

**Robert Christopher Jordan v. CIBC Mortgages Inc.**

**Ontario Superior Court of Justice File No 5303/11CP (the “Ontario Action”)**

Proceeding under the *Class Proceedings Act, 1992*

**Erin Sherry v. CIBC Mortgages Inc., and in French, Hypothèques CIBC Inc.**

**Supreme Court of British Columbia File No. S116769, Vancouver Registry (the “British Columbia Action”)**

**SETTLEMENT AGREEMENT**

Made as of August 30, 2021

Between

**ROBERT CHRISTOPHER JORDAN, on behalf of the Class Members in the Ontario Action, and ERIN SHERRY, on behalf of the Class Members in the British Columbia Action**

(collectively, including the certified classes, the “**Plaintiffs**”)

and

**CIBC Mortgages Inc.**

(“**CIBC**” or the “**Defendant**”)

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## RECITALS

**WHEREAS** Robert Christopher Jordan and Paulina Danao commenced the Ontario Action on October 7, 2011 on behalf of Class Members resident in Canada, other than in British Columbia or Quebec, for, *inter alia*, class-wide compensation for the alleged unlawful collection, or miscalculation, of Class Members' Prepayment Charges;

**AND WHEREAS** Paulina Danao withdrew as a proposed representative plaintiff in the Ontario Action;

**AND WHEREAS** the Ontario Action alleged, *inter alia*, that the Defendant's Prepayment Charges were void or voidable for uncertainty and breaches of the *Trust and Loan Companies Act*, S.C. 1991, c. 45, the *Cost of Borrowing (Trust and Loan Companies) Regulations*, SOR/2001-104, the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, SO 2006, c 29, the Defendant's "Plain Language Promise", the Defendant's fiduciary duties, and public policy. In the alternative, the Ontario Action alleged, *inter alia*, that the Defendant had miscalculated Prepayment Charges by failing to reduce them to their net present value, and by failing to calculate them with reference to a notional comparator mortgage with the same amortization period as the Class Member's mortgage. The Ontario Action alleged that the Defendant's charges or overcharges constituted an unjust enrichment;

**AND WHEREAS** the Honourable Justice Raikes of the Ontario Court certified the Ontario Action as a class proceeding in Reasons dated February 21, 2019;

**AND WHEREAS** Erin Sherry commenced the British Columbia Action on October 07, 2011 on behalf of Class Members resident in British Columbia for, *inter alia*, class-wide compensation for the alleged unlawful collection, or miscalculation, of Prepayment Charges when Class Members repaid their mortgage loans prior to their maturity; and amended her claim on September 27, 2016 and January 16, 2019;

**AND WHEREAS** the Honourable Justice Watchuk of the British Columbia Court certified the British Columbia Action as a class proceeding in Orders dated June 30, 2014 and March 31, 2015;

**AND WHEREAS** the British Columbia Court of Appeal overturned certification of certain certified common issues in the British Columbia Action on June 7, 2016;

**AND WHEREAS** the Honourable Justice Watchuk of the British Columbia Court certified additional common issues in the British Columbia Action, as amended, in an Order dated August 31, 2018;

**AND WHEREAS** the British Columbia Action, as amended, alleged, *inter alia*, that the Defendant's Prepayment Charges were unconscionable, illegal, contrary to public policy and unenforceable by reason of alleged breaches of statutory disclosure requirements, namely the *Trust and Loan Companies Act*, S.C. 1991, c. 45, the *Cost of Borrowing (Trust and Loan Companies) Regulations*, SOR/2001-104, the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313 and the *Mortgage Brokers Act Regulations*, B.C. Reg. 100/73, and that the Defendant's Prepayment Charges constituted an unjust enrichment;

**AND WHEREAS** the Parties have contemplated in this Settlement Agreement the full and final resolution of the claims of all Class Members and a release of the Defendant in a form described herein;

**AND WHEREAS** the Defendant denies any liability and does not admit, by the execution of this Settlement Agreement or otherwise, any allegation of unlawful or otherwise wrongful conduct and asserts that it has complete defences in respect of the merits of the Actions;

**AND WHEREAS** the Parties, through their counsel, have engaged in arm's length settlement negotiations with a view to resolving the Actions;

**AND WHEREAS** none of the Parties has relied on any representation made by any other party in executing this Settlement Agreement, and every Party has performed appropriate due diligence to satisfy itself of the veracity and accuracy of the facts upon which it is relying in executing this Settlement Agreement;

**AND WHEREAS**, the Parties have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendant and

the Plaintiffs, both individually and on behalf of the Class Members, subject to the approval of the Courts;

**AND WHEREAS** the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiffs and the Class Members in the Actions, and to avoid further expense, inconvenience, reputational damage, and the distraction of burdensome and protracted litigation;

