

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made on April 26, 2017

(the "Execution Date")

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN
HOME, HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL,
1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS,
MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS
FUZE SALON**

(the "Plaintiffs")

and

NATIONAL BANK OF CANADA

("NBC")

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**CANADIAN CREDIT CARD FEES CLASS ACTION
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RECITALS

A. WHEREAS the Plaintiffs have commenced the Canadian Proceedings in the Courts and allege that the Defendants, including NBC, participated in the Alleged Conspiracy, and the Plaintiffs claim class-wide damages allegedly caused as a result of the Alleged Conspiracy, as well as equitable relief;

B. AND WHEREAS, through its participation in the MasterCard network, NBC received Interchange Fees in Canada during the Class Period;

C. AND WHEREAS NBC believes that it is not liable in respect of the Alleged Conspiracy, and believes it has good and valid defences in respect of the claims advanced in the Canadian Proceedings;

D. AND WHEREAS NBC does not admit through the execution of this Settlement Agreement any allegation of unlawful conduct as alleged in the Canadian Proceedings or at all;

E. AND WHEREAS the Parties agree that neither this Settlement Agreement nor any statement made in the negotiations thereof shall be deemed or construed to be an admission by or evidence against NBC or evidence of the truth of any of the Plaintiffs' allegations against NBC, which NBC expressly denies;

F. AND WHEREAS, despite its firm belief that it is not liable in respect of the Alleged Conspiracy and that it has good and valid defences in respect of the claims advanced in the Canadian Proceedings, NBC has negotiated and entered into this Settlement Agreement to avoid

the further expense, inconvenience, and distraction of burdensome and protracted litigation of the Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them, to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent in relation to the Alleged Conspiracy;

G. AND WHEREAS NBC expressly reserves its rights to contest or appeal certification or authorization of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified or authorized in the absence of this Settlement Agreement, and that this Settlement Agreement does not constitute in any way a precedent to support the certification or authorization of classes of this nature;

H. AND WHEREAS counsel for the Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement;

I. AND WHEREAS as a result of these settlement discussions and negotiations, NBC and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between NBC and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of all Courts;

J. AND WHEREAS as part of this resolution, NBC has agreed to pay the Settlement Amount for the benefit of the Settlement Class;

K. AND WHEREAS the Plaintiffs have agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement and the value of the early cooperation NBC agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by NBC;

L. AND WHEREAS the Plaintiffs and Class Counsel recognize the heightened benefits of NBC's early cooperation in respect of the Canadian Proceedings, which continue to be defended by the Non-Settling Defendants;

M. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed dismissal of the Canadian Proceedings against NBC, the value of the Settlement Amount and the early cooperation to be provided by NBC, the burdens and expense associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with motions, trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in each of the Canadian Proceedings;

N. AND WHEREAS the Plaintiffs and the Settlement Class intend to fully and completely settle and resolve the claims advanced in the Canadian Proceedings as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

O. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nationwide basis, without admission of liability, all of the Canadian Proceedings as against the Releasees;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Canadian Proceedings as class proceedings and have consented to the Settlement Class and the Common Issue in each of the Canadian Proceedings;

Q. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Canadian Proceedings;

R. AND WHEREAS for the purposes of settlement only and conditional on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Canadian Proceedings as against NBC;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings as against NBC be settled and dismissed with prejudice and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

(1) *Acquirers* mean those persons entering into contracts with Merchants for the provision of Visa Credit Card services and/or MasterCard Credit Card services and charging Merchant Discount Fees, which account for and/or include Interchange Fees, in Canada.

(2) *Additional Class Proceedings* means the proceeding commenced by 1023926 Alberta Ltd. in the form of an action filed in the Alberta Court, File No. 1203 10620 (Edmonton Registry), filed on July 13, 2012, as amended on September 18, 2012, the proceeding commenced by The Crown & Hand Pub Ltd. in the form of an action filed in the Saskatchewan Court, Court File No. 1206 of 2012, filed on July 12, 2012, as amended on November 14, 2012 and any future proceeding commenced prior to the Final Order in respect of the Alleged Conspiracy or relating to any conduct alleged, or which could have been alleged, against NBC by the Plaintiffs in the Canadian Proceedings.

(3) *Administration Expenses* mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices and claims administration, but excluding Class Counsel Fees.

(4) *Alberta Court* means the Alberta Court of Queen's Bench.

(5) *Alberta MasterCard Settlement Class* means all Alberta resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(6) ***Alberta Visa Settlement Class*** means all Alberta resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(7) ***Alberta Proceeding*** means the proceeding commenced by Macaronies Hair Club and Laser Center Inc., operating as Fuze Salon, in the form of an action filed in the Alberta Court, File No. 1203 18531 (Edmonton Registry), filed on December 14, 2012.

(8) ***Alleged Conspiracy*** means the alleged unlawful conspiracy by the Defendants to fix, maintain, increase or control Merchant Discount Fees, including Interchange Fees, paid by Merchants who accepted payment by Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period, contrary to Part VI of the *Competition Act* and the common law (including the *Civil Code of Quebec*).

(9) ***Approval Hearings*** means the hearing of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement in each of the Courts.

(10) ***BofA Settlement*** means the settlement that has been negotiated with Bank of America Corporation and has been approved by the BC Court on November 9, 2015, the Saskatchewan Court on November 12, 2015, the Alberta Court on November 18, 2015, the Ontario Court on November 19, 2015 and the Quebec Court on December 7, 2015.

(11) ***BC Court*** means the Supreme Court of British Columbia.

(12) ***BC MasterCard Settlement Class*** means all British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of

MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(13) **BC Proceeding** means the proceeding commenced by Coburn and Watson's Metropolitan Home dba Metropolitan Home in the form of an action filed in the BC Court (Vancouver registry), Court File No. VLC-S-S-112003, filed on March 28, 2011, as amended.

(14) **BC Visa Settlement Class** means all British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(15) **Canadian Proceedings** mean the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding.

(16) **Capital One Settlement** means the settlement that has been negotiated with Capital One Financial Corporation and Capital One Bank (Canada Branch), and has been approved by the BC Court on November 9, 2015, the Saskatchewan Court on November 12, 2015, the Alberta Court on November 18, 2015, the Ontario Court on November 19, 2015, and the Quebec Court on December 7, 2015.

(17) **Certification Hearings** mean the hearings of the motions brought by Class Counsel for the certification or authorization of the Canadian Proceedings as class proceedings as against NBC in each of the Courts.

(18) **Citi Settlement** means the settlement that has been negotiated with Citigroup Inc., Citi Cards Canada Inc., Citibank Canada and Citibank N.A., and has been approved by the BC Court on November 9, 2015, the Saskatchewan Court on November 12, 2015, the Alberta Court on

November 18, 2015, the Ontario Court on November 19, 2015, and the Quebec Court on December 7, 2015.

(19) **Claims Administrator** means a Person proposed by Class Counsel and appointed by the Courts to administer this Settlement Agreement, including any claims process, in accordance with the provisions of this Settlement Agreement and any Distribution Protocol, and any employees of such Person.

(20) **Class Counsel** means Camp Fiorante Matthews Mogeran, Branch MacMaster LLP and Consumer Law Group.

(21) **Class Counsel Fees** means the fees, disbursements, costs, and other applicable taxes or charges of Class Counsel, including any applicable GST, HST, PST or QST.

(22) **Class Period** means March 23, 2001 to the latest date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings, including an order approving final settlement of those claims, or any end date of the Class Period provided therein.

(23) **Common Issue** means: Did NBC conspire with others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards and/or MasterCard Credit Cards in Canada during the Class Period?

(24) **Courts** mean the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court and the Quebec Court (each a "Court").

(25) ***Defendant(s)*** means, individually or collectively, the individuals or entities now or in the future named as a defendant or respondent in the Canadian Proceedings.

