

**DISTRIBUTION PLAN  
CANADIAN CREDIT CARDS CLASS ACTION SETTLEMENTS**

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## DEFINITIONS

1. Where a term is defined in any of the Settlement Agreements and in this Distribution Plan, the definition in this Distribution Plan shall govern.
2. For the purpose of this Distribution Plan:
  - (a) **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 but does not include the Bank Defendants, other than Toronto-Dominion Bank.
  - (b) **Annual Average Revenue** means a Settlement Class Member's average annual revenue over the Class Period.
  - (c) **Arbitrator** means a bilingual individual designated by the Courts to determine appeals.
  - (d) **Average Interchange Rate** means 1.5%, which is based on the average rate of Interchange Fees per transaction paid by Settlement Class Members during the Class Period.
  - (e) **Bank Defendants** means Bank of America Corporation, Capital One Bank (Canada Branch), Citigroup Inc., Fédération des caisses Desjardins du Québec, National Bank of Canada Inc., Canadian Imperial Bank of Commerce, Royal Bank of Canada, Bank of Montreal, Bank of Nova Scotia, and Toronto-Dominion Bank.
  - (f) **BC Court** means the Supreme Court of British Columbia.
  - (g) **Canadian Credit Cards Class Action** means, collectively, Alberta Court of Queen's Bench File No. 1203 18531 (Edmonton Registry); BC Court File No. VLC-S-S-112003 (Vancouver Registry); Saskatchewan Court of Queen's Bench Court File No. 133 of 2013; Ontario Superior Court of Justice Court File No. CV-11-426591CP (Toronto Registry); and Quebec Superior Court, Court File No. 500-06-000549-101 (District of Montreal).
  - (h) **Claims Administrator** means the firm proposed by class counsel and appointed by the Courts to administer this Distribution Plan and any employees of such firm.
  - (i) **Claims Filing Deadline** means the date by which Claim Forms (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Plan, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.

- (j) **Claim Form** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Plan.
- (k) **Class Period** means March 23, 2001 to December 5, 2021.
- (l) **Courts** means the Supreme Court of British Columbia, the Alberta Court of Queen's Bench, the Saskatchewan Court of Queen's Bench, the Ontario Superior Court of Justice and the Quebec Superior Court (each a "**Court**").
- (m) **Credit Card** means any card, plate or other payment code, device or service, even where no physical card is issued and the code or device is used for only one transaction (including, without limitation, a plastic card, a mobile telephone, a fob, or any other current or future code, device or service by which a Person, business or other entity can pay for goods or services) that is issued or approved for use through a Visa or Mastercard payment network and that may be used to defer payment of debt or incur debt and defer its payment, including cards commonly known as credit cards, charge cards, commercial credit cards, corporate credit cards, fleet cards, or purchasing cards. For greater certainty, Credit Card also includes any process or electronic device or application linked to or supported by, or both, a credit card account permitting payment for the supply of goods or services from a Merchant, but does not include debit cards. For greater certainty, a Credit Card does not include credit or charge cards issued on any payment networks other than the Visa or Mastercard networks.
- (n) **Credit Card Sales Volume** means the dollar amount of payments a Merchant received by way of Credit Cards over a specified time period.
- (o) **Decision Notice** shall have the meaning attributed to it in paragraph 48.
- (p) **Excluded Persons** means each defendant in the Canadian Credit Cards Class Action, 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.
- (q) **Independent Referee** means a bilingual individual designated by the Courts to determine the qualifying Interchange Fees paid in relation to Settlement Class Members who received Interchange Fees pursuant to issuance of Credit Cards, issued co-branded Credit Cards, or who paid a discounted rate of Interchange Fees.

