 23(c)(2)(A) of the Federal Rules of Civil Procedure, the Settlement Notice constitutes appropriate notice under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class members, and complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law.
- 3.1.3 Cause the Settlement Administrator to mail by first class mail or by electronic means the Settlement Notice to each Class member identified by the Settlement Administrator based upon the Plan Data provided by the Plan Recordkeeper.
- 3.1.4 Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class member may directly, through representatives, or in any other capacity commence any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Parties or the Plan.
- 3.1.5 Set the Fairness Hearing for no sooner than one hundred calendar days after the date the Preliminary Approval Order is entered by the Court, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Approval Order, and (iii) the Court should approve the application for Attorneys' Fees and Expenses, Class Representatives' Service Awards, Administrative Expenses incurred to date, and a reserve for anticipated future Administrative Expenses.
- 3.1.6 Provide that any objections to the Settlement Agreement shall be heard, and any papers submitted in support of those objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any notice of intent to appear or supporting documents must be filed at least twenty-eight calendar days prior to the scheduled Fairness Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to appear within the time limitation set forth above.
- 3.1.7 Provide that the Parties may, but are not required to, serve discovery requests, including requests for documents and notices of deposition not

to exceed two hours in length, on any objector within ten calendar days of receipt of the objection and that any responses to discovery or depositions must be completed within ten calendar days of the discovery request being served on the objector.

3.1.8 Provide that any Party may file a response to an objection by a Class member at least ten calendar days before the Fairness Hearing.

3.1.9 Provide that the Fairness Hearing may, without further direct notice to the Class members, other than by notice to Class Counsel, be adjourned or continued by order of the Court.

3.2. Any Independent Fiduciary retained by the Plan Administrator, on behalf of the Plan, shall have the following responsibilities, including whether to approve and authorize the settlement of the Released Claims on behalf of the Plan and to advise the Plan Administrator, Class Counsel, and Defense Counsel in writing of its conclusion in that regard.

3.2.1 In connection with its review of the Settlement, the Independent Fiduciary shall, if it elects to approve and authorize the settlement of the Released Claims on behalf of the Plan, provide the authorization required by Prohibited Transaction Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the U.S. Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"), so as to enable Defendants to rely on PTE 2003-39.

3.2.2 The Independent Fiduciary shall notify the Plan Administrator directly of its determination in writing (with copies to Class Counsel and Defense Counsel), which notification shall be delivered no later than forty-eight calendar days before the Fairness Hearing.

3.2.3 The Parties, Defense Counsel, and Class Counsel shall comply with reasonable written requests from the Independent Fiduciary for information necessary to evaluate the Settlement Agreement on behalf of the Plan.

3.3. Defendants and Defense Counsel shall respond timely to written requests, including by email, from the Settlement Administrator for readily accessible Plan Data that are reasonably necessary to implement the Plan of Allocation, provided that Defendants shall not be obligated to honor any request for Plan Data other than as set forth in §§ 3.5, 3.6, & 6.10 below unless the Settlement Administrator or Class Counsel has presented good cause for such request.

3.3.1 The Settlement Administrator shall be bound by the Confidentiality Agreement and any further non-disclosure or security protocol required by the Parties.

3.3.2 The Settlement Administrator (and Class Counsel, to the extent information supplied to the Settlement Administrator is also made available to Class Counsel) shall use the data provided by Defendants

and the Plan Recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator (or, in the case of Class Counsel, enabling the Settlement Administrator to do so) and for no other purpose.

3.3.3 The Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information. Such protocol shall be consistent with the U.S. Department of Labor's cybersecurity guidance, reflected in the Department's 2021 publications "Cybersecurity Program Best Practices" (available at <https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/best-practices.pdf>) and "Tips for Hiring a Service Provider with Strong Cybersecurity Practices" (<https://www.dol.gov/sites/dolgov/files/ebsa/key-topics/retirement-benefits/cybersecurity/tips-for-hiring-a-service-provider-with-strong-security-practices.pdf>).

