

**CANADIAN TD COIN COUNTING CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of September 12, 2018

Between

**LISA RAM**

(the "Plaintiff")

and

**THE TORONTO DOMINION BANK**

(the "Defendant")

**CANADIAN TD COIN COUNTING CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

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**RECITALS**

A. WHEREAS the Proceeding was commenced by the Plaintiff in Ontario and the Plaintiff claims class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceeding alleges that the Defendant's Coin Counting Machines did not operate accurately resulting in losses to the Settlement Class contrary to the consumer protection legislation and the common law;

C. WHEREAS the Defendant and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of liability alleged in the Proceeding or otherwise, and deny all liability and assert that they have complete defences in respect of the merits of the Proceeding;

D. WHEREAS the Plaintiff, Class Counsel and the Settling Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendant;

E. WHEREAS the Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class in the Proceeding, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. WHEREAS Counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

G. WHEREAS as a result of these settlement discussions and negotiations, the Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiff, both individually and on behalf of the Settlement Class she seeks to represent, subject to approval of the Court;

H. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claim, having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Settlement Class she seeks to represent;

I. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceeding as against the Releasees;

J. WHEREAS the Parties consent to certification of the Proceeding as a class proceeding and to the Settlement Class and a Common Issue in respect of the Proceeding solely for the purpose of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approval by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

K. WHEREAS the Plaintiff asserts that she is an adequate class representative for the class she seeks to represent and will seek to be appointed representative plaintiff in the Proceeding;

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 Proceeding be settled and dismissed with prejudice, all without costs as to the Plaintiff, the class she seeks to represent, or the Defendant, subject to the approval of the Court, on the following terms and conditions:

#### SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) *Administration Amount* means up to \$100,000 to be used towards Administration Expenses.

- (2) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and distribution, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (3) *Claims Administrator* means the firm proposed by Class Counsel and appointed by the Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (4) *Class Counsel* means Sotos LLP.
- (5) *Class Counsel Disbursements* include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (6) *Class Counsel Fees* means the fees of Class Counsel, and any applicable taxes or charges thereon.
- (7) *Class Period* means January 1, 2013 to the date of the order certifying the Proceeding for Settlement Purposes.
- (8) *Coin Counting Machines* means machines that were placed in the Defendant's retail branches in Canada during some or all of the Class Period. The Defendant's customers, including Settlement Class Members, could insert coins into the Coin Counting Machines, which would count the coins and issue cash vouchers or direct deposits to customers in exchange.
- (9) *Common Issue* means: Was there an agreement between the Defendant and each Settlement Class Member? If so, was it a term of this agreement that the Coin Counting Machines would count coins deposited with accuracy? If so, did the Defendant breach this term of the agreement?
- (10) *Counsel for the Defendant* means McCarthy Tétrault LLP.
- (11) *Court* means the Ontario Superior Court of Justice.
- (12) *Date of Execution* means the date on the cover page as of which the Parties have executed this Settlement Agreement.

- (13) ***Defendant*** means The Toronto Dominion Bank.
- (14) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.
- (15) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (16) ***Final Order*** means the final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.
- (17) ***Opt-Out Deadline*** means the date which is sixty (60) days after the date in the notice described in Section 9.1(1) is first published.
- (18) ***Party and Parties*** means the Defendant, the Plaintiff and, where necessary, the Settlement Class Members.
- (19) ***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, including the Crown, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (20) ***Plaintiff*** means Lisa Ram.
- (21) ***Proceeding*** means the action commenced in the Ontario Superior Court of Justice by way of Statement of Claim issued June 22, 2016, bearing Court File No. C-680-16.
- (22) ***Released Claims*** means any and all manner of manner of actions, complaints, causes of action, suits, debts, dues, accounts, bonds, covenants, claims and demands for damages, declaratory relief, money, losses, indemnity, costs, interest or injury, in any forum, howsoever arising which hereto may have been or may hereafter be sustained or alleged by the Releasors in respect of any of the allegations and claims made, or which could have been made, whether known, unknown or anticipated, arising from or relating in any way to Coin Counting Machines

or any conduct alleged in the Proceeding. However, the Released Claims do not include: (i) claims brought (whether before or after the Effective Date) outside of Canada relating to Coin Counting Machines outside of Canada; or (ii) claims brought (whether before or after the Effective Date) under laws other than those of Canada or any of its provinces relating to Coin Counting Machines outside of Canada.