- (r) **Interchange Fees** mean interchange fees collected by Issuers arising from transactions involving Visa Credit Cards and/or Mastercard Credit Cards in Canada.
- (s) **Issuers** mean the banks or other financial institutions which issued Visa Credit Cards and/or Mastercard Credit Cards in Canada and includes the Bank Defendants.
- (t) **Large Merchant** means a Merchant who collects an Annual Average Revenue of more than \$20 million over the Class Period.
- (u) **Large Merchant Fund** means the portion of the Net Settlement Amounts allocated to pay claims of Settlement Class Members who are Large Merchants.
- (v) **Mastercard** means Mastercard International Incorporated and Mastercard Canada, Inc.
- (w) **Mastercard Credit Cards** mean Credit Cards bearing the trademark "Mastercard" and authorized by Mastercard to be issued by Issuers.
- (x) **Medium Merchant** means a Merchant who collects an Annual Average Revenue of \$5 million to \$20 million over the Class Period.
- (y) **Medium Merchant Fund** means the portion of the Net Settlement Amounts allocated to pay claims of Settlement Class Members who are Medium Merchants.
- (z) **Merchant** means any Person or entity resident or operating in Canada who accepted payments for the supply of goods or services by way of Visa Credit Cards and/or Mastercard Credit Cards in Canada. For greater certainty, a Merchant does not include Persons or entities located outside of Canada.
- (aa) **Merchant Discount Fees** mean fees paid by Merchants arising from the acceptance by them of payments for the supply of goods or services by way of Visa Credit Cards and/or Mastercard Credit Cards in Canada, which account for and/or include Interchange Fees.
- (bb) **Net Settlement Amounts** mean the aggregate of the settlement amounts recovered pursuant to the Settlement Agreements, plus any costs awards and accrued interest after payment of class counsel fees as approved by the Courts and after deduction of the administration expenses and all taxes (including interest and penalties) accruable with respect to the income earned by the settlement amounts.
- (cc) **Notional Entitlement** means, in relation to documented claims, the value of a Settlement Class Member's claim for the purposes of determining that Settlement Class Member's pro rata share of the Net Settlement Amounts,

calculated by the Claims Administrator in accordance with paragraphs 19 to 22 below.

- (dd) **Online Claim Portal** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 32 to 36 of this Distribution Plan.
- (ee) **Person** 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.
- (ff) **Quebec Court** means the Quebec Superior Court.
- (gg) **Settlement Agreements** means the settlement agreements entered into in the Canadian Credit Cards Class Action with the Bank Defendants, Mastercard and Visa.
- (hh) **Settlement Class Member** means any Merchant resident in Canada who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards and/or Mastercard Credit Cards, except those who opted out and Excluded Persons.
- (ii) **Settlement Website** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreements, this Distribution Plan, the claims process, and access to the Online Claim Portal.
- (jj) **Small Merchant** means a Merchant who collects an Annual Average Revenue of less than \$5 million over the Class Period.
- (kk) **Small Merchant Fund** means the portion of the Net Settlement Amounts allocated to pay claims of Settlement Class Members who are Small Merchants.
- (ll) **Visa** means Visa Canada Corporation and Visa Inc.
- (mm) **Visa Credit Cards** means Credit Cards bearing the trademark "Visa" and authorized by Visa to be issued by Issuers.

### **GENERAL PRINCIPLES OF THE ADMINISTRATION**

3. The procedures set forth herein (the "Distribution Plan") are intended to govern the administration and distribution of the Net Settlement Amounts in the Canadian Credit Cards Class Action.

4. This Distribution Plan is intended to facilitate an equitable distribution of the Net Settlement Amounts among Settlement Class Members and minimize the costs required to administer claims, and thereby, maximize the Net Settlement Amounts payable to Settlement Class Members.
5. The administration shall:
  - (a) implement and conform to the Settlement Agreements, orders of the Courts and this Distribution Plan;
  - (b) include the establishment and maintenance of the Settlement Website;
  - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible; and
  - (d) be bilingual in all respects.
6. Pursuant to the terms of the Settlement Agreements, Excluded Persons are not entitled to the payment of settlement benefits under this Distribution Plan.
7. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to Merchant Discount Fees or Interchange Fees paid for accepting Visa Credit Cards and/or Mastercard Credit Cards, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## **DISTRIBUTION OF NET SETTLEMENT AMOUNTS**

### **Merchant Funds**

8. The Net Settlement Amounts will initially be divided into three funds with the following allocations:

<b>Merchant Fund</b>	<b>Amount of Net Settlement Amounts Allocated</b>
<b>Small Merchant Fund</b> Settlement Class Members who collect less than \$5 million in Annual Average Revenue over the Class Period	45%
<b>Medium Merchant Fund</b> Settlement Class Members who collect \$5 million to \$20 million in Annual Average Revenue over the Class Period	5%

<b>Large Merchant Fund</b>  Settlement Class Members who collect more than \$20 million in Annual Average Revenue over the Class Period	50%
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9. Settlement Class Members will be paid from the fund that corresponds to their Annual Average Revenue for the years during the Class Period in which they accepted Credit Cards as payment for goods or services.
10. If, in the opinion of class counsel or the Claims Administrator, the above allocation will result in an inequitable distribution of the Net Settlement Amounts, the Claims Administrator or class counsel may seek direction from the BC Court and the Quebec Court, on notice to the defendants.