(26) ***Desjardins Settlement*** means the settlement that has been negotiated with Desjardins, and has been approved by the BC Court on May 24, 2016, the Quebec Court on May 30, 2016, the Ontario Court on June 1, 2016, the Saskatchewan Court on June 10, 2016, and the Alberta Court on June 28, 2016.

(27) ***Distribution Protocol*** means a plan to be developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Courts.

(28) ***Document(s)*** has the meaning given to that term in Rule 1-1(1) of the *British Columbia Supreme Court Civil Rules*.

(29) ***Effective Date*** means the date immediately when the Final Orders have been received from the Courts approving this Settlement Agreement.

(30) ***Excluded NBC Documents*** means any NBC Documents that are subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or which would require NBC to breach any order, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction.

(31) ***Excluded Person(s)*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

- (32) **Execution Date** means the date the Parties execute this Settlement Agreement.
- (33) **Final Order** means a final order made by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.
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- (34) **Interchange Fees** mean interchange fees collected by Issuers arising from transactions made under the terms of the Visa Network Rules and/or the MasterCard Network Rules in Canada.
- (35) **Issuers** mean the banks or other financial institutions which issued Visa and/or MasterCard Credit Cards in Canada.
- (36) **MasterCard** means MasterCard International Incorporated and MasterCard Canada, Inc.
- (37) **MasterCard Credit Cards** mean credit cards issued by Issuers of MasterCard credit cards in Canada. For greater certainty, MasterCard Credit Cards also include processes and/or electronic devices and/or applications linked to and/or supported by a MasterCard credit card account permitting payment for the supply of goods or services at a Merchant.
- (38) **MasterCard Network Rules** means the MasterCard Worldwide MasterCard Rules, as amended.
- (39) **Merchant Agreements** mean agreements entered into between Acquirers and Merchants which impose Merchant Discount Fees, which account for and/or include Interchange Fees, on

Merchants whenever they accept payment from customers by way of Visa Credit Cards and/or MasterCard Credit Cards.

(40) **Merchant Discount Fees** mean fees paid by Merchants arising from the use of Visa Credit Cards and/or MasterCard Credit Cards in Canada.

(41) **Merchants** mean all persons or entities resident in Canada who accept payments from customers by way of Visa Credit Cards and/or MasterCard Credit Cards in exchange for the supply of goods or services.

(42) **NBC** means National Bank of Canada.

(43) **NBC Opt Out** means (a) any Person who has validly opted out of each of the Canadian Proceedings within the time provided for in the first Notice of Certification for settlement purposes that has been published and provided for opt outs in relation to NBC in each of the Canadian Proceedings and/or (b) any Person who commenced accepting Visa Credit Cards and/or MasterCard Credit Cards after the date of the first such Notice and who later validly opts out of the Canadian Proceedings in relation to NBC following a subsequent Notice issued to the Settlement Class as contemplated by section 2.2 of this Settlement Agreement and/or (c) any Person who validly opts out of the Quebec Proceedings within the time provided for in the Notice of Certification /Authorization and Settlement Hearing to be published that provides for opt outs in the Quebec Proceedings. For greater certainty, NBC Opt Out does not include Persons who subsequently opt out of the Canadian Proceedings and who had the opportunity to opt out pursuant to any of the Notices described in (a), (b) and (c) above and failed to do so.

(44) ***NBC Settlement's Confidential Opt Out Threshold*** means the threshold agreed to by the Parties, as set out in Schedule C to this Settlement Agreement and signed prior to or contemporaneously with the execution of this Settlement Agreement, which Schedule shall be kept confidential, and filed and maintained under seal in any filings in the Courts, and may be shown to judges of the Courts but shall not otherwise be disclosed. The Confidential Opt-Out Threshold shall be considered a material term of this Settlement Agreement and, once met, shall give rise to a right of termination pursuant to Section 12 of this Settlement Agreement.

(45) ***NBC Documents*** means any Documents provided by NBC to Class Counsel pursuant to section 3.3 of this Settlement Agreement.

(46) ***Non-Settling Defendant(s)*** means any Defendant that is not a Releasee under this Agreement or the BofA Settlement, the Capital One Settlement, the Citi Settlement or the Desjardins Settlement and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the date of execution of this Settlement Agreement.

(47) ***Notice of Certification/Authorization and Settlement Hearing*** means the form or forms of notice, agreed to by the Plaintiffs and NBC, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; (ii) the certification or authorization of the Canadian Proceedings for settlement purposes; (iii) the dates and locations of the Approval Hearings.

(48) ***Notice of Claims Procedure*** means any form or forms of notice, agreed to by the Plaintiffs and NBC, or such other form or forms as may be approved by the Courts, which

informs the Settlement Class of: (i) the approval of this Settlement Agreement; and (ii) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(49) *Notices* mean (i) Notice of Certification/Authorization and Settlement Hearing; (ii) Notice of Claims Procedure; (iii) notice of termination of this Settlement Agreement if it is terminated after notice provided for in accordance with (i) above or otherwise ordered by the Courts; and (iv) any other notice that may be required by the Courts.

(50) *Ontario Court* means the Ontario Superior Court of Justice.

(51) *Ontario MasterCard Settlement Class* means all Canadian resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the BC MasterCard Settlement Class, the Alberta MasterCard Settlement Class, the Saskatchewan MasterCard Settlement Class, the Quebec MasterCard Settlement Class, and Excluded Persons. For greater certainty, any legal person established for a private interest and any, partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec, shall be included in this Ontario MasterCard Settlement Class.

(52) *Ontario Proceeding* means the proceeding commenced by Jonathon Bancroft-Snell and 1739793 Ontario Inc. in the form of a Statement of Claim filed in the Ontario Court (Toronto registry), Court File No. CV-11-426591CP (Toronto), filed on May 16, 2011.

(53) ***Ontario Visa Settlement Class*** means all Canadian resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the BC Visa Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan Visa Settlement Class, the Quebec Visa Settlement Class, and Excluded Persons. For greater certainty, any legal person established for a private interest and any, partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec, shall be included in this Ontario Visa Settlement Class.

(54) ***Parties*** mean the Plaintiffs and NBC (each a "Party").

(55) ***Person(s)*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(56) ***Plaintiffs*** mean the plaintiffs in the Canadian Proceedings, and any other Person who may in the future be added or substituted as a plaintiff to any of the Canadian Proceedings.

(57) ***Proportionate Liability*** means the proportion of any judgment that, had they not settled, the Courts and/or an arbitration tribunal would have apportioned to the Releasees and shall also be deemed to include any amount that a Releasee would have been liable to pay to a Non-Settling Defendant as indemnification or contribution in the absence of this settlement and the bar orders contained herein.

(58) **Quebec Court** means the Superior Court of Quebec.

(59) **Quebec MasterCard Settlement Class** means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.

(60) **Quebec Proceeding** means the proceeding commenced by 9085-4886 Quebec Inc. and Peter Bakopanos, in the form of a Motion to authorize the bringing of a class action and to ascribe the status of representative in the Quebec Superior Court, Court File No. 500-06-000549-101 (District of Montreal), filed on December 17, 2010, as amended.

(61) **Quebec Visa Settlement Class** means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.

(62) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages,

liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time through the pendency of the Canadian Proceedings, in respect of the Alleged Conspiracy or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings and future claims relating to continuing acts or practices that occurred during the pendency of the Canadian Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conspiracy, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the payment of Merchant Discount Fees, including Interchange Fees. However, NBC acknowledges that this release does not include any benefits that may accrue to the Settlement Class as a result of final injunctive or declaratory relief ordered relating to the Visa Network Rules or MasterCard Network Rules and/or in relation to rates of Interchange Fees, that may be issued in the Canadian Proceedings.