(23) ***Releasees*** means, jointly and severally, individually and collectively, the Defendant and its parents, subsidiaries, other affiliated companies and Persons who provided goods or services to the Defendant in connection with the Coin Counting Machines, and each of their respective past, present and future directors, officers, shareholders, employees, servants, agents, administrators, trustees, successors and assigns, and any party or parties who claim a right or interest on behalf of or through them.

(24) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members on behalf of themselves and their agents, heir, executors and administrators, successors, assigns, insurers, lawyers, representatives, shareholders, owner associations, and any other legal or natural persons who may claim by, through, or under them.

(25) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(26) ***Settlement Amount*** means C\$555,000.

(27) ***Settlement Class*** means all Persons who used the Coin Counting Machines in Canada during the Class Period, excluding, as necessary, persons who have opted out in accordance with the terms of the order described in Section 2.2(2).

(28) ***Settlement Class Member*** means a member of the Settlement Class.

(29) ***Trust Account*** means 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*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Sotos LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Defendant, as provided for in this Settlement Agreement.

## **SECTION 2- SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Defendant.

### **2.2 Motion Seeking Approval of Notice and Certification**

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 9.1(1) and certifying the Proceeding as a class proceeding as against the Defendant (for settlement purposes only).

(2) The order approving the notices described in Section 9.1(1) and certifying the Proceeding for settlement purposes shall be substantially in the form attached as Schedule A.

(3) Class Counsel shall prepare the materials for the motion described in Section 2.2(1), including the forms of notices, subject to the review and approval of Counsel for the Defendant.

### **2.3 Motions Seeking Approval of the Settlement**

(1) The Plaintiff shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after:

(a) the order referred to in Section 2.2(1) has been granted; and

(b) the notices described in Section 9.1(1) have been published.

(2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.

(3) This Settlement Agreement shall only become final on the Effective Date.

(4) Class Counsel shall prepare the materials for the motion described in Section 2.3(1) subject to the review and approval of Counsel for the Defendant.

(5) If Class Counsel and the Plaintiff intend to file information that the Defendant identifies as proprietary or commercially-sensitive, Class Counsel shall provide advance notice of any such

intention to the Defendant and shall consent to obtain a sealing order to protect the confidentiality interests of the Defendant and/or any affected third parties in relation to any of the materials filed in support of the motion described in Section 2.3(1).

#### **2.4 Pre-Motion Confidentiality**

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

### **SECTION 3 – SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount and Administration Amount**

(1) Within ten (10) days of the Date of Execution, the Defendant shall pay the Settlement Amount and the Administration Amount to Class Counsel, for deposit into the Trust Account.

(2) Payment of the Settlement Amount and the Administration Amount shall be made by wire transfer. Prior to the Settlement Amount and Administration Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount, Administration Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount and Administration Amount shall be inclusive of interest, costs, Class Counsel Fees and Class Counsel Disbursements.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount and the Administration Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceeding.

(6) Once a Claims Administrator has been appointed, Class Counsel shall transfer control of the Trust Account to the Claims Administrator.

(7) Class Counsel and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) Class Counsel and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

### **3.2 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Amount and the Administration Amount in the Trust Account 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), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount or the Administration Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount and the Administration 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 by the Settlement Amount and Administration Amount shall be paid from the Trust Account.

(3) The Defendant 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 on the Settlement Amount and the Administration Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount and the Administration Amount in the Trust Account or otherwise shall be paid to the Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

## SECTION 4 – OPTING OUT

### 4.1 Procedure

(1) Class Counsel will seek approval from the Court of the following opt-out process as part of the orders certifying or authorizing the Proceeding as a class proceeding for settlement purposes:

- (a) Persons seeking to opt out of the Proceeding must do so by sending a written request to opt out to Class Counsel at an address or email address to be identified in the notice described in Section 9.1(1), postmarked or sent on or before the Opt-Out Deadline.
- (b) The written election to opt-out must be signed by the Person or the Person's designee and must include the following information:
  - (i) the Person's full name, current address and telephone number;
  - (ii) if the Person seeking to opt out is a corporation, the name of the corporation and the position of the Person submitting the request to opt out on behalf of the corporation;
  - (iii) a statement to the effect that the Person wishes to be excluded from the Proceeding; and
  - (iv) the reason(s) for opting out.
- (c) Where the postmark is not visible or legible, the request to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
- (d) Persons who opt-out of the Proceeding shall have no further right to participate in the Proceeding or to share in the distribution of any funds received as a result of a judgment or settlement in the Proceeding.
- (e) No further right to opt out of the Proceeding will be provided.