**AND WHEREAS** Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Actions, including the time, 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 Class Members;

**AND WHEREAS** the Parties have intended and acknowledge that the Settlement provides direct or indirect compensation to the Class Members through a simplified, convenient and proportionate procedure;

**AND WHEREAS** the Parties have intended and acknowledge that the Settlement does not provide direct compensation to all Class Members;

**AND WHEREAS** the Parties wish to and hereby finally resolve the Actions as against the Defendant, without admission of liability, and without any admission by the Defendant that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Actions;

**AND WHEREAS** the Parties acknowledge that the Settlement is contingent on approval by both the Ontario Court and the British Columbia Court as provided for in this Settlement Agreement, and entered into with the express understanding that this Settlement shall not derogate from the respective rights of the Parties relating to the Actions in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

**AND WHEREAS** the Plaintiffs and the 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 the Defendant, evidence against the Defendant, or evidence of the truth of any of the Plaintiffs' allegations, which allegations are expressly denied by the Defendant;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Actions shall be settled and dismissed with prejudice, each without costs paid by or to the Plaintiffs, the Class Members, or the Defendant, subject to the approval of the Courts, on the following terms and conditions:

### **SECTION 1 – DEFINITIONS**

For the purposes of this Settlement Agreement, including the Recitals hereto:

- (1) **“Actions”** means the Ontario Action and the British Columbia Action;
- (2) **“British Columbia Action”** means *Erin Sherry v. CIBC Mortgages Inc.*, commenced in the Supreme Court of British Columbia and bearing Court File No. S116769, Vancouver Registry;
- (3) **“British Columbia Class Counsel”** means Branch MacMaster LLP;
- (4) **“British Columbia Class Members”** means all persons resident in British Columbia who were or are mortgagors under mortgages issued by CIBC Mortgages Inc. as mortgagee, who prepaid part or all of the principal amounts secured by those mortgages from January 1, 2005 onward, and who have not opted out in accordance with the Opt-Out Procedure;
- (5) **“British Columbia Court”** means the Supreme Court of British Columbia;
- (6) **“CJA”** means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (7) **“Claims Administrator”** means RicePoint Administration Inc.;



- (8) “**Class**” and “**Class Members**” mean the Ontario Class Members and the British Columbia Class Members together;
- (9) “**Class Counsel**” means Ontario Class Counsel and British Columbia Class Counsel together;
- (10) “**Class Counsel Disbursements**” means the disbursements, interest and applicable taxes incurred by Class Counsel in the prosecution of the Actions;
- (11) “**Class Counsel Fees**” means the fees of Class Counsel arising from the Actions, and any applicable taxes or charges thereon;
- (12) “**Court**” means, as the context requires, the Ontario Court or the British Columbia Court (together herein, the “**Courts**”);
- (13) “**CPA**” means, as the context requires, the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, and the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, or both;
- (14) “**Discount**” means any discount to the posted rate of interest for a given term that the Class Member received when taking a mortgage loan from the Defendant.
- (15) “**Distribution Protocol**” means the protocol for the distribution of the Net Settlement Funds approved by the Courts. The Parties’ proposed form of Distribution Protocol is attached hereto as Schedule “1”.
- (16) “**Effective Date**” means the later of the dates upon which the Order of each Court approving the Settlement Agreement becomes a Final Order;
- (17) “**Execution Date**” means the date on which the last of the Parties signs this Settlement Agreement;
- (18) “**Fee and Disbursement Approval Date**” means the date when the Court’s Order approving the Class Counsel Fees and Class Counsel Disbursements becomes a Final Order;
- (19) “**Final Order**” means the later of the dates upon which each Court grants an Order approving this Settlement Agreement and the time to appeal each Order has expired

without any appeal being taken, or if an appeal is taken, all appeals and any time period for a further appeal has concluded;

(20) **“Net Settlement Funds”** means the Settlement Amount less Class Counsel Fees, Class Counsel Disbursements, and Settlement Administration Expenses;

(21) **“Notice”** means the form or forms of notice agreed by the Parties and approved by the Courts, which inform(s) the Class Members of:

- (a) the Court’s certification of the Actions;
- (b) the principal elements of the Settlement;
- (c) the date and location of the hearing of the Settlement Approval Motions;
- (d) the Opt-Out Procedure;
- (e) the Opt-Out Deadline;
- (f) the Class Counsel Fees and Class Counsel Disbursements to be requested by Class Counsel; and
- (g) the process for objecting to the Settlement or to Class Counsel Fees and Class Counsel Disbursements, should any Class Member(s) wish to do so.