(63) **Releasee(s)** mean, jointly and severally, individually and collectively, NBC and all of their and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their and its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and

representatives (subject to such particular inclusions or exclusions of individuals as may be specified in writing by NBC in its sole discretion prior to the Effective Date); and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(64) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former, and future direct and indirect parents, affiliates, subsidiaries, officers, directors, attorneys, servants, predecessors, successors, trustees, representatives, heirs, executors, administrators, insurers, and assigns of each of the foregoing.

(65) **Saskatchewan Court** means the Saskatchewan Court of Queen's Bench.

(66) **Saskatchewan MasterCard Settlement Class** means all Saskatchewan resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(67) **Saskatchewan Proceeding** means the proceeding commenced by Hello Baby Equipment Inc. in the form of a Statement of Claim filed in the Saskatchewan Court of Queen's Bench, Court File No. 133 of 2013, filed on January 24, 2013.

(68) **Saskatchewan Visa Settlement Class** means all Saskatchewan resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(69) **Settled Defendants** means Bank of America Group, Capital One Financial Corporation, Capital One Bank (Canada Branch), Citigroup Inc., Citi Cards Canada Inc., Citibank Canada, Citibank N.A. and Fédération des caisses Desjardins, all of their and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their and its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(70) **Settlement Agreement** means this agreement, including the Recitals and Schedules.

(71) **Settlement Amount** means the all-inclusive sum of CAD \$6,000,000 (six million dollars).

(72) **Settlement Class** means all Persons included in the BC MasterCard Settlement Class, the BC Visa Settlement Class, the Alberta MasterCard Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan MasterCard Settlement Class, the Saskatchewan Visa Settlement Class, the Ontario MasterCard Settlement Class, the Ontario Visa Settlement Class, the Quebec MasterCard Settlement Class and the Quebec Visa Settlement Class.

(73) **Settlement Class Member(s)** means a member of the Settlement Class who has not validly opted-out of the Settlement Class in accordance with the order of the Courts, as applicable.

(74) *Trust Account* means an interest bearing trust account at a Canadian Schedule I bank under the control of Class Counsel for the benefit of the Settlement Class Members.

(75) *Visa* means Visa Canada Corporation and Visa Inc.

(76) *Visa Credit Cards* mean credit cards issued by Issuers of Visa credit cards in Canada. For greater certainty, Visa Credit Cards also include processes and/or electronic devices and/or applications linked to and/or supported by a Visa credit card account permitting payment for the supply of goods or services at a Merchant.

(77) *Visa Network Rules* mean the Visa Canada Operating Regulations and Visa International Operating Regulations, as amended.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to: (i) effectuate this Settlement Agreement, including obtaining the approval of the Courts, and to secure the prompt, complete and final dismissal with prejudice, or where applicable a declaration of settlement, of the Canadian Proceedings; (ii) stay the Additional Class Proceedings as against the Releasees named as Defendants in the Canadian Proceedings, and (iii) secure the prompt, complete and final dismissal of the Canadian Proceedings, with prejudice, as against NBC, it being understood and agreed that best efforts include exhausting applicable and reasonable legal proceedings and appeals on any given issue, as the case may be.

2.2 Motions Certifying or Authorizing the Canadian Proceedings and Approving Notice

(1) At a time mutually agreed to by the Plaintiffs and NBC after this Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders certifying or authorizing each of the Canadian Proceedings as a class proceeding as against NBC solely for settlement purposes and approving the Notice of Certification/Authorization and Settlement Hearing.

(2) The BC order certifying the BC Proceeding as a class proceeding referred to in section 2.2(1) shall be substantially in the form set out in Schedule A.

(3) The Quebec, Ontario, Alberta and Saskatchewan orders certifying or authorizing the Quebec Proceeding, the Ontario Proceeding, the Alberta Proceeding and the Saskatchewan Proceeding shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order referred to in section 2.2(2), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the parties.

(4) Following receipt of any orders referred to in sections 2.2(2) or 2.2(3) and the expiration of the applicable opt-out period in the Quebec Proceeding, and at a time mutually agreed to by the Parties, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(5) The BC order approving this Settlement Agreement referred to in section 2.2(4) shall be substantially in the form set out in Schedule B.

(6) The Quebec, Ontario, Alberta and Saskatchewan orders approving this Settlement Agreement referred to in section 2.2(4) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order referred to in section 2.2(5), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the parties.

2.3 Agreement on Form of Orders

(1) It is a fundamental term of this Settlement Agreement that the Plaintiffs and NBC must agree on the form and content of the orders to be sought pursuant to section 2.2 (“collectively, the “Certification and Approval Orders”), including the form of Notice of Certification/Authorization and Settlement Hearing, and that the issued Certification and Approval Orders and the Notice of Certification/Authorization and Settlement Hearing must be consistent with the terms of this Settlement Agreement. The form and content of the Certification and Approval Orders shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the Certification and Approval Orders substantially in the form agreed upon shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for NBC and Class Counsel, as the case may be, except as required for the purposes of financial reporting

or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

(2) Notwithstanding section 2.4(1), at any time after the execution of this Settlement Agreement, NBC may elect to disclose this Settlement Agreement to the Non-Settling Defendants or for insurance purposes provided the recipient has agreed to act in accordance with section 2.4(1). If NBC elects to disclose this Settlement Agreement to any of the Non-Settling Defendants, it will provide immediate notice of this fact to the Class Counsel.

2.5 Sequence of Motions

(1) At any time as mutually agreed to by the Plaintiffs and NBC after this Settlement Agreement is executed, the Plaintiffs may bring motions before the Courts to request that the Courts hold joint hearings to consider any of the motions required by this Settlement Agreement pursuant to the *Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions*.

(2) If no such request is made, or if the Courts do not agree to hold joint hearings, the Parties agree that, unless they agree otherwise, or unless any Court orders otherwise, any motions required by this Settlement Agreement shall be heard first by the BC Court. The Parties may take steps to schedule parallel motions in Quebec, Ontario, Alberta and Saskatchewan before any BC hearing, but, if necessary, Class Counsel may seek an adjournment of these hearings to permit the BC Court to render its decision on the motions.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Execution Date, NBC agrees to pay the Settlement Amount in full satisfaction of: (i) all payment obligations under this Settlement Agreement; and (ii) the Released Claims against the Releasees.

(2) None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) Once the Settlement Amount is paid by NBC to Class Counsel in accordance with Section 3.1(1), that sum will be received by Class Counsel in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction the Released Claims against the Releasees.

(4) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement. Class Counsel shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained after notice to NBC, and in any event, after all appeal rights have either lapsed or been exhausted.

(5) Notwithstanding Section 3.1(3) and in addition to the Settlement Amount, upon delivery of the appropriate invoices, NBC will reimburse Class Counsel up to a maximum of \$50,000 for expenses reasonably incurred in publishing the Notice of Certification/Authorization and Settlement Hearing in accordance with a Plan of Dissemination that is no different in substance than that approved by the Courts in relation to the BofA Settlement, the Capital One Settlement

the Citi Settlement, and the Desjardins Settlement. In the event another Defendant subsequently enters into a settlement with the Plaintiffs in circumstances allowing for publication of a joint Notice of Certification/Authorization and Settlement Hearing, the amount to be reimbursed by NBC for publication of the said notice shall be reduced proportionately in accordance with the value of such other settlement(s).

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to section 3.2(3) and (4), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.
- (3) NBC shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to NBC who, in such case, shall be responsible for the payment of all taxes on such interest.

(4) Class Counsel hereby indemnifies, defends, and holds harmless NBC from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with the Settlement Amount or funds in the Trust Account not strictly in accordance with the provisions of this Settlement Agreement or any order of the Courts.