3.4. By the date and in the manner set by the Court in the Preliminary Approval Order, and unless otherwise set forth below, the Settlement Administrator shall cause to be sent to each Class member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached as Exhibit C or a form subsequently agreed to by the Parties and the Court. The Settlement Notice shall be sent to the last known address, or email address if sent electronically, of each Class member provided by Defendants, as applicable, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan Recordkeeper (or its designee(s)). Class Counsel also shall post the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Class member whose Settlement Notice is returned and re-send such documents one additional time.

3.5. By no later than fourteen calendar days following the entry of the Preliminary Approval Order, Defendants shall cause the Plan Recordkeeper to provide to the Settlement Administrator and Class Counsel an electronic datafile in active Excel format containing the first name, middle name or initial (if available in the Plan Recordkeeper's records), and last name (each name in separate fields); last four digits of the Social Security number; the last known address and email address, if available; of each participant or beneficiary with a balance in the Plan on or after February 14, 2011 through the date of entry of the Preliminary Approval Order; and, for any participant reflected as deceased in Plan records with a date of death on or after February 14, 2011 through the date of entry of the Preliminary Approval Order, the beneficiary designation.

3.6. By no later than twenty-one calendar days following the entry of the Preliminary Approval Order, Defendants shall cause the Plan Recordkeeper to provide to the Settlement



Administrator and Class Counsel electronic datafiles in active Excel format containing, for each participant or beneficiary with a balance in the Plan on or after February 14, 2011 through the date of entry of the Preliminary Approval Order, such participant's or beneficiary's first name, middle name or initial (if available in the Plan Recordkeeper's records), and last name (each name in separate fields); last four digits of the Social Security number; and the participant's or beneficiary's balances in each of the Plan's investment options as of both (a) the end of the third quarter of 2021 (September 30, 2021) (and any subsequent quarters ending before the entry of the Preliminary Approval Order) and (b) the date of entry of the Preliminary Approval Order (supplementing the Plan Recordkeeper's prior production to Class Counsel of quarterly participant and beneficiary balances for earlier portions of the Class Period).

#### **4. FINAL SETTLEMENT APPROVAL**

4.1. No later than forty-five calendar days prior to the Fairness Hearing, Class Counsel shall file with the Court the motion for final approval of this Settlement Agreement and for entry of the Final Approval Order substantially in the form attached as Exhibit B.

4.2. The Final Approval Order as proposed shall provide for the following, among other things, to carry out the Settlement consistent with applicable law and governing Plan documents:

- 4.2.1 Approval of the settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class members and directing the Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;
- 4.2.2 A determination under Rule 23(c)(2)(A) of the Federal Rules of Civil Procedure that the Settlement Notice constitutes appropriate notice under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class members has been provided;
- 4.2.3 Dismissal with prejudice of the Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on the behalf of the Class members, or derivatively to secure relief for the Plan, without costs to any of the Parties other than as provided for in this Settlement Agreement;
- 4.2.4 That the Plan and each Class member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be conclusively deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties and the Plan from all Released Claims;
- 4.2.5 That Defendants have satisfied all applicable CAFA requirements;

- 4.2.6 That the Independent Fiduciary retained by the Plan Administrator, on behalf of the Plan, has reviewed and approved the Settlement (or, in the alternative, that Defendants have elected to proceed with the Settlement notwithstanding the Independent Fiduciary's determination not to approve the Settlement);
- 4.2.7 That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class member in accordance with the Plan of Allocation; and
- 4.2.8 That the payments made from the Qualified Settlement Fund to effect the distributions to Class members who are eligible for a Class Member Distribution or to effect the Plan of Allocation constitute restorative payments in accordance with Revenue Ruling 2002-45.

4.3. The Final Approval Order and final judgment entered by the Court approving the Settlement shall provide that upon its entry all Parties including the Plan and the Class shall be bound by the Settlement Agreement and the Final Approval Order.

## **5. ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

5.1. No later than seven calendar days after entry of the Preliminary Approval Order, Class Counsel shall establish an escrow account, trustee by the Escrow Agent. The escrow account shall be the Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns ("Tax Filings") necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number for the Qualified Settlement Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in § 5.1 shall be consistent with this § 5 and, in all events, shall reflect that all taxes (as defined in § 5.3 below, including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in § 5.3.