The Parties’ proposed short form Notice and long form Notice are attached hereto as Appendix “A” and Appendix “B”, respectively, and are subject to approval by the Courts;

(22) **“Notice Approval Motions”** means the motions for an Order of each Court:

- (a) approving the form, content and manner of distribution of the Notice;
- (b) setting out the Opt-Out Procedure;
- (c) fixing the Opt-Out Deadline; and
- (d) such other relief as the Parties may request;

(23) “**Notice Plan**” means the manner in which Class Counsel are to disseminate Notice and Settlement Approval Notice. The Parties’ proposed Notice Plan is attached hereto as Appendix “C”. The costs of the Notice Plan will be paid as Settlement Administration Expenses.

(24) “**Ontario Action**” means *Robert Christopher Jordan v. CIBC Mortgages Inc.*, commenced in the Ontario Superior Court of Justice at London and bearing Court File No. 5303/11CP;

(25) “**Ontario Class Members**” means Persons residing in Canada, except persons residing in the provinces of British Columbia and Québec, who: (i) were or are mortgagors under mortgages issued by the Defendant as mortgagee from 2005 onward on residential properties located in Canada; (ii) prepaid part or all of the principal amounts secured by those mortgages; (iii) in so doing paid a Prepayment Charge based on an interest rate differential; and (iv) have not opted out in accordance with the Opt-Out Procedure;

(26) “**Ontario Class Counsel**” means Siskinds LLP;

(27) “**Ontario Court**” means the Ontario Superior Court of Justice;

(28) “**Opt-Out Deadline**” means the date which is sixty (60) days after the first publication of any form of the Notice, which completion date shall be provided by the Claims Administrator;

(29) “**Opt-Out Procedure**” means the procedure to be fixed by Order of the Courts by which any Class Member(s) who wish(es) to do so may opt out of the Actions;

(30) “**Opt-Out Threshold**” means more than five-thousand (5,000) Class Members opt out of the actions in accordance with the Opt-Out Procedure;

(31) “**Parties**” means the Plaintiffs, on behalf of each and every Class Member that has not opted out of the Actions in accordance with the Opt-Out Procedure, and the Defendant, each being a party to this Settlement Agreement;

(32) “**Prepayment Charge**” means any amount assessed, levied, or collected by any of the Releasees on account of the repayment of a mortgage loan before maturity.

(33) “**Released Claims**” means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages of any kind including compensatory, punitive or other damages, whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or at equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from January 1, 2005 to the date hereof relating to any conduct alleged, or which could have been alleged in the Actions or either of them, including, without limitation, any similar claims arising out of or resulting from the payment of the Prepayment Charge, with the exception of any obligations under this Settlement Agreement and any wholly unrelated claims. For the sake of greater certainty, and without diminishing the generality of the foregoing, the Released Claims include:

- (a) any claim that the Releasees’ disclosure regarding the Prepayment Charge breached any statute, regulation, contractual term, common law or equitable obligation, Plain Language Promise, or public policy;
- (b) any claim that the Releasees were not entitled to charge a Prepayment Charge;
- (c) any claim that the Releasees miscalculated a Prepayment Charge or charged an excessive Prepayment Charge;
- (d) any claim that the Releasees were obliged to reduce a Prepayment Charge to its net present value;
- (e) any claim that the Releasees were obliged to calculate a Prepayment Charge with reference to a notional comparator mortgage loan with the same amortization period as the Class Member’s mortgage loan; and

- (f) any claim that the Releasees were not entitled calculate a Prepayment Charge with reference to the Discount, including any comparison between posted rates of interest and between discounted rates of interest. For the sake of greater certainty, this includes any claim that the Releasees were not entitled to calculate a Prepayment Charge by applying the Discount to the posted rate of interest payable on a notional comparator mortgage loan for a term comparable to the remaining term of the Class Member's mortgage loan, or that the Releasees were not entitled to calculate a Prepayment Charge by adding the Discount to the rate of interest payable on the Class Member's mortgage loan.

(34) "**Releasees**" means, jointly and severally, individually and collectively, the Defendant and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, stockholders, shareholders, agents, employed or retained lawyers, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing;

(35) "**Releasors**" means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and their respective successors, heirs, executors, administrators, trustees and assigns;

(36) "**Remainder**" means any portion of the Net Settlement Funds that is not distributed to Class Members in accordance with the Distribution Protocol, that is not spent on Settlement Administration Expenses when the Settlement has been fully administered but for the distribution of the Remainder.