3.3 Cooperation

(1) To the extent not previously provided to the Plaintiffs, and subject to the limitations set forth in this Settlement Agreement, NBC agrees to provide cooperation to Class Counsel, as specifically set forth below, which cooperation the Parties acknowledge and agree is a material term of this Settlement Agreement.

(2) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by Class Counsel and NBC, NBC shall provide to Class Counsel:

- (a) any NBC Documents in NBC's' possession or control, relevant to the issues raised in the Canadian Proceedings, including any Mastercard Canadian transaction data between March 28, 2001 and the Effective Date, but excluding any Excluded NBC Documents, to the extent that such NBC Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights. Upon a request by the Plaintiffs or Class Counsel, NBC will provide for the authentication of any business records in this production, so identified by Class Counsel, pursuant to a single request made to NBC; and

- (b) any third party Documents in NBC's possession or control relevant to the issues raised in the Canadian Proceedings, not including any Excluded NBC Documents, to the extent that such third party Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights.

(3) The parties agree that the requirements set out in subsection 3.3(2)(a) and (b) include NBC providing to Class Counsel the following documents, either in the form in which they presently exist or redacted to the extent required by law:

- (a) a document or report that will show the total interchange fees earned by NBC in relation to Canadian transactions during the Class Period; and
- (b) a document or report that will show the total volume (in dollars) of NBC credit card transactions as issuer and acquirer during the Class Period.

(4) If NBC has in its possession any Documents produced by third parties relevant to the issues raised in the Canadian Proceedings that cannot be disclosed pursuant to confidentiality obligations, court orders, or third party consent rights, NBC will reasonably consider making any requests necessary to obtain consent or authorization for the release of such Documents. If such consent or authorization is withheld, NBC will reasonably consider allowing the Plaintiffs to, at their own expense, assert any rights NBC has to permit production of such Documents to the Plaintiffs, provided that in no case shall NBC be required to advance or respond to contested proceedings to provide to Class Counsel Documents that are relevant to issues raised in the Canadian Proceedings.

(5) In connection with any Documents produced by NBC pursuant to this Settlement Agreement (including pursuant to a bar order which grants a Non-Settling Defendant an ability to apply for: (i) documentary or oral discovery from NBC; (ii) service of a request to admit or production on NBC; or (iii) production of a witness at a hearing or trial), NBC shall be at liberty to designate such Documents as "Confidential" or "Highly Confidential" pursuant to the Consent Order made in the BC Proceeding dated September 17, 2012 (the "BC Protective Order") or any other order which may be obtained. Prior to, or at the same time as the approval of this Settlement Agreement, Class Counsel shall make best efforts to obtain, in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as the BC Protective Order. To the extent that it is not possible to obtain a protective order in the form of the BC Protective Order at the time of approval of this Settlement Agreement and Documents produced by NBC are later required for use in the Canadian Proceedings other than the BC Proceeding, Class Counsel shall seek at that time, on a contested basis if necessary and on notice to NBC, protective orders similar in substance to the BC Protective Order, so that any Documents produced by NBC to Class Counsel under this Settlement Agreement, for use in the Canadian Proceedings, which qualify as Confidential or Highly Confidential, may be produced subject to a protective order. This Settlement Agreement shall be contingent on Class Counsel obtaining, in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as BC Protective Order or such other form as the parties may agree. It is understood that this condition is for the sole benefit of NBC and may be waived by NBC.

(6) NBC will make reasonable efforts to facilitate access to a person having knowledge of the issues raised in the Canadian Proceedings for a meeting to speak to Class Counsel for a

period of 6 hours or less, which meeting, if any, is to take place in Montréal, in the Province of Quebec.

(7) In the event that the Courts approve a bar order which grants a Non-Settling Defendant an ability to apply for: (i) documentary or oral discovery from NBC; (ii) service of a request to admit or production on NBC; or (iii) production of a witness at a hearing or trial, then such ability to apply shall extend to the Plaintiffs.

(8) It is understood and agreed that the Plaintiffs and Class Counsel shall not, without the express written consent of NBC, directly or indirectly, use or disclose any information or Documents provided by NBC for any purpose other than the investigation or prosecution of the claims in the Canadian Proceedings, nor, except as expressly permitted herein, share with any other Persons, including, but not limited to, any Settlement Class Members or any counsel or plaintiffs in any other action on behalf of Merchants, any information or NBC Documents obtained in connection with this Settlement Agreement, except in the event that a court in Canada expressly orders such information or Documents to be disclosed. In no circumstances, however, may the Plaintiffs, Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify NBC of the application so that NBC may intervene in such proceedings. The disclosure restrictions set forth in this subsection do not apply to otherwise publicly available Documents and information.

(9) It is understood and agreed that any NBC Documents may be confidential and may be designated as confidential in accordance with and subject to the terms of any

protective/confidentiality order(s) issued in the Canadian Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel agree to comply with the terms of such order(s).

(10) Upon the final judgment or order being entered by a Court against the Defendants in the Canadian Proceedings, including an order denying the certification or authorization of the Canadian Proceedings as class proceedings, if requested by NBC, the Plaintiffs, Class Members and/or Class Counsel shall return to NBC or destroy, and provide NBC with a written confirmation by Class Counsel of such destruction, all Documents or other materials provided to the Plaintiffs or Class Counsel by NBC pursuant to this Settlement Agreement. Nothing contained in this subparagraph shall be construed to require the Plaintiffs or Class Counsel to return any of their work product.

(11) The provisions set forth in this Settlement Agreement are the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery, information or Documents from NBC or their current or former officers, directors or employees. The Plaintiffs, Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel, other than at trial, the evidence of NBC or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(12) A material factor influencing the decision by NBC to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from NBC and to avoid seeking information that is

unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on NBC .

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

4.1 Distribution Protocol

(1) At a time within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving a Distribution Protocol.

4.2 No Responsibility for Administration or Fees

(1) Class Counsel shall bear all risks related to the investment of the monies in the Trust Account. NBC shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees and any responsibility or liability as a result of any decrease or depreciation of the value of the Trust Account, howsoever caused, including but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the Trust Account.

(2) All funds held by Class Counsel shall be considered to be in *custodia legis* of the Courts and shall remain subject to the jurisdiction of the Courts until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Courts.

(3) Class Counsel hereby indemnifies, defends, and holds harmless NBC and its respective directors, officers and employees from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with

the Settlement Amount or monies in the Account not strictly in accordance with the provisions of this Settlement Agreement or any implementing order of the Courts.

SECTION 5 - RELEASES, DISMISSALS AND STAYS

5.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement. The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

(2) Notwithstanding subsection 5.1(1), if, at any time between the date of the Final Order and the date of the final judgment or order being entered by the Courts as against the Defendants in the Canadian Proceedings, the Releasees acquire all or substantially all of the credit card business of any one or more of the Non-Settling Defendants (the "Acquired Business"), the release shall not apply to any Interchange Fees collected in respect of the Acquired Business.

For greater certainty, in such circumstances, the release shall continue to apply for Interchange Fees collected in respect of NBC' existing credit card business at the time of any such acquisition but will not apply in relation to Interchange Fees collected in respect of the Acquired Business. However, and subject to any provision of a sale-purchase agreement, if the Releasees acquire all or any material portion of the credit card business of any of the Non-Settling Defendants that has entered into a settlement agreement with the Plaintiff, at the time of any such acquisition the release granted to or to be granted to any such Non-Settling Defendant at that time, including in relation to the Interchange Fees collected in respect of this such Non-Settling Defendant's credit card business, shall continue to apply to NBC in relation to Interchange Fees collected in respect of that newly acquired business

5.2 Covenant Not To Sue

(1) Notwithstanding section 5.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The Parties agree that the Final Order entered by the Court shall also enjoin the Releasers from making or pursuing such additional claims.