### **Undocumented Claims**

11. Settlement Class Members who are Small Merchants may file a Claim Form without providing documentary proof that they paid Merchant Discount Fees (“Undocumented Claims”).
12. Settlement Class Members who are Medium Merchants may file a Claim Form along with proof of any agreement they entered into with an Acquirer during the Class Period.
13. Settlement Class Members who elect to file Undocumented Claims will be eligible to receive the following payment for each year the Settlement Class Member accepted Visa Credit Cards and/or Mastercard Credit Cards during the Class Period, subject to paragraph 15:

	<b>Per Year Claim Amount</b>
<b>Small Merchant</b>	\$30
<b>Medium Merchant/ Large Merchant</b>	\$150

14. Large Merchants who choose to make Undocumented Claims will receive the yearly payments attributable to Medium Merchants as set out in paragraph 13.
15. A Settlement Class Member who elects to make an Undocumented Claim will not be eligible to make a Documented Claim.

16. If, in the opinion of class counsel or the Claims Administrator, the collective value of Undocumented Claims will result in an inequitable distribution of the Net Settlement Amounts, the Claims Administrator or class counsel may seek direction from the BC Court and the Quebec Court.

### **Documented Claims**

17. Settlement Class Members classified as Large Merchants who wish to be eligible to receive more than an Undocumented Claim payment must substantiate their claim ("Documented Claims"). Small Merchants and Medium Merchants are not eligible to make Documented Claims.
18. After Undocumented Claims of Large Merchants are paid out from the Large Merchant Fund, the remaining Net Settlement Amounts in the Large Merchant Fund will be distributed to qualifying Settlement Class Members who filed Documented Claims. In respect of Documented Claims, a Settlement Class Member's entitlement will be calculated *pro rata* (proportionally) based on the value of the qualifying Settlement Class Member's total Interchange Fees paid as against the value of all qualifying Settlement Class Members' total Interchange Fees paid (as set out in paragraph 19).
19. For the purposes of the *pro rata* distribution, a Settlement Class Member's Notional Entitlement will be calculated or determined on an annual basis for the years where Credit Card payments were received by the Settlement Class Member during the Class Period, as follows:
  - (a) where the actual amount of Interchange Fees paid is known based on information provided by the Settlement Class Member, Notional Entitlement for that year or years will be equal to the actual Interchange Fees paid;
  - (b) where Credit Card Sales Volume and the actual rate of Interchange Fees is known based on information provided by the Settlement Class Member, Notional Entitlement for that year or years will be equal to:
$$\text{Credit Card Sales Volume} \times \text{actual Interchange Fees rate}$$
  - (c) where only Credit Card Sales Volume is known based on information provided by the Settlement Class Member, Notional Entitlement for that year or years will be equal to:
$$\text{Credit Card Sales Volume} \times \text{Average Interchange Rate.}$$
20. If, in the opinion of class counsel or the Claims Administrator, the collective value of Documented Claims will result in an inequitable distribution of the Net Settlement Amounts, the Claims Administrator or class counsel may seek direction from the BC Court and the Quebec Court, on notice to the defendants.



## **Minimum Payment**

21. Subject to further directions of the BC Court and the Quebec Court, all eligible Settlement Class Members will receive a minimum payment of \$30. The administrative minimum is not an estimate of any damages suffered, but is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.

## **Sample Calculation**

22. If a Settlement Class Member does not know the actual amount or rate of Interchange Fees paid, but has documented Credit Card Sales Volume over the Class Period of \$1 million, the Notional Entitlement for the purpose of determining its pro rata share of the Net Settlement Amounts remaining after Undocumented Claims are paid out would be calculated as follows:

$$\begin{aligned} & \$1,000,000 \text{ (Credit Card Sales Volume)} \times 1.5\% \text{ (Average Interchange Rate)} \\ & = \$15,000 \text{ (qualifying Interchange Fees paid).} \end{aligned}$$

Assuming the value of all qualifying Settlement Class Members' Interchange Fees paid is \$500 million, this Settlement Class Member would be entitled to 0.003% ( $\$15,000/\$500,000,000$ ) of the portion of the Net Settlement Amounts in their applicable merchant fund remaining after Undocumented Claims are paid out.<sup>1</sup>

## **Directions from the BC Court and the Quebec Court**

23. In consultation with class counsel, the Claims Administrator can seek directions from the BC Court and the Quebec Court with respect to the distribution and fund allocation of the Net Settlement Amounts to ensure an equitable and cost effective distribution of the Net Settlement Amounts.