(37) "**Settlement**" means the settlement provided for in this Settlement Agreement;

(38) "**Settlement Administration Expenses**" means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable for the approval, implementation and operation of this Settlement Agreement, including the costs of giving

Notice and Settlement Approval Notice, but excluding Class Counsel Fees and Class Counsel Disbursements;

(39) **“Settlement Agreement”** means this agreement, including the Recitals hereto, which Recitals the Parties represent to be true, and which are incorporated into the Settlement Agreement;

(40) **“Settlement Amount”** means seven million five hundred thousand dollars (\$7,500,000), which amount is the entirety of the Defendant’s liability under this Settlement Agreement and in connection with the Settlement.

(41) **“Settlement Approval Motions”** means the motions for an Order of each Court:

- (a) approving the Settlement and giving effect to the Settlement Agreement;
- (b) approving the distribution of the Net Settlement Funds in accordance with the Distribution Protocol;
- (c) dismissing the Actions with prejudice and without costs; and
- (d) such other relief as the Parties may request;

(42) **“Settlement Approval Notice”** means the notice advising that the Settlement has been approved and describing how Class Members can participate in the distribution of the Settlement Benefits. The Parties’ proposed short form Settlement Approval Notice and long form Settlement Approval Notice are attached hereto as Appendix “D” and Appendix “E”, respectively.

(43) **“Settlement Benefits”** means the share of the Net Settlement Funds, if any, available to a Class Member in accordance with the Distribution Protocol, referenced therein as the “Claim Value”.

## **SECTION 2 – PAYMENT AND ADMINISTRATION**

### **2.1 The Settlement Amount**

(1) Subject to and following the Final Order approving the Settlement, the Settlement Amount shall be distributed in accordance with this Settlement Agreement.

## **2.2 Claims Administration**

- (1) The Notice Approval Motions shall seek the appointment of the Claims Administrator.
- (2) Within fourteen (14) business days of the last of the Courts allowing the Settlement Approval Motions, both Courts having approved the Settlement, CIBC shall establish a non-interest-bearing Trust Account, in the name of the Claims Administrator as trustee.
- (3) Within fourteen (14) business days of the establishment of the Trust Account, CIBC shall pay the Settlement Amount into the Trust Account.
- (4) The Claim Administrator shall pay the Class Counsel Fees and Class Counsel Disbursements from the Trust Account on the Settlement Fee and Disbursement Approval Date.
- (5) CIBC 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 Courts obtained on notice to Class Counsel and CIBC.

## **2.3 Settlement Administration Expenses**

- (1) The Claims Administrator may use the Settlement Amount deposited in the Trust Account to fund the Settlement Administration Expenses in relation to this Settlement Agreement.
- (2) The Class shall be responsible for all Settlement Administration Expenses, including costs of disseminating the Notice in accordance with s. 5.1.
- (3) Upon conclusion of the administration, the Claims Administrator shall provide an accounting to the Courts for all payments made from the Trust Account.

## **2.4 No Further Payments**

- (1) The Settlement Amount shall be paid by the Defendant in full satisfaction of the Released Claims against the Releasees.

(2) Subject to the Defendant's obligations in furtherance of the approval and implementation of this Settlement Agreement, as set out herein, the Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) The Plaintiffs, the Class Members and Class Counsel, including their heirs, executors, predecessors, successors, assigns and agents, have no personal obligation to pay anything to the Defendant or any of the Releasees in relation to the Actions.

### **SECTION 3 – NOTICE APPROVAL MOTIONS**

#### **3.1 Order of Notice Approval Motions**

(1) As soon as reasonably practicable after the Execution Date, Class Counsel shall bring the Notice Approval Motions, by joint hearing if practicable. If a joint hearing is not practicable, the Notice Approval Motion shall be brought in the Ontario Action first, followed by the British Columbia Action.

#### **3.2 Consent Required**

(1) Upon agreement by the Parties to the terms of a draft Order to be proposed to each Court, the Defendant shall consent to the Notice Approval Motions solely for the purposes of implementing the Settlement, and the Defendant's consent shall not be taken to be an admission of the appropriateness of the Notice, nor shall the Defendant's consent be taken to be an admission of liability or legal responsibility for the pleaded damages and losses, the Settlement Amount, or any other amount.

(2) If this Settlement is not approved by both Courts or it is terminated in accordance with its terms, the Parties shall consent to an Order of each Court vacating and setting aside any relief granted by the Courts in connection with the Notice Approval Motions.

#### **3.3 Costs**

(1) Each Party shall bear its own costs of the Notice Approval Motions.



### **3.4 Pre-Motion Confidentiality**

(1) Until the first Notice Approval Motion is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, the preparation of financial records (including tax returns and financial statements), negotiations in any parallel or related legal proceedings, and/or as necessary to give effect to the terms of the Settlement or as otherwise required by law.