5.3. Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, to the extent they are: (1) any taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income earned by the Gross Settlement Amount for any period during which the Gross

Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) any tax expenses and costs incurred in connection with the operation and implementation of this § 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this § 5). Such taxes and tax expenses shall be paid timely by the Escrow Agent from the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from any distribution destined to any Class member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Released Parties, Defense Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this § 5.

5.4. Within twenty-one calendar days after the later of (a) the entry of the Preliminary Approval Order, or (b) establishment of the Qualified Settlement Fund described in § 5.1 where the Escrow Agent shall have furnished to Defendants in writing the Qualified Settlement Fund account name, IRS W-9 Form, and all necessary wiring instructions, Defendants shall cause the deposit of five hundred thousand dollars (\$500,000) into the Qualified Settlement Fund. Within fourteen calendar days following the Settlement Effective Date, Defendants shall cause the deposit of the remaining six million five hundred thousand dollars (\$6,500,000) into the Qualified Settlement Fund.

5.5. The Escrow Agent shall, at the written direction of Class Counsel, invest the Qualified Settlement Fund in (i) short-term United States Agency or Treasury Securities or other interest-bearing instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates; (ii) a mutual fund investing in such securities; or (iii) multiple FDIC insured bank accounts that collectively insure the entire Qualified Settlement Fund and which, if reasonably available, pay interest.

5.6. The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion thereof except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between the Parties. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

5.7. The Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: (i) all Attorneys’ Fees and Expenses shall be paid to Class Counsel as set forth in § 8.3; (ii) all Administrative Expenses not paid previously shall be paid within forty-five calendar days after the Effective Date; (iii) any Service Awards ordered by the Court shall be paid within thirty calendar days after the Effective Date; (iv) a contingency reserve shall be determined by Class Counsel and set aside by the Settlement Administrator within twenty-eight calendar days after the Effective Date for: (1) Administrative Expenses incurred before the Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Effective Date but before the

end of the first full calendar year of the Settlement Period, and (3) an amount estimated for adjustments of data or calculation errors; and (v) the Net Settlement Amount shall be distributed in accordance with the Plan of Allocation. Until the final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.

5.8. The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The Released Parties, Defense Counsel, and Class Counsel shall have no responsibility or liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

## **6. DISTRIBUTION OF SETTLEMENT FUNDS TO CLASS MEMBERS**

6.1. After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed in accordance with the Plan of Allocation.

6.2. The Settlement Administrator shall be solely responsible for performing any calculations required by the Plan of Allocation.

6.3. To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant, a Former Participant, or a Beneficiary under the Plan of a Current Participant who became entitled to all or a portion of a Current Participant's account after the date of the Preliminary Approval Order.

6.4. Current Participants with an Active Account as of the date of distribution shall receive their settlement payments as credits to their Plan account(s), as provided in § 6.11. In crediting the accounts of such Class members, the Defendants shall cause the Plan Recordkeeper (or other responsible Plan entity or service provider) to identify the credit as an "Other Credit" provided on the date of Settlement allocation and include a Plan account statement message that describes the amounts represented as "Other Credit" and credited on that date as a distribution from the settlement of *Feinberg, et al. v. T. Rowe Price Group, Inc., et al.*, Case No. 17-cv-427, in the U.S. District Court for the District of Maryland.

6.5. Former Participants and any Current Participants without an Active Account as of the date of distribution shall receive their settlement payments as provided in § 6.12 & § 6.13.

6.6. Beneficiaries under the Plan who become entitled to all or a portion of a Current Participant's account after the date of the Preliminary Approval Order (other than those such Beneficiaries who have Active Accounts as of the date of distribution, whose payments will be credited to their Plan account(s) as described in § 6.4) will receive checks as described in this § 6 in amounts corresponding to their entitlement as Beneficiaries of the Current Participant with respect to which the payment is made.