## **THE CLAIMS PROCESS**

### **Contents of the Claim Form**

24. The Claim Form shall require Settlement Class Members to provide the following:
- (a) name and contact information;
  - (b) in respect of Undocumented Claims only:

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<sup>1</sup> This calculation is an example only and would not be applicable to Large Merchants who issued Credit Cards or had a co-brand agreement during the Class Period.

- (i) a declaration as to whether the Settlement Class Member is a Small Merchant, Medium Merchant or Large Merchant;
- (ii) a declaration as to which years during the Class Period the Settlement Class Member collected Credit Card payments;
- (c) in respect of Documented Claims only:
  - (i) information that will allow the Claims Administrator to determine the Settlement Class Member's Notional Entitlement in accordance with paragraph 19;
  - (ii) the rate(s) of Interchange Fees paid during the Class Period, if such rates differ from the Average Interchange Rate;
  - (iii) whether the Settlement Class Member issued Credit Cards or co-branded Credit Cards during the Class Period;
- (d) disclosure about whether the Settlement Class Member or any related entity has received compensation through other proceedings or private out-of-class settlements and/or provided a release in relation to Merchant Discount Fees and/or Interchange Fees paid for accepting Visa Credit Cards and/or Mastercard Credit Cards;
- (e) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to review the Claim Form;
- (f) a declaration that the information submitted in the Claim Form is true and correct; and
- (g) if the Claim Form is submitted by a related entity (i.e., a parent company claiming on behalf of a subsidiary or affiliate) or a third-party on behalf of a Settlement Class Member (i.e., a third-party claims services or a lawyer of their own choosing), the Settlement Class Member must provide a signed authorization in the form attached hereto as Schedule "A" or Schedule "B", as applicable, at the time the Claim Form is submitted.

### **Information Required as Part of a Documented Claim**

25. As part of Documented Claims:

- (a) Settlement Class Members will be required to complete all relevant fields in the Claim Form relating to the Settlement Class Member's payment of Interchange Fees and Credit Card Sales Volume during the Class Period; and
- (b) Other than in relation to issuance of Credit Cards or co-branded Credit Cards, Settlement Class Members will be required to provide documentary proof in any of the following forms:

- (i) merchant statements, financial statements, or historical accounting records that identify Credit Card Sales Volume or payment of Interchange Fees (but do not include methods of payment other than by Credit Cards such as cash or debit); or
- (ii) a declaration attesting to Credit Card Sales Volume, Interchange Fees paid, and/or applicable interchange rates, together with substantiating documentation that is acceptable to the Claims Administrator. For greater clarity,
  - (A) The declaration must:
    - (I) be sworn by the Settlement Class Member or an officer, director or employee of the Settlement Class Member. To the extent that the declaration contains information that is not within the declarant's personal knowledge, the declarant must identify the source of the information and their belief that the information is true;
    - (II) reflect realistic annual Credit Card Sales Volume. Any extrapolations for years where sales data is not available should be supported by actual business records during the Class Period;
    - (III) clearly set out any data points or metrics used to calculate the annual Settlement Class Member's Credit Card Sales Volume during the Class Period;
    - (IV) to the extent that the Settlement Class Member is extrapolating its Credit Card Sales Volume based on records for part of the Class Period, the Settlement Class Member must provide the basis of the extrapolation and proof that the Settlement Class Member was fully operational during the period in which the Settlement Class Member is extrapolating its Credit Card Sales Volume;
  - (B) The substantiating documentation must:
    - (I) support each of the key data points or metrics relied upon in the declaration; and
    - (II) be claimant-specific and contemporaneous with the Class Period.