## **SECTION 4 – OPT-OUT PROCEDURE AND DEADLINE**

### **4.1 Court Approval of Opt-Out Process and Deadlines**

(1) As part of the Notice Approval Motions Class Counsel shall seek both Courts' approval of the following as the Opt-Out Procedure:

- (a) Class Members seeking to opt out of the Actions must do so within sixty (60) days from the first date of distribution of the Notice, by sending a complete and validly executed written election to opt out to the Claims Administrator at an email address to be identified in the Notice, received on or before the Opt-Out Deadline. The written election to opt out must be sent by the Class Member or the Class Member's designee and must include the following information:
  - (i) the Class Member's full name, current address, email address and telephone number;
  - (ii) if the Class Member seeking to opt out is a corporation, the name of the corporation and the position of the individual submitting the request to opt out on behalf of the corporation, and confirmation that the individual has the necessary authority to do so;
  - (iii) a statement to the effect that the Class Member wishes to be excluded from the Actions; and

- (iv) the reason(s) for opting out.
- (b) Class Members who opt out of the Actions shall no longer be Class Members, and shall have no further right to participate in the Actions or to receive Settlement Benefits; and
- (c) Within thirty (30) days of the Opt-Out Deadline, the Claims Administrator shall provide a report to the Parties containing the names of each person who has validly and timely opted out of the Actions.
- (d) No person shall be required to pay Settlement Benefits in respect of any Class Member who validly opts out of one or both of the Actions.

#### **4.2 Opt-Out Threshold**

(1) If the number of valid opt-outs reported by the Claims Administrator pursuant to s. 4.1(1)(c) exceeds the Opt-Out Threshold, the Defendant will have the option, but not the obligation, to terminate this Settlement Agreement by providing written notice to Class Counsel prior to the hearing of the first of the Settlement Approval Motions.

#### **4.3 Reservations of Legal Rights**

(1) The Defendant reserves all of its legal rights and defences with respect to any Class Member who validly opts out from the Actions, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against CIBC.

### **SECTION 5 – NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT**

#### **5.1 Form and Distribution of Notices**

- (1) The Parties shall seek approval from the Courts of the short form Notice and long form Notice, attached hereto as Appendix “A” and Appendix “B”, respectively.
- (2) Class Counsel shall disseminate the Notice in accordance with the Notice Plan attached hereto as Appendix “C”.

(3) Class Counsel shall disseminate the Notice ordered by the Courts using a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notice shall be disseminated by a method ordered by the Courts.

## **5.2 Notice Required**

(1) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the Classes shall be given notice of such event by Class Counsel posting a succinct synopsis, in plain language, to their respective firms' websites.

## **SECTION 6 – SETTLEMENT APPROVAL**

### **6.1 The Settlement Approval Motions**

(1) As soon as reasonably practicable, Class Counsel shall bring the Settlement Approval Motions, first in the Ontario Action, then in the British Columbia Action.

### **6.2 Where Consent Required**

(1) Upon agreement by the Parties to the terms of a draft Order to be proposed to each Court, the Defendant shall consent to the Settlement Approval Motions concerning the Courts' approval of the Settlement and the distribution of the Net Settlement Funds and the Defendant's consent shall not be taken to be an admission of liability or legal responsibility for the pleaded damages and losses the Settlement Amount, or any amount.

(2) The Defendant's consent referenced in s. 6.2(1) does not extend to any aspect of the Settlement Approval Motions that concerns Class Counsel Fees or Class Counsel Disbursements, on which the Defendant shall take no position.

### **6.3 Form of Order Approving Settlement Agreement**

(1) The Orders approving this Settlement Agreement shall be as agreed to by the Parties and approved by the Court.

### **6.4 Date Upon Which Settlement Is Final**

(1) This Settlement shall become final on the Effective Date.

## **6.5 Costs**

(1) Each Party shall bear its own costs of the Settlement Approval Motions and any other motion, if necessary, contemplated in this section.

## **SECTION 7– DISTRIBUTION OF SETTLEMENT FUNDS**

### **7.1 Notice of Settlement Approval**

(1) The Parties shall seek the Courts' approval of the short form Settlement Approval Notice and the long form Settlement Approval Notice, attached hereto as Appendix "D" and Appendix "E", respectively, contemporaneously with or as soon as reasonably practicable following the Settlement Approval Motions.

(2) Following the Courts' approval of the Settlement and the Settlement Approval Notice, Class Counsel shall disseminate the Settlement Approval Notice in accordance with the Notice Plan attached hereto as Appendix "C".

### **7.2 Distribution of Settlement Funds**

(1) Class Members shall be eligible for the relief provided in this Settlement Agreement in accordance with the Distribution Protocol.

(2) The Parties acknowledge that the allocation of compensation pursuant to the Settlement is without any admission of liability by the Defendant, and without any admission by the Defendant that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Actions.