6.7. The Settlement Administrator shall complete all settlement payment calculations for all Current Participants and Former Participants within forty-five calendar days after the Settlement Effective Date.

6.8. Within five calendar days after the Settlement Administrator has completed all payment calculations for all Current Participants and Former Participants as described in § 6.7, the Settlement Administrator will provide the Plan Administrator with a spreadsheet in active Excel format containing the first name, middle name or initial (if available), and last name; last four digits of the Social Security number; and the amount of the Net Settlement Amount to be allocated to each Current Participant and Former Participant (the "Settlement Spreadsheet").

6.9. The Parties acknowledge that any payments to Class members in accordance with the Settlement Agreement or the Plan of Allocation will be governed by applicable tax laws. Further, the Parties agree to work in good faith to take reasonable steps to minimize any adverse tax consequences on Class members resulting from this Settlement Agreement. Defendants, Defense Counsel, Class Counsel, and Class Representatives will provide no tax advice to Class members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. Neither the Released Parties, Defense Counsel, nor Class Counsel shall have any responsibility for or liability whatsoever with respect to any tax advice given to Current Participants or Former Participants. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Parties.

6.10. Within fourteen calendar days of receipt of the Settlement Spreadsheet referenced in § 6.8 from the Settlement Administrator, the Plan Recordkeeper will notify the Settlement Administrator and Class Counsel of which Current Participants and Former Participants listed in the Settlement Spreadsheet have neither an Active Account as of that date nor an Active Account for a Beneficiary with respect to such individual as of that date. Simultaneously therewith, the Plan Recordkeeper will also cause to be provided to the Settlement Administrator the full Social Security number for each Class member who does not have an Active Account as of the date of the Plan Recordkeeper's receipt of the Settlement Spreadsheet referenced in § 6.8, in order to facilitate the Settlement Administrator's distribution of payments as described in §§ 6.12 and 6.13 below. In the event that an individual listed in the Settlement Spreadsheet was a Current Participant that has died since the date of the Preliminary Approval Order, and whose Beneficiaries no longer have an Active Account as of the date on which the Settlement Spreadsheet is processed, the Plan Recordkeeper will cause the Beneficiary designation for such Current Participant, along with the last known address of any Beneficiary or Beneficiaries, to be provided to the Settlement Administrator and Class Counsel. The Settlement Administrator shall treat any such Beneficiary, as well as any Current Participant that does not have an Active Account at this point, as a Former Participant under § 6.13 for purposes of distributing their share of the Net Settlement Amount.

**6.11. Payments to Current Participants With Active Accounts.** Payments to Current Participants with Active Accounts as of the date of the notice referenced in § 6.10 above shall be distributed as follows:

- 6.11.1 Within five calendar days after receiving from the Plan Administrator the notice referenced in § 6.10 above, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund, using wire instructions to be provided by the Plan Administrator, of the aggregate amount of all settlement payments payable to individuals other than those to be treated as Former Participants under § 6.10.
- 6.11.2 The Plan trustee will credit the individual Active Account(s) of each Current Participant with an Active Account as of the distribution date in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant.
- 6.11.3 The settlement payment for each Current Participant with an Active Account as of the distribution date will be invested in accordance with and proportionate to such Current Participant's investment elections then on file. If there is no investment election on file for a Current Participant, then such Current Participant shall be deemed to have directed such payment to be invested in the relevant Plan "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.
- 6.11.4 The Parties understand that the Plan Recordkeeper will process all credits or payments to Current Participants with Active Accounts within thirty calendar days of receiving the distribution of funds described in § 6.11.1 from the Settlement Administrator.
- 6.11.5 The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Current Participants' Active Account(s) in accordance with this § 6.

**6.12. Payments to Current Participants Who No Longer Have Active Account(s) as of the Date the Settlement Payments are Made.** Settlement payments that cannot be credited to a Current Participant's Active Account(s) within thirty calendar days of receiving the distribution of funds described in § 6.11.1 from the Settlement Administrator, because the Current Participant no longer has an Active Account in the Plan nor an Active Account of a Beneficiary with respect to such individual, shall be returned by the Plan trustee to the Settlement Administrator for distribution pursuant to § 6.13 below within twenty calendar days.