(2) The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any claim

against the Releasees as set out in this Subsection 5.2(2), and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

5.3 No Further Claims

(1) The Releasors shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other Persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim, except for the continuation of the Canadian Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees, and are permanently barred and enjoined from doing so. Plaintiffs and Class Counsel acknowledge that NBC considers it to be a material term of this Settlement Agreement that the Settlement Class Members will be bound by the releases provided for herein.

(2) For further certainty, the intention of the Releasors is to release all claims against NBC by Settlement Class Members up to the later of the date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings or any later date of release provided for in any final judgment or order against any of the Defendants in the Canadian Proceedings. The Releasors agree that a confirmation of the release of all claims against NBC up to the date of any further settlement agreements with Non-Settling Defendants will be included as a term of any such settlement agreement. The Releasors further agree that if

any Notice that provides for an opportunity to opt-out is issued to the Settlement Class in the future with respect to settlement with or judgment against the Non-Settling Defendants, the Releasers will use their best efforts to include in any such Notice as further notice to the Settlement Class that claims against NBC and its related entities have already been released and to provide an opportunity for any Persons who commenced accepting Visa Credit Cards and/or MasterCard Credit Cards after the date of the original Notice, and consequently have become members of the Settlement Class after the date of the original Notice, to opt out.

5.4 Dismissal of the Canadian Proceedings

(1) Class Counsel shall bring such motions as are necessary to dismiss the Canadian Proceedings with prejudice and without costs as against any and all Releasees that are Defendants in the Canadian Proceedings within 60 days of the Effective Date of this Settlement Agreement.

5.5 Stay of the Additional Class Proceedings

(1) The Additional Class Proceedings shall be stayed and/or dismissed as against any and all Releasees that are Defendants in the Canadian Proceedings. Class Counsel shall bring such motions as are necessary to stay the Additional Class Proceedings and the Releasees shall not be responsible for any costs incurred or otherwise ordered in bringing or adjudicating such motions.

5.6 Settlement of Quebec Proceeding

(1) The Quebec Proceeding shall be settled, without costs and without reservation as against NBC and any and all Releasees that are Defendants in the Quebec Proceeding and the Parties shall sign a declaration of settlement out of court, which shall be filed with the Quebec Court.

5.7 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Settlement Class Members against any Person other than the Releasees.

5.8 Releases and Covenants

(1) The releases and covenants contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the releases, or of the Releasers to abide by the covenants, contemplated herein shall give rise to a right of termination pursuant to Section 12 of this Settlement Agreement.

SECTION 6 - BAR ORDER AND OTHER CLAIMS

6.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order

(1) The Plaintiffs in the British Columbia Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding and the Ontario Proceeding shall seek a bar order from the BC Court, the Alberta Court, the Saskatchewan Court and the Ontario Court respectively, providing for the following:

- (a) All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes, fees and costs, relating directly or indirectly to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise, by any Non-Settling Defendant, Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person excluded in writing from the definition of Releasees; (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendant; (iii) a claim by an NBC Opt Out; and (iv) a claim by a Non-Settling Defendant or any Person or party for contribution, indemnity or other claims over relating to Interchange Fees that have not been released pursuant to section 5.1,) are barred, prohibited and enjoined in accordance with the terms of the order.
- (b) Also for greater certainty, the bar order in Section 6.1(1) deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action between NBC as a settling defendant and Visa as a Non-Settling Defendant, and/or between NBC as a settling defendant and MasterCard as a Non-Settling Defendant, for relief other than that claimed by the Plaintiffs in the Canadian Proceedings.

- (c) If any one of the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court or other final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise:
- (i) The members of the BC MasterCard Settlement Class, BC Visa Settlement Class, Alberta MasterCard Settlement Class, Alberta Visa Settlement Class, Saskatchewan MasterCard Settlement Class, Saskatchewan Visa Settlement Class, Ontario MasterCard Settlement Class or Ontario Visa Settlement Class shall reduce or limit their claims against the Non-Settling Defendants (and/or named or unnamed co-conspirators who are not Releasees) to not be entitled to claim or recover from the Non-Settling Defendants and/or named or un-named co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (ii) the Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding or the Ontario Proceeding, whether or not the Releasees remain in the Canadian Proceedings and appear at the trial or other disposition and the

Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding and shall not be binding on the Releasees in any other proceedings.

- (d) A Non-Settling Defendant may, on motion to the BC Court, Alberta Court, Saskatchewan Court or Ontario Court brought on at least ten (10) days' notice to counsel for NBC, not to be brought unless and until the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding against the Non-Settling Defendants have been certified and all appeals or times to appeal from such certification have been exhausted, seek orders for the following:
- (i) documentary discovery and an affidavit or list of documents in accordance with the relevant rules of civil procedure from NBC;
 - (ii) oral discovery of a representative of NBC, the transcript of which may be read in at trial;
 - (iii) leave to serve a request or notice to admit on NBC in respect of factual matters; and/or
 - (iv) the production of a representative of NBC to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling

Defendants.

- (2) NBC retains all rights to oppose such motion(s) brought under section 6.1(1)(d).
- (3) A Non-Settling Defendant may serve the motion(s) referred to in section 6.1(1)(d) on NBC by service on counsel of record for NBC in any of the Canadian Proceedings.
- (4) To the extent that an order is made pursuant to section 6.1(1)(d) and rights of discovery are granted to a Non-Settling Defendant, a copy of all discovery evidence obtained pursuant thereto, whether oral or documentary in nature, shall promptly be delivered by NBC to the Plaintiffs and Class Counsel.

6.2 Quebec Waiver or Renunciation of Solidarity Order

- (1) The Plaintiffs and NBC agree that the Quebec order approving this Settlement Agreement must include an order providing for the following:
 - (a) the Plaintiffs in Quebec and the members of the Quebec MasterCard Settlement Class and the Quebec Visa Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees, and the Non-Settling Defendants are thereby released with respect to the Proportionate Liability of the Releasees proven at trial or otherwise, if any;
 - (b) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Quebec Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate

Liability of the Releasees shall be determined as if the Releasees are parties to the Quebec Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Quebec Proceeding and shall not be binding on the Releasees in any other proceedings.

- (c) the Plaintiffs in Quebec and the members of the Quebec MasterCard Settlement Class and the Quebec Visa Settlement shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (d) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding, provided that *bona fide* independent and direct claims and causes of action between NBC as a settling defendant and Visa as a Non-Settling Defendant or between NBC as a settling defendant and MasterCard as a Non-Settling Defendant are not precluded; and
- (e) any future right by the Non-Settling Defendants to examine on discovery a representative of NBC will be determined according to the provisions of the *Code of Civil Procedure*, and NBC shall reserve its right to oppose such an examination under the *Code of Civil Procedure* as a third party to the Quebec Proceedings.

6.3 Material Term

(1) The form and content of the orders contemplated in section 6 of this Settlement Agreement shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the orders contemplated herein shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

(1) The Plaintiffs and NBC expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, including the NBC Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any fault, omission, wrongdoing or liability by NBC or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member, including but not limited to those pleadings filed in the Additional Class Proceedings.

7.2 Agreement Not Evidence

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

7.3 No Further Litigation & No Assistance to Other Plaintiffs

(1) Except as provided in sections 7.3(2) and 7.3(4) of this Settlement Agreement, no Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, including by providing any direct or indirect assistance to any plaintiff or any plaintiff's counsel.

(2) Section 7.3(1) of this Settlement Agreement, shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a BC Court. This section

shall not affect or render inoperative any other section or provision of this Settlement Agreement.

(3) No Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel may divulge to any Person for any purpose any information, including, without limitation, any cooperation materials and Documents provided pursuant to section 3.3 of this Settlement Agreement, obtained in the course of the Canadian Proceedings or in connection with this Settlement Agreement or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(4) Section 7.3(1) does not apply to the involvement of any Person in the continued prosecution of the Canadian Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees.