### **7.3 Class Counsel's Fees and Disbursements**

(1) Class Counsel shall bring motions for approval of Class Counsel Fees and Class Counsel Disbursements contemporaneously with or as soon as reasonably practicable following the Settlement Approval Motions. Class Counsel shall seek the Courts' approval of Class Counsel Fees and Class Counsel Disbursements to be paid as a first charge on the Settlement Amount.

(2) Class Counsel are not precluded from making additional motion(s) for fees or expenses incurred as a result of implementing the terms of this Settlement Agreement.

(3) Unless this Settlement Agreement is terminated in accordance with its terms, all amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount, in accordance with s. 2.2(4).

(4) The Defendant acknowledges that it is not a party to the motions concerning the approval of Class Counsel Fees and Class Counsel Disbursements. The Defendant acknowledges that it will have no involvement in the approval process to determine the amount of Class Counsel Fees and Class Counsel Disbursements, and that it will not take any position or make submissions to the Courts concerning Class Counsel Fees and/or Class Counsel Disbursements.

(5) The procedure for, and the allowance or disallowance by the Courts of, any requests for Class Counsel Fees and Class Counsel Disbursements to be paid out of the Settlement Amount are not part of the Settlement provided for herein, and are to be considered by the Courts separately from its consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.

(6) Any order in respect of Class Counsel Fees and Class Counsel Disbursements, or any appeal from any order relating thereto or any modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the Settlement of the Actions as provided herein.

#### **7.4 Final Calculation and Cy-Près Distribution**

(1) Settlement cheques issued by the Claims Administrator that are not deliverable to or retrieved by a Class Member, or which are not cashed by a Class Member, within six (6) months of issuance will become stale-dated, ineligible for redemption, and shall not be reissued.

(2) Forthwith after the date on which all or substantially all uncashed settlement cheques have become stale-dated and ineligible for redemption, the Claims Administrator shall advise the Parties of the total dollar value of cheques cashed from Net Settlement Funds.

(3) If the total value of cheques cashed from Net Settlement Funds is less than 100% of the Net Settlement Funds, the Claims Administrator shall distribute the Remainder by making payment from the Trust Account as follows:

- (a) Sixty percent (60%) to the Law Foundation of Ontario; and
- (b) Forty percent (40%) to the Law Foundation of British Columbia.

## **SECTION 8– STEPS TO EFFECTUATE SETTLEMENT AGREEMENT**

### **8.1 Reasonable Efforts**

(1) The Parties shall take all reasonable steps to effectuate this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal, with prejudice, of the Ontario Action and the British Columbia Action, including cooperating with the Plaintiffs' efforts to obtain the approvals and orders required from the Courts and the implementation of this Settlement Agreement.

(2) The Parties agree that, if necessary to give effect to this Settlement Agreement in Canadian provinces and territories outside of Ontario and British Columbia, they will cooperate in entering into such further agreements as necessary, and applying to the relevant courts for directions.

(3) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

### **8.2 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 agreement between the Parties, each acting reasonably, or by the Courts on motions brought by any Party, where necessary.

### **8.3 Actions in Abeyance**

(1) Until the Parties have obtained the Final Order or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, the Parties agree to hold in abeyance all other steps in the Actions other than the Notice Approval Motions and the

Settlement Approval Motions contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed to in writing by the Parties.

## **SECTION 9 – RELEASES AND DISMISSALS**

### **9.1 Release of the Releasees**

(1) Upon the Effective Date, and in consideration of payment of the Settlement Benefits and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release, relinquish and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, excepting the obligations created by this Settlement Agreement.

(2) The Plaintiffs and the Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.

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

### **9.2 No Further Claims**

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Ontario, British Columbia, 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 the Releasees, or any other person who may claim contribution or indemnity, or other claims over, relief from the Releasees, whether pursuant to statute or at common law or equity in respect of any Released Claim.

(2) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its action against the Releasees.

(3) Except as provided for in s. 9.1(1), this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Class Members against any person other than the Releasees.

### **9.3 Material Term**

(1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases and reservation of rights contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of the Courts to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to s. 11 of this Settlement Agreement.

## **SECTION 10 – EFFECT OF SETTLEMENT**

### **10.1 No Admission of Liability or Concessions**

(1) The Plaintiffs and the Defendant expressly reserve all of their rights if the Settlement is not approved, is terminated, or otherwise fails to take effect for any reason.

(2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be:

- (a) an admission or concession by the Defendant or any other Releasee of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Actions, or of the application of any of the pleaded statutes to any of the claims made in the Actions, or of the entitlement of any Class Member to compensation or payment for any of the losses and damages alleged in the Actions; or



- (b) an admission or concession by the Plaintiffs, Class Counsel or the Class of any weakness in the claims of the Plaintiffs and the Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered from the Defendant after the trial of the Actions.