- (f) Settlement Class Members who are resident in Quebec and have commenced proceedings or commence proceedings and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out. Class Counsel warrant and represent that, to the best of their knowledge, no such action has been commenced as of the Execution Date.
  - (g) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendant a report containing the names of each Person who has validly and timely opted out of the Proceeding and a summary of the information delivered by such Persons pursuant to Section 4.1(1)(a) above.
- (2) The Defendant reserves all of its legal rights and defences with respect to any potential Settlement Class Member who validly opts-out from the Proceeding.

## **SECTION 5 - TERMINATION OF SETTLEMENT AGREEMENT**

### **5.1 Right of Termination**

- (1) In the event that:
  - (a) the Court declines to certify the Proceeding for the purposes of the Settlement Agreement;
  - (b) the Court declines to dismiss the Proceeding against the Defendant;
  - (c) the Court declines to approve this Settlement Agreement or any material part hereof;
  - (d) the Court approves this Settlement Agreement in a materially modified form;
  - (e) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule B; or
  - (f) any order approving this Settlement Agreement made by the Court does not become a Final Order;

the Plaintiff and the Defendant shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17.

(3) Except as provided for in Section 5.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties or the Releasees, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(4) Any order, ruling or determination made or rejected by the Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements;
- (b) the opt-out process; or
- (c) the 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.

## **5.2 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:

- (a) no motion to certify the Proceeding 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) the Parties will cooperate in seeking to have any issued order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and

- (c) any prior certification of the Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceeding, or any other litigation.

### **5.3 Allocation of Settlement Amount Following Termination**

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Class Counsel shall, within thirty (30) days of the written notice pursuant to Section 5.1(1) or 5.1(2), return to the Defendant the Settlement Amount and Administration Amount they have paid to Class Counsel, plus all accrued interest thereon, but less the costs of notices required by Section 11.1(1) and any translations required by Section 13.11 as deducted from the Administration Amount.

### **5.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(8), 3.2(3), 5.1(3), 5.2, 5.3, 5.4, 7.1, 7.2 and 9.1(2), and the definitions, Schedules and miscellaneous provisions of Section 13 applicable thereto 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 Sections 3.1(8), 3.2(3), 5.1(3), 5.2, 5.3, 5.4, 7.1, 7.2, 9.1(2) and (as applicable) 13 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 6 – RELEASES AND DISMISSALS**

### **6.1 Release of Releasees**

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and the Administration Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims.

## **6.2 Release Includes Unknown Claims**

(1) The Plaintiff acknowledges that she may hereafter discover facts in addition to, or different from, those facts that she knows or believes to be true regarding the subject matter of the Settlement Agreement, and it is her intention to release fully, finally and forever all Released Claims on her behalf and on behalf of the Settlement Class she seeks to represent, and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

## **6.3 No Further Claims**

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in 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 proceeding, cause of action, claim or demand against any Releasee, or any other Person including, without limitation, any Person who may claim, in any manner or forum, contribution, indemnity or any other relief from any of the Releasees in connection with the Released Claims.

## **6.4 No Known Assignment of Claims**

(1) The Plaintiff and Class Counsel represent that they are not aware of any action, cause of action, claim, debt, suit or demand of any nature or kind arising from or relating to the Released Claims that has been assigned by any Releasor to any person, corporation or entity (including the Crown).

## **6.5 Dismissal of the Proceeding**

(1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Defendant.

## **6.6 Material Term**

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

## **SECTION 7 – EFFECT OF SETTLEMENT**

### **7.1 No Admission of Liability**

(1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the 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, 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 liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding, or any other pleading filed by the Plaintiff.

### **7.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it 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, 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 pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

### **7.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by 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 against the Defendant which relates to or arises from the Released Claims. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is or becomes otherwise publicly available or unless ordered to do so by a court.

## **SECTION 8 – CERTIFICATION FOR SETTLEMENT ONLY**

(1) The Parties agree that the Proceeding shall be certified as a class proceeding as against the Defendant solely for the purpose of settlement of the Proceeding and the approval of this Settlement Agreement by the Court.

(2) The Plaintiff agrees that, on the motion for certification of the Proceeding as a class proceeding for settlement purposes and for approval of this Settlement Agreement, the only common issue that she will seek to define is the Common Issue and the only class that she will assert is the Settlement Class.