**6.13. Payments to Former Participants.** Payments to Former Participants, including Current Participants who no longer have Active Accounts as described in § 6.12 above, shall be distributed as follows:

- 6.13.1 For each Former Participant, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail the check to the address on file for such Former Participant or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means. The check shall be issued as follows:

- (a) For each check issued, the Settlement Administrator shall: (i) calculate and withhold any applicable taxes associated with the payments allocable to the Former Participant; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Former Participants.
- (b) The Settlement Administrator shall advise the Former Participant that any distribution in accordance with the Settlement is rollover eligible and of their right to rollover such an amount.
- (c) Class members who are Former Participants shall receive a letter with their settlement payment stating that they alone bear responsibility for complying with any Qualified Domestic Relations Order that may apply to the payment.

6.14. The method of distribution described in this section is based upon preliminary data regarding the Class members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement these provisions, the method of distribution will be modified and any modification, if material, presented to the Independent Fiduciary for its review and approval.

6.15. Within fourteen calendar days of completing the steps described in §§ 6.1-6.13, the Settlement Administrator shall send to Class Counsel and Defense Counsel one or more affidavits stating the following: (a) the name of each Class member to whom the Settlement Administrator sent the Settlement Notice, and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice; (c) the name of each Class member whose Settlement Notice was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice for each such Class member; and (e) the name of each Class member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

6.16. Each Class member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class member shall hold the Released Parties, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Released Parties, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit) related to such tax liability.

6.17. All checks issued in accordance with the Plan of Allocation shall expire no later than one hundred twenty calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.

6.18. No sooner than thirty calendar days following the end of the first full calendar year of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs, taxes, and interest earned on the Qualified Settlement Fund, shall be paid to the Plan and distributed by the Plan Recordkeeper across Active Accounts existing on such date on a per capita basis. In no event shall any part of the Qualified Settlement Fund be used to reimburse any Defendants or otherwise offset settlement-related costs incurred by any Defendant.

## **7. REQUIREMENT TO MAKE AVAILABLE A BROKERAGE WINDOW**

7.1. As soon as reasonably practicable, and in no event later than six months after the Settlement Effective Date, Defendants shall cause the Plan to make available to Plan participants a Brokerage Window option for the duration of the Settlement Period, and to permit Plan participants to allocate all or a portion of their Plan balances to investments available through such Brokerage Window.

7.2. The Brokerage Window required by this § 7 shall afford Plan participants the option of investing in a wide range of pooled investment vehicles (such as mutual funds, exchange traded funds, and, if available, collective investment trusts). To the extent such a Brokerage Window product is commercially available during the Settlement Period, the Brokerage Window shall offer a wide range of investment funds in different asset classes and from different fund families, encompassing both active and passively managed strategies. Nothing in this Settlement Agreement requires Defendants to furnish to the Plan a Brokerage Window that allows participants to invest in the securities of individual companies.

7.3. Neither T. Rowe Price Group, Inc., nor its affiliates will collect account maintenance fees or other fees from Plan participants in connection with their use of the Brokerage Window option required by this § 7. To the extent Defendants cause the Plan to make available a Brokerage Window through a provider unaffiliated with T. Rowe Price Group, Inc., however, nothing in this Settlement Agreement precludes Plan participants from being charged fees by the Brokerage Window provider in connection with their use of the Brokerage Window option, provided that those fees do not exceed the fees customarily charged by the Brokerage Window provider to similarly situated plans with similar amounts of total assets. With the exception of any additional costs incurred by T. Rowe Price Retirement Plan Services, Inc., in creating or maintaining connectivity with the selected Brokerage Window provider for the plans on its recordkeeping platform, nothing in this § 7.3 shall preclude T. Rowe Price Group, Inc., from recovering from the Plan any necessary and reasonable “direct expenses” of Plan administration (as the term “direct expenses” is used in 29 C.F.R. § 2550.408b-2(e)(3)) incurred by T. Rowe Price Group, Inc., or its affiliates, in connection with offering the Brokerage Window option in the Plan.