## **10.2 Agreement Not Evidence or Presumption**

(1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding in any jurisdiction:

- (a) against the Defendant, as evidence, or a presumption of a concession or admission of anything set out in s. 10.1(2)(a); or
- (b) against the Plaintiffs, Class Counsel, or the Class, as evidence, or a presumption, of a concession or admission of anything set out in s. 10.1(2)(b).

(2) Notwithstanding s. 10.2(1) this Settlement Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Courts contemplated by this Settlement Agreement, in a proceeding to enforce this Settlement Agreement, to defend against the assertion of Released Claims, or to seek approval of a settlement in parallel or related legal proceedings, as may be necessary, or as otherwise required by law.

## **SECTION 11 – TERMINATION**

### **11.1 Right of Termination**

- (1) In the event that:
  - (a) either Court declines to approve this Settlement Agreement or any material part hereof;

- (b) either Court issues an order approving this Settlement Agreement that is materially inconsistent with the terms of the Settlement Agreement; or
- (c) an Order approving this Settlement Agreement is reversed on appeal and the reversal becomes a Final Order;

and if the Parties, within thirty (30) days thereafter, using best efforts and acting in good faith, are not able to agree on such modified terms as may be required to obtain the Courts' approval, then the Plaintiffs and Defendant shall each have the option, but not the obligation, to terminate this Settlement Agreement by delivering a written notice to all Parties and the Courts.

(2) In addition, if the Settlement Amount is not paid in accordance with s. 2.2(3), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice to the Defendant and providing the Defendant with fourteen (14) days to comply with s. 2.2(3), failing which the Settlement Agreement will be terminated.

(3) Any order, ruling or determination made or rejected by either Court with respect to Class Counsel Fees, Class Counsel Disbursements, or Settlement Administration Expenses shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide a basis for the termination of this Settlement Agreement.

(4) Except as provided for in ss. 11.1(3) and 11.4(2), if any of the Plaintiffs or the Defendant validly exercises the right to terminate the Settlement Agreement, then the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

## **11.2 Steps Required on Termination**

(1) If this Settlement Agreement is terminated after either Court has heard or decided any motion in the settlement approval process, either the Defendant or the Plaintiffs shall, as soon as reasonably practicable after termination, on notice to the other Party, bring a motion to the Court(s) for Orders:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in ss. 11.1(3) and 11.4(2); and
- (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments sought from and entered by the Courts in accordance with the terms of this Settlement Agreement.

(2) Subject to s. 11.4(2), the Parties shall consent to the order(s) sought in any motion made under s. 11.2(1).

### **11.3 Notice of Termination**

(1) If this Settlement Agreement is terminated, Class Counsel will give notice of the termination by posting a succinct synopsis, in plain language, to their respective firms' websites.

### **11.4 Effect of Termination**

- (1) In the event this Settlement Agreement is terminated in accordance with its terms:
  - (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
  - (b) the Claims Administrator shall, within thirty (30) days of receiving written notice of termination pursuant to s. 11.1(1), return to the Defendant any unused portion of the Settlement Amount.
  - (c) the Parties will cooperate in seeking to have all prior orders or judgments sought from and entered by the Courts, in accordance with the terms of 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;
  - (d) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;

- (e) all statutes of limitation applicable to the claims asserted in the Actions shall be deemed to have been tolled during the period beginning with the execution of this Settlement Agreement and ending with the day on which any Final Order(s) contemplated by s. 11.2 are entered, whereupon any applicable limitation periods shall resume running, and if no order contemplated by s. 11.2 is required, any applicable limitation periods shall resume running upon giving notice in accordance with s. 11.3(1); and
- (f) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendant.

(2) Notwithstanding the provisions of s. 11.2, if this Settlement Agreement is terminated, the provisions of ss. 3.3, 6.5, 10.1, 10.2, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 12.1, 12.3, 12.4, 12.5, 12.6, 12.8, 12.9, 12.10, 12.12, 12.13, 12.14, 12.15, 12.16, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **11.5 Disputes Relating to Termination**

(1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Courts shall determine the dispute on a motion made by a Party on notice to the other Party or Parties.

### **11.6 Handling of Confidential Information in the Event of Termination**

(1) In the event of a valid termination in accordance with the terms of the Settlement Agreement, it is understood and agreed that all documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are, or become publicly available.