## **SECTION 9 – NOTICE TO SETTLEMENT CLASSES**

### **9.1 Notices Required**

(1) The proposed Settlement Class shall be given a single notice of: (i) the certification of the Proceeding as a class proceeding as against the Defendant for settlement purposes; (ii) the right to opt-out of the Proceeding; (iii) the hearing at which the Court will be asked to approve the Settlement Agreement; and (iv) if brought with the hearing to approve the Settlement Agreement, the hearing to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

### **9.2 Form and Distribution of Notices**

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

## **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 shall be determined by the Court on motions brought by Class Counsel.

## **SECTION 11– DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **11.1 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Defendant, Class Counsel will bring a motion seeking an order from the Court approving the Distribution Protocol. The motion can be brought before the Effective Date, but the order approving the Distribution Protocol shall be conditional on the receipt of a Final Order.

### **11.2 No Responsibility for Administration**

(1) Except as otherwise provided for in this Settlement Agreement, the Defendant shall not have any responsibility or liability whatsoever with respect to the administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account.

## **SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

### **12.1 Responsibility for Fees, Disbursements and Taxes**

(1) The Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount or the Administration Amount.

### **12.2 Responsibility for Costs of Administration Expenses, Notices and Translation**

(1) The Plaintiff shall pay the costs of the notices required by Section 9 and any costs of translation required by Section 13.11 from the Administration Amount, as they become due. If

the Administration Amount is fully depleted, the Plaintiff shall pay the balance of the costs of the notice required by Section 9 and any costs of translation required by Section 13.11 from the Settlement Amount, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation beyond the Defendant's payment of the Administration Amount pursuant to Section 3.1(1).

(2) The Plaintiff shall pay the costs of implementing the Distribution Protocol referred to in Section 11 from the Administration Amount, as they become due. If the Administration Amount is fully depleted, the Plaintiff shall pay the costs of implementing the Distribution Protocol referred to in Section 11 from the Settlement Amount, as they become due. The Releasees shall not have any responsibility for the costs of implementing the Distribution Protocol beyond the Defendant's payment of the Administration Amount pursuant to Section 3.1(1).

(3) Any portion of the Administration Amount (inclusive of the accrued interest thereon) still remaining in the Trust Account after the Plaintiff has paid all costs which are eligible to be paid from the Administration Amount shall be returned to the Defendant.

### **12.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account from the Settlement Amount after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

## **SECTION 13 – MISCELLANEOUS**

### **13.1 Motions for Directions**

(1) Class Counsel or the Defendant may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

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

### **13.2 Headings, etc.**

(1) In this Settlement Agreement:

- (a) the division of the 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.

### **13.3 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 as "holiday" is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

### **13.4 Ongoing Jurisdiction**

(1) The Court shall retain exclusive jurisdiction over the Proceeding, the Parties and the Class Counsel Fees.

### **13.5 Governing Law**

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **13.6 Entire Agreement**

(1) This Settlement Agreement 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.

### **13.7 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties, and any such modification or amendment must be approved by the Court.

### **13.8 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class Members, the Defendant, the Releasors, 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 Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

### **13.9 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 electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **13.10 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, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **13.11 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 connexes soient rédigés en anglais. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Administration Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **13.12 Transaction**

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

#### **13.13 Recitals**

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

#### **13.14 Schedules**

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

#### **13.15 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 the 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 the 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 the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement;

#### **13.16 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 above their respective signatures and their law firms.

#### **13.17 Notice**

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

#### **For the Plaintiff and for Class Counsel in the Proceeding:**

Jean Marc Leclerc  
SOTOS LLP  
Barristers and Solicitors  
180 Dundas Street West, Suite 1250  
Toronto, ON M5G 1Z8  
Tel: 416.977.0007  
Fax: 416.977.0717  
Email: jleclerc@sotosllp.com

**For the Defendant:**

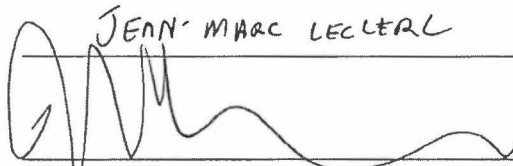
Christine Lonsdale  
McCarthy Tétrault LLP  
TD Bank Tower, 66 Wellington Street West, Suite 5300  
Toronto, ON M5K 1E6  
Tel: 416.601.8019  
Fax: 416.868.0673  
Email: clonsdale@mccarthy.ca