SECTION 8 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

8.1 Settlement Class and Common Issue

(1) The Parties agree that the Canadian Proceedings shall be certified or authorized as class proceedings against NBC solely for purposes of settlement of the Canadian Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Canadian Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will

assert is the Settlement Class. The Plaintiffs acknowledge that NBC agrees to the definition of the Common Issue for purposes of settlement only.

8.2 Certification or Authorization Without Prejudice

(1) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, the Parties agree that any prior certification or authorization of the Canadian Proceedings, or any one of them, as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

SECTION 9 - NOTICE TO SETTLEMENT CLASS

9.1 Notices Required

(1) The Settlement Class shall be given the Notices.

9.2 Form and Distribution of Notices

(1) The form and content of the Notices and the manner and extent of publication and distribution of the Notices shall be as agreed to by the Plaintiffs and NBC, it being understood and agreed that the Plan of Dissemination is to be no different in substance than that approved by the Courts in relation to the BofA Settlement, the Capital One Settlement, the Citi Settlement and the Desjardins Settlement.

9.3 Notice of Distribution

(1) Except to the extent provided for in this Settlement Agreement, the Courts shall determine the form of notice in respect to the administration of this Settlement Agreement and any Distribution Protocol, on motions brought by Class Counsel.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

10.2 Settlement Class Member Information and Assistance

(1) NBC will not oppose a motion by the Plaintiffs brought in the Quebec Court seeking orders requiring NBC to make reasonable efforts to compile and provide to Class Counsel a list of the names, addresses of Settlement Class Members. NBC may, but shall not be required to, extract this information from its existing records, or may produce it in the form in which it exists in its records. To the extent that this information is not in the possession of NBC and cannot readily be assembled, reasonable efforts will include requesting this information from Visa and MasterCard. For greater certainty, reasonable efforts shall not require NBC to commence legal proceedings or incur other significant costs in connection with requesting this information.

(2) Class Counsel and the Claims Administrator may only request and use the information provided under section 10.2(1) in relation to the implementation of the Distribution Protocol

including facilitation of the claims administration process to be approved by the Courts. NBC shall be at liberty to designate the information provided under section 10.2(1) as "Confidential" or "Highly Confidential" pursuant to the BC Protective Order or any other order which may be obtained. Prior to, or at the same time as the approval of the Distribution Protocol, Class Counsel shall make best efforts to obtain, in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as the BC Protective Order. To the extent that it is not possible to obtain a protective order in the form of the BC Protective Order at the time of approval of the Distribution Protocol, Class Counsel shall seek at that time, on a contested basis if necessary and on notice to NBC, protective orders similar in substance to the BC Protective Order, so that any information produced by NBC to Class Counsel under this section, for use in the Canadian Proceedings, which qualify as Confidential or Highly Confidential, may be produced subject to a protective order, provided such information is available for use in the implementation of the Distribution Protocol.

(3) Upon completion of the claims administration process, all information and Documents provided by NBC pursuant to section 10.2(1) shall be returned or destroyed forthwith, no record of the information so provided shall be retained by Class Counsel or by any Person to whom Class Counsel has provided such information, in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, and for whatever purpose, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

SECTION 11 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) Upon exhaustion of the amount of \$50,000 paid pursuant to section 3.1(5), Class Counsel shall pay any additional costs of the Notices of this Settlement Agreement from the Trust Account.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneously with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion. NBC will not oppose such motions.
- (3) Except as provided in sections 11(1) and 11(2), Class Counsel Fees and any Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

SECTION 12 - TERMINATION OF SETTLEMENT AGREEMENT

12.1 Right of Termination

- (1) NBC or the Plaintiffs, in their respective sole discretion, have the option to terminate this Settlement Agreement in the event that:
 - (a) the NBC' Settlement's Confidential Opt Out Threshold is met;

- (b) the releases and covenants contemplated in sections 5 and 6 are not complied with;
 - (c) the form and content of any of the orders or Notices departs materially from the form and content of the orders and Notices as agreed upon by the Plaintiffs and NBC;
 - (d) the form and content of any of the Final Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiffs and NBC under section 2.3(1) of this Settlement Agreement;
 - (e) any Court declines to approve this Settlement Agreement or any material term or part hereof;
 - (f) any Court declines to dismiss the Canadian Proceedings or stay the Additional Class Proceedings against NBC;
 - (g) any Court approves this Settlement Agreement in a materially modified form; or
 - (h) any orders approving this Settlement Agreement made by the Courts do not become Final Orders.
- (2) To exercise a right of termination under section 12.1(1), a terminating party shall deliver a written notice of termination pursuant to this Settlement Agreement within fifteen (15) business days of the fact of the condition being met becoming known to the terminating party. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 12.4, shall be null and void and have no further force or effect,

shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court that is not substantially in the form and content of the respective Final Orders, as agreed upon by the Plaintiffs and NBC in accordance with section 2.3(1), shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that NBC may agree to waive this provision.

(4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or any Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(5) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and NBC agree that any prior certification or authorization of a Canadian Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

(6) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and NBC agree that any appearance, attendance, filing or other action or step taken by NBC pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that any Releasee may later take in respect of the jurisdiction of the Courts or any other court, including, without limitation, a

motion to stay any of the Canadian Proceedings pursuant to applicable commercial arbitration legislation, a motion to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over any Releasee in the Canadian Proceedings or any other litigation.

12.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation, and:

- (a) no motion to certify or authorize any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of any of the Canadian Proceedings as class proceedings, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in any of the Canadian Proceedings or any other litigation; and
- (d) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against any Releasees.

12.3 Allocation of Monies in the Trust Account Following Termination

- (1) Class Counsel shall pay to NBC the Settlement Amount plus all accrued interest thereon, within thirty (30) business days of termination in accordance with this Settlement Agreement.
- (2) The Plaintiffs and NBC expressly reserve all of their respective rights if this Settlement Agreement is terminated.

12.4 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2, 7.1, 7.2, 8.2, 9, 11(1), 11(4), 12, 13.2, 13.7, 13.8, 13.14 and 13.18 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 13 - MISCELLANEOUS

13.1 Releasees Have No Liability for Administration

- (1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration, implementation or enforcement of this Settlement Agreement or the Distribution Protocol.

13.2 Motions for Directions

(1) NBC or the Plaintiffs may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) Class Counsel may apply to the Courts for directions in respect of any Distribution Protocol.

(3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and NBC, except for those motions concerned solely with the implementation and administration of any Distribution Protocol.

13.3 Further Acts

(1) Without limiting the generality of any other provisions of this Settlement Agreement, until such time as the Courts have approved or refused to approve this Settlement Agreement: (i) none of the Plaintiffs, the Releasers and Class Counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement; and (ii) none of the Releasees and their respective counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement.

13.4 Publicity

(1) Except as otherwise required for the purposes of approving the settlement, the Plaintiffs and NBC agree that:

- (a) the Parties shall not issue any press releases or other communication of any kind (with the media or otherwise) regarding this settlement, except those that may be agreed to by the Parties;
- (b) the Parties shall act in good faith to ensure that any public statements, comments or any communications of any kind about any descriptions of the settlement and the terms of this Settlement Agreement are balanced, fair and accurate;
- (c) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Courts or as may be required under any applicable law or regulation.

13.5 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of this Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
 - (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.6 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a weekend or statutory holiday.

13.7 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over the proceeding commenced in its jurisdiction, the parties thereto, and Class Counsel Fees in that proceeding.

(2) The Plaintiffs and NBC agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter.

13.8 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia, save for matters relating exclusively to the Quebec MasterCard Class Members and Quebec Visa Class Members, which

matters shall be governed by and construed and interpreted in accordance with the laws of the Province of Quebec.

13.9 Entire Agreement

(1) This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.10 Amendments and Waivers

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the Courts with jurisdiction over the matter to which the amendment relates must approve any such modification or amendment.