- (c) With respect to Settlement Class Members who substantiate their claims with a declaration pursuant to paragraph 25(b)(ii), the Claims Administrator has discretion to approve, in full or part, any claim based on its own assessment of reasonableness. As part of this assessment, the Claims Administrator can consider the reasonableness of the Settlement Class Member's assertions, any substantiating evidence (or lack thereof) provided by the Settlement Class Member, and publicly available information. The Claims Administrator may, at its own discretion, request further information from the Settlement Class Member.
26. If submitting a Documented Claim, Settlement Class Members must declare whether they, at any time during the Class Period:
- (a) received Interchange Fees through issuance of Credit Cards. If so, the Settlement Class Member must provide documentary proof showing the amount of Interchange Fees paid and received over the Class Period;
  - (b) issued co-branded Credit Cards. If so, the Settlement Class Member must provide documentary proof showing the actual rate of Interchange Fees paid over the Class Period; or
  - (c) received a discounted rate for Interchange Fees below the Average Interchange Rate. If so, the Settlement Class Member must provide documentary proof showing the actual rate of Interchange Fees paid over the Class Period.
27. Information submitted by Settlement Class Members with respect to issuance of Credit Cards or co-branded Credit Cards, or discounted Interchange Fees will be evaluated by an Independent Referee appointed by the Courts in order to determine that Settlement Class Member's actual Interchange Fees paid, for the purposes of calculating their Notional Entitlement.
28. Information submitted by Settlement Class Members with respect to issuance of Credit Cards or co-branded Credit Cards, or discounted Interchange Fees must be sufficient for the Independent Referee to determine the Settlement Class Member's actual Interchange Fees paid.
29. All information disclosed by a Settlement Class Member with respect to issuance of Credit Cards, co-branded Credit Cards or discounted rates for Interchange Fees will be provided to only the Claims Administrator, the Independent Referee, and in the case of appeals, the Arbitrator.

#### **Assistance in Filing a Claim Form**

30. Settlement Class Members can contact the Claims Administrator or class counsel, at no charge, with questions about how to complete a Claim Form.

31. For Documented Claims, Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claim Forms. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Member will be responsible for any and all expenses incurred in doing so.

### **The Online Claim Portal**

32. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim Form online and shall provide the necessary administration support to enable Settlement Class Members to do so.
33. The Online Claim Portal shall be accessible from the Settlement Website.
34. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim Form, in accordance with paragraphs 24 to 26 above.
35. The Online Claim Portal shall be designed so as to minimize the possibility of deficient Claim Forms.
36. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is provided by Settlement Class Members in their Claim Forms:
  - (a) names, addresses, payment of Interchange Fees, and Credit Card Sales Volume of the Settlement Class Members;
  - (b) supporting documents provided by Settlement Class Members as part of the claims process; and
  - (c) any other information that might be useful in the claims administration process.

### **The Process for Filing a Claim Form**

37. Settlement Class Members will be encouraged to complete and submit a Claim Form electronically using the Online Claim Portal.
38. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim Form using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy Claim Form by mail.

39. Subject to paragraph 46 or further order of the Courts, all completed Claim Forms must be submitted to the Claims Administrator or postmarked no later than the Claims Filing Deadline.
40. Subject to the discretion of the Claims Administrator, claims may not be amended after the Claims Filing Deadline. For greater clarity, “placeholder claims” - meaning inaccurate and/or incomplete claims filed solely for the purpose of meeting the Claim Filing Deadline - will not be permitted.

### **Deficiencies and Review Process**

41. The Claims Administrator shall review all Claim Forms for (or implement processes to detect) deficiencies including incomplete fields, missing documentation, out of country claims, and duplicative or fraudulent claims.
42. In addition to the above, the Claims Administrator will review a subset of claims for accuracy. Among other things, this review will determine whether the Settlement Class Member provided adequate proof of Credit Card Sales Volume received in accordance with paragraph 25(b). The review process may require Settlement Class Members to submit proof that they accepted Credit Cards, entered into agreements with Acquirers, or had revenue to support their declared classification as a Small Merchant, Medium Merchant or Large Merchant. The Claims Administrator will review:
  - (a) any claims supported by a declaration pursuant to paragraph 25(b)(ii);
  - (b) the top 15% of Documented Claims (measured by Credit Card Sales Volume);
  - (c) at least an additional random selection of 10% of other Documented Claims;
  - (d) up to 10% of Undocumented Claims from Medium Merchants; and
  - (e) up to 2% of Undocumented Claims from Small Merchants.
43. At its sole discretion, the Claims Administrator can elect to review any claim and can reject a claim, in whole or in part, where, in the Claims Administrator’s view, the Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.
44. The Claims Administrator shall notify Settlement Class Members if their claim was identified pursuant to paragraphs 41 and/or 42 as:
  - (a) including incomplete fields or missing documentation;
  - (b) potentially duplicative;
  - (c) an out of country claim;
  - (d) potentially fraudulent; and/or

(e) being supported by insufficient proof of Credit Card Sales Volume or payment of Interchange Fees.