7.4. The Brokerage Window may be removed from the Plan prior to the expiration of the Settlement Period in either of the following circumstances: (a) upon the determination by an experienced, competent, and professional independent fiduciary (appointed for this specific purpose and paid by Defendants) that there has been a change in circumstances and it would violate ERISA’s duty of prudence to continue to offer such a Brokerage Window to participants under such circumstances; or (b) if Defendants reasonably conclude that there has been a change in law or regulation relating to fiduciary monitoring or reporting requirements for investment offerings available through a Brokerage Window that makes such monitoring or reporting materially more burdensome or costly than it is today. Defendants shall provide a written notification to Class



Counsel of the occurrence of one of these two events at least thirty days in advance of removal of the Brokerage Window option from the Plan.

## **8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

8.1. Class Counsel intend to seek an award of their attorneys' fees in an amount not to exceed \$3.5 million plus all reasonable litigation costs and expenses advanced and carried by Class Counsel for the duration of this Action, both of which shall be recovered from the Gross Settlement Amount. Class Counsel believe such an award is warranted in light of the relief obtained for the Class as a result of the Action, which includes: (i) a \$7 million direct payment from Defendants; (ii) as will be further discussed in subsequent Court filings, a \$6.6 million Special Payment by T. Rowe Price Group, Inc., in 2019 to thousands of Plan participants; and (iii) the addition of the Brokerage Window as a Plan option discussed in § 7 above. Class Counsel also intend to seek Service Awards, in an amount not to exceed \$15,000 per Class Representative, which shall be recovered from the Gross Settlement Amount. For avoidance of doubt, nothing in this Settlement Agreement bars Defendants from opposing any award of Attorneys' Fees and Expenses, nor contesting the amount of such award, although Defendants agree not to contest Plaintiffs' contention that the filing of the Complaint was a catalyst for the Special Payment.

8.2. Class Counsel will file a motion for an award of Attorneys' Fees and Expenses and to seek Service Awards at least forty-five calendar days before the date of the Fairness Hearing, which may be supplemented thereafter.

8.3. The amount the Court awards to Class Counsel for Attorneys' Fees and Expenses shall be transferred to Class Counsel from the Qualified Settlement Fund within fourteen calendar days after the Settlement Effective Date (or such later time as Class Counsel shall direct).

## **9. RELEASES AND COVENANT NOT TO SUE**

9.1. As of the Effective Date, the Plan (subject to the approval of the Independent Fiduciary, as provided for herein), the Class Representatives (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, agents, and attorneys), on their own behalves and on behalf of the Class, and the Class shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Parties and the Plan from the Released Claims, regardless of whether or not (1) Class members have filed an objection to the Settlement or to Class Counsel's application for an award of Attorneys' Fees and Expenses, (2) the objections of such Class members have been approved or allowed by the Court, and (3) they received any monetary benefit from the Settlement.

9.2. As of the Effective Date, the Class Representatives and the Class expressly agree that they, acting individually or together or in combination with others, shall not sue or seek to institute, maintain, prosecute, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a U.S. Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim against any of the Released Parties (i) asserting any of the Released Claims or (ii) asserting that the Released Parties violated ERISA or other applicable law by causing the Plan to make available a Brokerage Window as described in § 7 above. Nothing herein shall preclude

any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.

9.3. With respect to the Released Claims and the additional claims described in § 9.2 above, it is the intention of the Parties and all Class members and the Plan to expressly waive to the fullest extent of the law: (a) the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides that “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor”; and (b) the provisions, rights, and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

9.4. As of the Settlement Effective Date, Defendants (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, representatives, agents, and attorneys), shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged the Class Representatives and Class Counsel from any and all claims, actions, causes of action, controversies, demands, disputes, duties, debts, damages, obligations, contracts, agreements, promises, issues, judgments, liabilities, liens, losses, sums of money, matters, suits, proceedings, and rights of every nature and description, whether known or unknown, suspected or unsuspected, concealed or unconcealed, foreseen or unforeseen, fixed or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether based on federal, state, local or foreign statutory law, rule, regulation, common law or equity, that, from the beginning of time, Defendants ever had, now have, or hereafter can, shall, or may have on the basis of, connected with, or arising out of the prosecution of the Action. Notwithstanding anything to the contrary in this Settlement Agreement, nothing herein will release the Class Representatives, Class Counsel, or the Class from their obligations under this Settlement Agreement.