(2) The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party and, any such waiver shall not be deemed or construed as a waiver of any other right, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.11 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Releasers, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by NBC shall be binding upon all of the Releasees.

13.12 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.13 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Settlement Agreement.

13.14 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents à son soutien soient rédigés en anglais.* Nevertheless, NBC shall prepare a French translation of this Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only.

In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

(2) The cost of translating the Notices, claims forms, or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by NBC.

13.15 Transaction

(1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

13.16 Recitals

(1) The recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

13.17 Schedules

- (1) The Schedules annexed hereto form part of this Settlement Agreement.

13.18 Notice

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

For the Plaintiffs and for Class Counsel in the Canadian Proceedings:

Reidar Mogerman

Ward Branch

CAMP FIORANTE MATTHEWS
4th Floor, Randall Building
555 West Georgia Street
Vancouver, BC V6B 1Z6
Tel: 604-689-7555
Fax: 604-689-7554
Email: rmogerman@cfmlawyers.ca

BRANCH MACMASTER LLP
1410 - 777 Hornby Street
Vancouver, BC V7G 3E2
Tel: 604-654-2966
Fax: 604-684-3429
Email: wbranch@branmac.com

Jeff Orenstein

CONSUMER LAW GROUP
4150 Ste.- Catherine St. W Suite 330
Montréal, QC H3Z 2Y5
Tel: 1-888-909-7863 ext. 220
Fax: 514-868-9690
Email: jorenstein@clg.org

For NBC:

William McNamara

Sean Griffin

TORYS LLP
79 Wellington Street West
TD South Tower
Toronto, ON M5K 1N2

LANGLOIS AVOCATS, S.E.N.C.R.L.
1250, René-Lévesque Blvd. West
Suite 2000
Montreal, QC H3B 4W8

Tel: 416-865-7988
Fax: 416-865-7380
Email: wmcnamara@torys.com

Tel: 514-842-7872
Fax: 514-845-6573
Email: sean.griffin@langlois.ca

13.19 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) ~~he, she or a representative of the Party with the authority to bind the Party with~~ respect to the matters set forth herein has read and understood this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.20 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on April 26, 2017.



WARD K. BRANCH, QC for Branch
MacMaster LLP and the Plaintiffs

REIDAR M. MOGERMAN for Camp
Fiorante Matthews and the Plaintiffs

JEFF ORENSTEIN for Consumer Law
Group and the Plaintiffs

LANGLOIS AVOCATS, S.E.N.C.R.L.
(Sean Griffin) for National Bank of Canada

TORYS LLP (William McNamara) for
National Bank of Canada

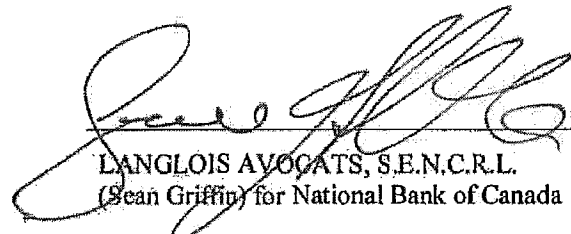
Executed in counterparts on April 26, 2017.

WARD K. BRANCH, QC for Branch
MacMaster LLP and the Plaintiffs




REIDAR M. MOGERMAN for Camp
Fiorante Matthews and the Plaintiffs

JEFF ORENSTEIN for Consumer Law
Group and the Plaintiffs



LANGLOIS AVOCATS, S.E.N.C.R.L.
(Sean Griffin) for National Bank of Canada

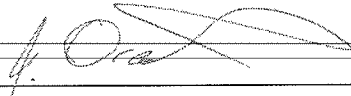


TORYS LLP (William McNamara) for
National Bank of Canada

Executed in counterparts on April 26, 2017.

WARD K. BRANCH, QC for Branch
MacMaster LLP and the Plaintiffs

REIDAR M. MOGERMAN for Camp
Fiorante Matthews and the Plaintiffs



JEFF ORENSTEIN for Consumer Law
Group and the Plaintiffs

LANGLOIS AVOCATS, S.E.N.C.R.L.
(Sean Griffin) for National Bank of Canada

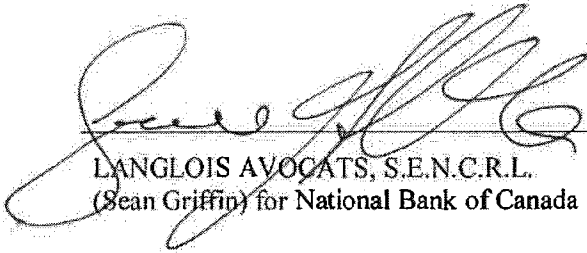
TORYS LLP (William McNamara) for
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WARD K. BRANCH, QC for Branch
MacMaster LLP and the Plaintiffs

REIDAR M. MOGERMAN for Camp
Fiorante Matthews and the Plaintiffs

JEFF ORENSTEIN for Consumer Law
Group and the Plaintiffs



LANGLOIS AVOCATS, S.E.N.C.R.L.
(Sean Griffin) for National Bank of Canada



TORYS LLP (William McNamara) for
National Bank of Canada

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL, 1739793
ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS, MACARONIES
HAIR CLUB AND LASER CENTER INC. OPERATING AS FUZE SALON**

(the "Plaintiffs")

and

NATIONAL BANK OF CANADA ("NBC")

SCHEDULE A

SCHEDULE A to NATIONAL BANK SETTLEMENT

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson's Metropolitan Home dba Metropolitan
Home

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSCB, 1996, c.50

ORDER MADE AFTER APPLICATION

(National Bank of Canada – Settlement Pre-approval Notice)

BEFORE THE HONOURABLE MR. JUSTICE G.C. WEATHERILL)
)
) , 2017

ON THE APPLICATION of the Plaintiff, Coburn and Watson's Metropolitan Home dba Metropolitan Home ("Metropolitan Home") in the within proceeding (the "BC Proceeding"), without a hearing and by consent, for approval of the Notice to Class Members of a proposed settlement of all claims against the defendant National Bank of Canada (mistakenly identified in these proceedings as "National Bank of Canada Inc.") (the "Pre-approval Notice");

THIS COURT ORDERS that:

National Bank Round 1 Order

1. Except to the extent that they are modified by this Order, the definitions set out in the settlement agreement between the Plaintiff and National Bank of Canada Inc. ("National Bank" and the "National Bank Settlement Agreement") apply to and are incorporated into this Order;

2. The "BC MasterCard Settlement Class" is defined as:

All British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons;

3. Coburn and Watson's Metropolitan Home dba Metropolitan Home is appointed as the representative plaintiff for the BC MasterCard Settlement Class;

4. The certified common issues as against the Settling Defendant in the BC Proceeding is amended as follows:

Did the Settling Defendant conspire with others to fix, maintain, increase or control Interchange Fees paid by merchants who accepted payment by MasterCard Credit Cards in Canada during the Class Period?

5. The period to opt-out of the BC Proceeding has already expired pursuant to this Court's order pronounced July 11, 2014. Any member of the BC Settlement Class who has validly opted-out of the BC Proceeding is not bound by the National Bank Settlement Agreement, and will not be entitled to receive any share of benefits payable in connection with the National Bank Settlement Agreement;

6. Any member of the BC MasterCard Settlement Class who has not validly opted-out of the BC Proceeding is bound by this Order and the National Bank Settlement Agreement, and will not be entitled to opt-out of the continuing action as against the Non-Settling Defendants;

7. This Order is binding upon each member of the BC MasterCard Settlement Class who has not validly opted out of the BC Proceeding, including those persons who are minors or mentally incapable.
8. The form of the Pre-Approval Notice is hereby approved substantially in the form attached hereto as **Schedule "A"**;
9. The plan of dissemination for the Pre-Approval Notice (the "Plan of Dissemination") is hereby approved in the form attached hereto as **Schedule "B"**;
10. The Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order and by any other additional means as may be ordered by any of the other Courts in the Canadian Proceedings; and
11. This Order, including without limiting the generality of the foregoing, the certification of the BC Proceeding against the Settling Defendant and the definitions of BC MasterCard Settlement Class, Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether the BC Proceeding should be certified as a class proceeding as against the Non-Settling Defendants. For greater certainty, this Order, the Court's reasons in support of this Order and the certification of the BC Proceeding against the Settling Defendant for settlement purposes only are not binding on and shall have no effect on the continuing prosecution of the BC Proceeding or any other proceeding as against the Non-Settling Defendants.
12. This Order may be executed in counterpart, electronically or by facsimile.