45. The Claims Administrator will provide the Settlement Class Member with instructions for remedying the issue(s) and shall provide (30) days from the date of such notice to remedy the issue(s). If the issue(s) is not corrected within the thirty (30) day period, the Claims Administrator may reject the Claim Form.

#### **Adjustments to Claims Process and Extension of the Claims Filing Deadline**

46. By agreement between the Claims Administrator and class counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust the claims process. Class counsel and the Claims Administrator may agree to extend the Claims Filing Deadline and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amounts and it is in the best interests of the Settlement Class Members to do so.

#### **Claims Administrator's Decision**

47. In respect of each Settlement Class Member who has filed a Claim Form in accordance with this Distribution Plan, the Claims Administrator shall decide whether the Settlement Class Member is eligible to receive settlement benefits in accordance with the Distribution Plan and any orders of the Courts related to the Distribution Plan.

48. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the claim and the determination of their Notional Entitlement (the "Decision Notice"). Where the Claims Administrator has rejected all or part of a claim (or re-categorized any a claim into a different merchant fund), the Claims Administrator shall include in the Decision Notice its grounds for rejecting or re-categorizing all or part of the claim.

49. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 50 to 58.

#### **Appeal of the Claims Administrator's Decision**

50. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.

51. The following grounds shall not be grounds for appeal:

(a) the Claims Administrator's refusal to accept a Claim Form postmarked or electronically submitted after the Claims Filing Deadline;

- (b) the Claim Administrator's decisions on Undocumented Claims;
  - (c) the Claim Administrator's decision to reject a Claim Form pursuant to paragraph 45 for the failure to respond to a request for additional information; or
  - (d) the structure of the Distribution Plan, as approved by the Courts.
52. Appeals will be determined by the Arbitrator.
53. Appeals will be on the basis of written submissions, supported by the documentation provided by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Arbitrator for consideration.
54. A \$150 filing fee is payable by a Settlement Class Member upon submission of a notice of appeal to the Claims Administrator. If a Settlement Class Member's claim was partially approved, the filing fee shall be deducted from the Settlement Class Member's settlement benefits. If a Settlement Class Member's claim was rejected, the Settlement Class Member will be required to pay the filing fee to the Claims Administrator by e-transfer or cheque within ten (10) days after delivering a written appeal. If a Settlement Class Member does not pay the filing fee within ten (10) days after delivering a written appeal, their appeal shall be dismissed.
55. The filing fee shall be refunded if the Arbitrator finds in favour of the Settlement Class Member.
56. The Claims Administrator must provide the Arbitrator with a copy of the documentation provided by the Settlement Class Member as a part of the claims process, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal. The Claims Administrator and class counsel may make written submissions to the Arbitrator as is reasonably necessary.
57. Notwithstanding the foregoing, the Arbitrator, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Arbitrator) from the Settlement Class Member, Claims Administrator and/or class counsel.
58. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.



## **Adjustments to Appeal Process and Extension of the Appeal Deadline**

59. Subject to the approval of the Arbitrator, class counsel may extend the appeal deadline and/or adjust the appeal process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amounts and it is in the best interests of the Settlement Class to do so.

## **Payment of Settlement Benefits**

60. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall report to class counsel the particulars of the proposed distribution to each eligible Settlement Class Member. The Claims Administrator shall provide a copy of this report to the Quebec *Fonds d'aide aux actions collectives*.
61. The Claims Administrator shall make arrangements to pay approved claims as expeditiously as possible. Undocumented Claims may be paid out before Documented Claims.
62. For Settlement Class Members whose claims are paid from the Small Merchant Fund or the Medium Merchant Fund, payments will be made by e-transfer or cheque. Where a Settlement Class Member receiving payment from the Small Merchant Fund or Medium Merchant Fund elects to receive payment by cheque, \$2 will be deducted from that Settlement Class Member's payment to reflect the cost of issuing a cheque. The online claims portal shall provide Settlement Class Members an opportunity to elect between payment by e-transfer or cheque and shall advise that individual Settlement Class Members who elect to receive payment by cheque will have \$2 deducted from their payment to reflect the cost of issuing a cheque. For Settlement Class Members whose claims are paid from the Large Merchant Fund, payments will be issued by cheque or, at the discretion of the Claims Administrator, wire transfer.
63. Subject to further Order of the Courts, and following payment of all approved Documented and Undocumented Claims, any unclaimed amounts due to uncashed e-transfers or cheques, residual interest or otherwise, will be held in trust for the benefit of Settlement Class Members pending any subsequent distribution.