## **10. REPRESENTATIONS AND WARRANTIES**

10.1. The Parties represent and warrant as follows:

- 10.1.1 The Parties are voluntarily entering into this Settlement Agreement as a result of arm’s length negotiations among their counsel, and in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon 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 that relate in any way to the subject matter hereof;
- 10.1.2 The Parties assume the risk of mistake as to facts or law;
- 10.1.3 The Parties recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;
- 10.1.4 The Parties have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Parties; and

10.1.5 The Parties have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

10.2. Each individual executing this Settlement Agreement 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 Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

## **11. TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

11.1. The Parties are obligated to attempt, in good faith, to cure any disagreements or issues with respect to this Settlement Agreement in the event of any events listed in § 11.2, including but not limited to Court ordered modifications to the Settlement.

11.2. This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

11.2.1 (1) Either the Independent Fiduciary does not approve the Settlement Agreement for any reason whatsoever, or the Plan Administrator reasonably concludes that the Independent Fiduciary's approval does not include the determinations necessary to satisfy PTE 2003-39; and (2) the Parties do not mutually agree either to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39, or to proceed with implementation of the Settlement Agreement without approval by the Independent Fiduciary.

11.2.2 The Preliminary Approval Order or Final Approval Order is not entered by the Court substantially in the form submitted by Class Counsel or in a form which is otherwise agreed to by the Parties in writing;

11.2.3 The Settlement Agreement is disapproved by the Court or fails to become effective for any reason; or

11.2.4 The Preliminary Approval Order or Final Approval Order is finally reversed on appeal, or is modified on appeal and the Parties do not mutually agree to any such modifications in writing.

11.3. If the Settlement Agreement is terminated and rendered null and void for any reason, the Action shall for all purposes with respect to the Parties revert to its status as of July 22, 2021. All funds deposited in the Qualified Settlement Fund, and any returns thereon, shall be returned to Defendants within thirty calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in § 11.5.

11.4. It shall not be deemed a disapproval of the Settlement Agreement within the meaning of § 11.2.3 if Class Counsel's application for Attorneys' Fees and Expenses and/or Service Awards

is denied, in whole or in part, and/or any of the proposed orders relating to Attorneys' Fees and Expenses and/or Service Awards are modified accordingly.

11.5. In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from positive returns, if any, on the Qualified Settlement Fund, and then the remainder shall be paid in equal shares by Defendants and Class Counsel.

## 12. GENERAL PROVISIONS

12.1. The Parties agree to cooperate fully with each other in seeking Court approval of the Settlement and to do all things as may reasonably be required to effectuate such approvals and the implementation of this Settlement Agreement according to its terms (subject, in the case of Defendants, to §§ 8.1 & 12.18 of this Agreement).

12.2. Defendants shall cooperate reasonably to provide Class member contact information to the Settlement Administrator in an electronic format accessible by such vendor, to the extent the contact information exists in such a format or otherwise can be readily obtained.

12.3. Neither the Parties, Class Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (ii) the management, investment, or distribution of the Qualified Settlement Fund; (iii) the Plan of Allocation as approved by the Court; (iv) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defense Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.

12.4. The Court shall retain jurisdiction over all Parties, the Action, and this Settlement Agreement to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notice referenced herein, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement, and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this paragraph. Any motion to enforce this Settlement Agreement may be filed in the U.S. District Court for the District of Maryland, or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Settlement Agreement.

12.5. This Settlement Agreement 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 Maryland law will apply without regard to conflict of law principles.