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

Signature of ●
Counsel for the Plaintiff

Signature of ●
Counsel for National Bank of Canada Inc.

Signature of ●
Counsel for Bank of Nova Scotia

Signature of ●
Counsel for Canadian Imperial Bank of Commerce

Signature of ●
Counsel for BMO Financial Group

Signature of ●
Counsel for Royal Bank of Canada

Signature of ●
Counsel for Toronto-Dominion Bank

Signature of ●
Counsel for Visa Canada Corporation

Signature of ●
Counsel for MasterCard International Incorporated

By the Court

Registrar

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL, 1739793
ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS, MACARONIES
HAIR CLUB AND LASER CENTER INC. OPERATING AS FUZE SALON**

(the "Plaintiffs")

and

NATIONAL BANK OF CANADA ("NBC")

SCHEDULE B

SCHEDULE B to NATIONAL BANK SETTLEMENT

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson's Metropolitan Home dba
Metropolitan Home

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

**ORDER MADE AFTER APPLICATION
(National Bank of Canada Settlement Approval)**

- BEFORE** the Honourable Justice G.C. Weatherill)))
)))
)))
- ON THE APPLICATION** of the Plaintiff, Coburn and Watson's Metropolitan Home dba Metropolitan Home, coming on for hearing at 800 Smithe Street, Vancouver, B.C. on ●, 2017, for an order approving the agreement made between the Plaintiff and others and National Bank of Canada Inc. (the "Settling Defendant"), dated ●, 2017 (the "Settlement Agreement");

ON HEARING the submissions of ●, counsel for the Plaintiff and J●, counsel for the Settling Defendant; ● [counsel for non-settling defendants];

AND ON READING the pleadings and materials filed;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order;

AND ON BEING ADVISED that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS that:

1. The Settlement Agreement, as attached at Schedule "A", is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order;
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC MasterCard Settlement Class (the "BC Settlement Class");
4. The Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c 50 and shall be implemented in accordance with its terms and the terms of this Order;
5. This Order, including the Settlement Agreement, is binding upon the representative plaintiff and all members of the BC Settlement Class who have not validly opted-out (collectively, the "BC Settlement Class Members, each a "BC Settlement Class Member"), and the Settling Defendant;
6. This Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Proceeding;
7. Upon the Effective Date, each BC Settlement Class Member shall consent to and shall be deemed to have consented to the dismissal as against the Releasees of any other actions or proceedings in BC he, she or it has commenced, without costs and with prejudice;

8. Upon the Effective Date, each other action or proceeding commenced in BC by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
9. Upon the Effective Date, each Releasor who has not validly opted-out of the BC Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims;
10. Upon the Effective Date, each Releasor shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, proceeding, complaint or demand against, or collect or seek to recover from, any Releasee or any other person or persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any Releasee in respect of any Released Claims, except for the continuation of any proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees, and are permanently barred and enjoined from doing so;
11. The use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those BC Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors;
12. Instead of releasing the claims against the Releasees, upon the Effective Date, each BC Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to sue or make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;
13. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive

of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise by any Non-Settling Defendant, a Settled Defendant, named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any named or unnamed co-conspirators, or any other Person or party who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the BC Proceeding), except as set out in section 6.1(1)(a) of the Settlement Agreement;

14. If, in the absence of paragraph 13 of this Order, the Court or other final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by contract, statute or otherwise:
 - (a) The BC Settlement Class Members shall reduce or limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators to not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and
 - (b) This Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, whether or not the Releasees remain in the BC Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding and shall not be binding on the Releasees in any other proceedings;

15. If, in the absence of paragraph 13 hereof, the Non-Settling Defendants would not have the right to make claims for contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the BC Proceeding;
16. For greater certainty, the bar order in paragraphs 13 through 15 deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action arising by contract, statute or otherwise between the Settling Defendant and MasterCard as a Non-Settling Defendant for relief other than that claimed by the Plaintiff in the BC Proceeding, including *bona fide* independent and direct claims and causes of action that MasterCard may have against the Settling Defendant under the MasterCard Network Rules;
17. Subject to paragraph 13 hereof, a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days' notice to counsel for the Settling Defendants seek orders for the following:
 - (a) Documentary discovery and an affidavit of documents in accordance with the *Supreme Court Civil Rules*, BC Reg 168/2009 from the Settling Defendant;
 - (b) Oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (c) Leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (d) The production of a representative of the Settling Defendant to testify at trial, with such witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants;

18. The Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 17 of this Order and to seek such ancillary relief as they deem appropriate (including, without limitation, confidentiality protections and/or costs). Nothing in this Order is intended to interfere with the power of this Court to make such orders as to costs and other terms as it considers appropriate on any such motion;
19. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the BC Proceeding;
20. For purposes of enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges the jurisdiction of this Court and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order;
21. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the BC Proceeding;
22. No Releasee shall have any responsibility or liability relating to the administration of the Settlement Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
23. Subject to the provisions of the Settlement Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Settlement Agreement, shall be held in trust for the benefit of the Settlement Class, pending further order of the Courts;
24. The approval of the Settlement Agreement is contingent upon approval by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the terms of this Order shall not be effective unless and until the Settlement

Agreement is approved by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the Ontario Proceeding, the Saskatchewan Proceeding, and the Alberta Proceeding have been dismissed with prejudice and without costs and the Quebec Proceeding has been declared settled out of court as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in Alberta, Saskatchewan Quebec and Ontario, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Proceeding and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice;

25. In the event that the Settlement Agreement is terminated in accordance with its terms, on motion made on notice to the Plaintiff or the Settling Defendant, as appropriate:
 - (a) This Order shall be declared null and void and be without prejudice to any party; and
 - (b) Each party to the BC Proceeding shall be restored to his, her or its respective position in the BC Proceeding as it existed immediately prior to the execution of the Settlement Agreement.
26. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement;
27. The determination of the form of any additional notice to the Settlement Class Members regarding approval of the Settlement Agreement and/or claims filing process, and the approval of a plan of dissemination of any additional notice be and are hereby adjourned to be dealt with by further orders of the Courts;
28. Except as aforesaid, the BC Proceeding be and is hereby dismissed against the Settling Defendant without costs and with prejudice;

29. The certification for settlement purposes and the approval of the Settlement Agreement is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Proceeding. No person may cite or refer to all or any part of this Order and any reasons given by the Court in connection with this Order as against any of the Non-Settling Defendants, except as is necessary to enforce this Order;

Endorsement of this Order

30. This Order may be endorsed in counterpart, electronically or by facsimile; and
31. Endorsement of this Order by the Non-Settling Defendants is dispensed with.

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

Signature of lawyer for the Plaintiff

•

Signature of lawyer for National Bank of Canada Inc.

•

By the Court

Registrar

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL, 1739793
ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS, MACARONIES
HAIR CLUB AND LASER CENTER INC. OPERATING AS FUZE SALON**

(the "Plaintiffs")

and

NATIONAL BANK OF CANADA

("NBC")

SCHEDULE C

CONFIDENTIAL