**13.18 Date of Execution**

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**LISA RAM** on her own behalf and on behalf of the Settlement Class, by her counsel

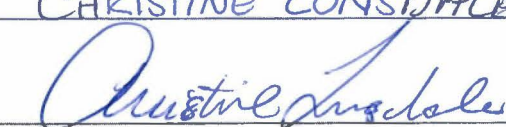
Name of Authorized Signatory:

JEAN-MARC LECLEAL  
  
Sotos LLP  
Class Counsel

Signature of Authorized Signatory:

**THE TORONTO DOMINION BANK**, by its counsel

Name of Authorized Signatory:

CHRISTINE LONSDALE  
  
McCarthy Tétrault LLP  
Counsel for the Defendant

Signature of Authorized Signatory:

**SCHEDULE "A"**

Court File No. C-680-16

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE TAYLOR ) OF , 2018

BETWEEN:

**LISA RAM**

Plaintiff

- and -

**THE TORONTO DOMINION BANK**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
- Notice Approval and Consent Certification -**

**THIS MOTION** made by the Plaintiff for an Order approving the abbreviated and long-form notices of settlement approval hearing and the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against The Toronto Dominion Bank (the "Defendant") was read this day at the Courthouse, 45 Main Street East, Hamilton, Ontario.

**ON READING** the materials filed, including the settlement agreement with the Defendant dated as of ●, 2018 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on reading the submissions of counsel for the Plaintiff and the Defendant;

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

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules "B" to "C".
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated and long-form notices of settlement approval hearing (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "D" and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the Proceeding is certified as a class proceeding as against the Defendant for settlement purposes only.
5. **THIS COURT ORDERS** that the "Settlement Class" is certified as follows:

All Persons who used the Coin Counting Machines in Canada during the Class Period.
6. **THIS COURT ORDERS** that Lisa Ram is appointed as the representative plaintiff for the Settlement Class.
7. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Was there an agreement between the Defendant and each Settlement Class Member? If so, was it a term of this agreement that the Defendant's coin counting machines would count coins deposited with accuracy? If so, did the Settlement Defendant breach this term of the agreement?

8. **THIS COURT ORDERS** that putative members of the Settlement Class can opt out of the Proceeding by sending a written request to opt out to Class Counsel, postmarked on or before the Opt-Out Deadline. The written election to opt out must be signed by the Person or the Person's designee and must include the following information:
  - (a) the Person's full name, current address and telephone number;
  - (b) if the Person seeking to opt out is a corporation, the name of the corporation and the position of the Person submitting the request to opt out on behalf of the corporation;
  - (c) a statement to the effect that the Person wishes to be excluded from the Proceeding; and
  - (d) the reason(s) for opting out.
9. **THIS COURT ORDERS** that where the postmark is not visible or legible, the election to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
10. **THIS COURT ORDERS** that any putative member of the Settlement Class who validly opts out of the Proceeding shall not be able to participate in the Proceeding or to share in the distribution of any funds received as a result of a judgment or settlement, and no further right to opt out of the Proceeding will be provided.
11. **THIS COURT ORDERS** that Settlement Class Members who are resident in Quebec and have commenced proceedings or commence proceedings and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out.

12. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendant a report containing the names of each Person who has validly and timely opted out of the Proceeding, and a summary of the information delivered by such Persons pursuant to paragraph 8 above.

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The Honourable Justice Taylor

**SCHEDULE "B"**

Court File No. C-680-16

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE TAYLOR ) OF , 2018

BETWEEN:

**LISA RAM**

Plaintiff

- and -

**THE TORONTO DOMINION BANK**

Defendant

*Proceeding under the Class Proceedings Act, 1992*

**ORDER  
- Settlement Approval -**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement agreement entered into with The Toronto Dominion Bank (the "Defendant") and dismissing this action as against the Defendant, was heard this day at the Courthouse, 45 Main Street East, Hamilton, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated ●, 2018, attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff, and counsel for the Defendant;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ● written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the Proceeding has passed, and there were ● Persons who validly and timely exercised the right to opt-out;

**AND ON BEING ADVISED** that the Plaintiff and the Defendant consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 9, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

7. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
8. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
9. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after completion of the Distribution Protocol and payment of Class Counsel Disbursements and Class Counsel Fees, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
10. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
11. **THIS COURT ORDERS** that this action be and is hereby dismissed against the Defendant, without costs and with prejudice.

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The Honourable Justice Taylor