12.6. In the event that Defendants breach this Settlement Agreement, Plaintiffs and the Class will continue to have any and all remedies for such breach. In the event that Plaintiffs breach this Settlement Agreement, Defendants will continue to have any and all remedies for such breach.

12.7. Each Party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to the Party by his, her, or its counsel.

12.8. Except as expressly specified otherwise, the provisions of this Settlement Agreement are not severable.

12.9. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it 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 of this Settlement Agreement.

12.10. All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date.

12.11. The provisions of this Settlement Agreement 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 Agreement shall not be deemed to be or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous with this Settlement Agreement.

12.12. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement 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 a drafter.

12.13. The following principles of interpretation apply to this Settlement Agreement:

- 12.13.1 The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.
- 12.13.2 Unless the context indicates otherwise, definitions apply to the singular and plural forms of each term defined, and to the masculine, feminine, and neuter genders of each term defined.
- 12.13.3 Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

12.14. This Settlement Agreement may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile or email for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement 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.

12.15. This Settlement Agreement binds and inures to the benefit of the Parties, their assigns, heirs, administrators, executors, and successors-in-interest.

12.16. Any notice, demand, or other communication between or to the Parties under this Settlement Agreement (other than notices to members of the Class) shall be in writing and shall be deemed duly given if it is addressed to each of the intended recipients as set forth below and sent by email with confirmation given of the receipt of that email, except that any notice or demand by any Class member to the Parties under this Settlement Agreement need only be addressed to Class Counsel and Defense Counsel.

**A. IF TO PLAINTIFFS:**

J. Brian McTigue  
James A. Moore  
**MCTIGUE LAW LLP**  
bmctigue@mctiguelaw.com  
jmoore@mctiguelaw.com

Mary J. Bortscheller  
Scott M. Lempert  
**COHEN MILSTEIN SELLERS & TOLL, PLLC**  
mbortscheller@cohenmilstein.com  
slempert@cohenmilstein.com

**B. IF TO DEFENDANTS:**

Brian D. Boyle  
**O'MELVENY & MYERS LLP**  
bboyle@omm.com

12.17. The allocation of the Net Settlement Amount to Class members is a matter separate and apart from the proposed Settlement between the Parties. Any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. It is not a condition of the Settlement that any particular plan of allocation be approved by the Court. Class Representatives and Class Counsel may not cancel or terminate the Settlement based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action. There shall be no distribution of any of the Qualified Settlement Fund to any Class member (excepting Service Awards) until an order approving a plan of allocation is Final.

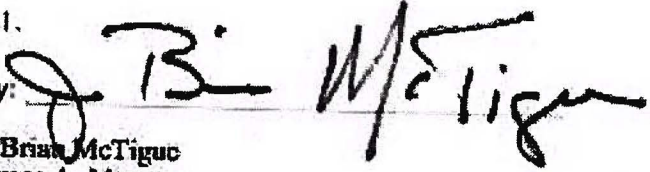
12.18. The exhibits to this Settlement Agreement represent the versions of documents Plaintiffs intend to present with the settlement approval motions they file with the Court. By agreeing to this Settlement Agreement, Defendants are not admitting to the statements contained in those exhibits, and reserve their rights to object to those statements and/or the versions of the exhibits Plaintiffs present to the Court, as well as Plaintiffs' Plan of Allocation.

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

**FOR NAMED PLAINTIFFS AND THE CLASS**

Dated this 16 day of December 2021.

By:

  
J. Brian McTigue  
James A. Moore  
**MCTIGUE LAW LLP**  
bmctigue@mctiguelaw.com  
jmoore@mctiguelaw.com

By:

  
Mary J. Bortscheller  
Scott M. Lempert  
**COHEN MILSTEIN SELLERS & TOLL, PLLC**  
mbortscheller@cohenmilstein.com  
slempert@cohenmilstein.com

*Class Counsel*

**FOR ALL DEFENDANTS**

Dated this the 17<sup>th</sup> day of December 2021.

By: 

Brian D. Boyle  
**O'MELVENY & MYERS LLP**  
1625 Eye Street NW  
Washington, DC 20006

*Attorneys for Defendants*