## **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **Supervisory Powers of the BC Court and the Quebec Court**

64. The Claims Administrator shall administer this Distribution Plan under the ongoing authority and supervision of the BC Court and the Quebec Court.

### **Investment of Settlement Funds**

65. The settlement amounts shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

### **Communication, Languages and Translation**

66. Where a Claim Form is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
67. The Claims Administrator shall establish a toll-free number for calls from Canada.
68. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.
69. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.
70. In the event of any dispute as to the interpretation or application of this Distribution Plan, only the English version shall be considered.

### **Undeliverable Mail**

71. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.

### **Reissued Payments**

72. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Subject to the sole discretion of the Claims Administrator, payments for \$30 will not be reissued. Subject to the Claims Administrator's discretion, where a Settlement Class Member who is entitled to payment of greater than \$30 requests that payment be reissued, the cost of repayment (\$10 for e-transfers and \$15 for cheques) will be deducted from that Settlement Class Member's settlement benefits.

### **Fraudulent Claim Forms**

73. The Claims Administrator shall develop and implement processes to detect possible fraudulent conduct, including monitoring Claim Forms for unusual activity and multiple Claim Forms being filed from the same address and/or IP address.

### **Taxes**

74. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Amounts and shall pay any taxes imposed on such monies out of the Net Settlement Amounts.

### **Reporting**

75. The Claims Administrator shall provide regular reports to class counsel regarding the administration.
76. The Claims Administrator shall provide any reports requested by the Courts.

### **Assistance to the Claims Administrator**

77. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Plan, provided that related expenses are paid out of the Claims Administrator's fees or approved by the Courts in advance.

### **Preservation and Disposition of Claim Submissions**

78. Subject to paragraph 79, the Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, Claim Forms, documents relating to the Claim Forms, and documents relating to the claims administration, including customer and sales information provided by the defendants, until three (3) years after this action is finally resolved and all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy such documents by shredding, deleting, or such other means as will render the materials permanently illegible.

### **Confidentiality**

79. All information received from Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Distribution Plan, including evaluating the Settlement Class Member's eligibility status under the Distribution Plan. The information provided by the Settlement Class Member is strictly private and confidential and will not be

disclosed without the express written consent of the Settlement Class Member, except in accordance with the Distribution Plan and/or orders of the Courts.

**SCHEDULE “A” – RELATED ENTITY AUTHORIZATION**

This Schedule is to be completed only if the Claim is being submitted by a parent company on behalf of a subsidiary or affiliate.

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I \_\_\_\_\_ [*name of Settlement Class Member*] authorize \_\_\_\_\_ [*name of representative*] to file a Claim in the Canadian Credit Cards Class Action distribution on my behalf.

I understand that all communications relating to the claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at \_\_\_\_\_ [*city*], in the Province of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

I have the authority to bind the corporation

**SCHEDULE “B” – THIRD-PARTY AUTHORIZATION**

This Schedule is to be completed only if the Claim is being submitted on behalf of a Settlement Class Member by a representative (including a third-party claims service or lawyer of their own choosing).

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I, \_\_\_\_\_ [*name of Settlement Class Member*] authorize \_\_\_\_\_ [*name of representative*] to file a Claim in the Canadian Credit Cards Class Action Distribution on my behalf.

I understand that the claims filing process was designed to enable Settlement Class Members to file Claims without the assistance of an agent and that the Settlement Class Member can contact the Claims Administrator at no charge to ask questions about the claims filing process.

I have reviewed the information to be submitted by my representative as part of the Claim Form, including documentation supporting Credit Card Sales Volume and/or Interchange Fees paid.

I can attest based on personal knowledge that the information to be submitted by the representative, including documentation supporting total Credit Card Sales Volume and Interchange Fees paid, accurately reflects the business records.

I understand that all communications relating to the claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at \_\_\_\_\_ [*city*], in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name  
\_\_\_\_\_

---

Signature

I have the authority to bind the  
corporation