(2) In the event of termination, within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Defendant or containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide counsel for the

Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this section shall be construed as requiring Class Counsel to destroy any of their work product. However, any documents or information provided by the Defendant in connection with the negotiation, administration and termination of this Settlement Agreement, including the mediation conducted on September 9-10, 2020, may not be disclosed to any person in any manner, or used, directly or indirectly, by Class Counsel or any other person in any way for any reason, including the prosecution of the Actions, without the express prior written permission of the Defendant. Class Counsel shall take reasonable steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel that discloses such documents and information.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Motions for Directions**

- (1) Any of the Parties may apply to the Courts 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.

### **12.2 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;
  - (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” “hereto,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement;  
and

- (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

### **12.3 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.

### **12.4 Ongoing Jurisdiction**

(1) The Courts shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

### **12.5 Governing Law**

(1) Subject to s. 12.5(2), 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.

(2) Notwithstanding s. 12.5(1), for matters relating specifically to the British Columbia Action, the British Columbia Court shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

### **12.6 Severability**

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **12.7 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.

### **12.8 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Court(s) with jurisdiction over the matter to which the amendment relates.

### **12.9 Binding Effect**

(1) If the Settlement is approved by the Courts and becomes final, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendant, the Releasees and the Releasers or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

### **12.10 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.

### **12.11 Survival**

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

### **12.12 Negotiated Agreement**

(1) This Settlement Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties 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.

### **12.13 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 a Court, the Claims Administrator and/or a translation firm selected by the Claims Administrator shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

### **12.14 Recitals**

(1) The recitals to this Settlement Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

### **12.15 Acknowledgements**

- (1) Each Party hereby affirms and acknowledges that:
- (a) they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has reviewed this Settlement Agreement;
  - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;



- (c) they 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.

### **12.16 Authorized Signatures**

(1) Each of the undersigned represents that they are 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.

### **12.17 Notice**

(1) Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Settlement Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email, facsimile or letter by overnight delivery to:

### **For the Plaintiffs, the Class and Class Counsel in the Proceeding:**

#### **Siskinds LLP**

680 Waterloo Street  
London, ON N6A 3V8

Alex Dimson

Tel: (416) 594-4396

Fax: (416) 594-4397

Email: [alex.dimson@siskinds.com](mailto:alex.dimson@siskinds.com)

#### **Branch MacMaster LLP**

1410-777 Hornby Street  
Vancouver, BC V6Z 1S4

Luciana Brasil

Tel: (604) 654-2960

Email: [lbrasil@branmac.com](mailto:lbrasil@branmac.com)

### **For the Defendant:**

#### **McCarthy Tétrault LLP**

5300-66 Wellington Street West  
Toronto, ON M5K 1E6

Michael Rosenberg

Tel: (416) 601-7831

Fax: (416) 868-0673  
Email: [mrosenberg@mccarthy.ca](mailto:mrosenberg@mccarthy.ca)

**IN WITNESS OF WHICH** the Parties have executed this Settlement Agreement.

**Robert Christopher Jordan on his own behalf and on behalf of the Ontario Class,  
by his counsel**

Name of Authorized Signatory: Alex Dimson, Siskinds LLP

Signature of Authorized Signatory:   
Ontario Class Counsel

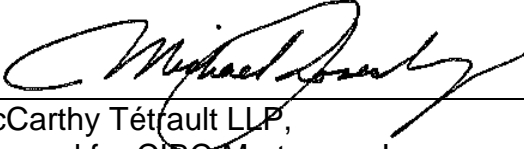
**Erin Sherry on her own behalf and on behalf of the British Columbia Class, by  
her counsel**

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
British Columbia Class Counsel

**CIBC Mortgages Inc., by its counsel**

Name of Authorized Signatory: Michael Rosenberg,  
Partner, McCarthy Tétrault LLP

Signature of Authorized Signatory:   
McCarthy Tétrault LLP,  
Counsel for CIBC Mortgages Inc.

## APPENDIX A

### CIBC MORTGAGES PREPAYMENT CHARGE CLASS ACTIONS NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

This notice is directed to mortgagors under mortgages issued by CIBC Mortgages Inc. who: (i) reside in Canada, excluding British Columbia and Quebec, and paid a prepayment charge when they prepaid part or all of their mortgages from 2005 onward; or (ii) reside in British Columbia and paid a prepayment charge when they prepaid part or all of their mortgages from 2005 onward (the “**Class Members**”).

<b>WHAT ARE THESE CLASS ACTIONS ABOUT?</b>	Two actions ( <i>Jordan v CIBC Mortgage Inc.</i> and <i>Sherry v CIBC Mortgage Inc.</i> , together the “ <b>Class Actions</b> ”) were brought against the defendant CIBC Mortgages Inc. (“ <b>CIBC</b> ”) in connection with the calculation of certain prepayment charges on mortgages across Canada, excluding Quebec. The Class Actions apply to CIBC mortgages as well as mortgages through related entities such as Firstline Mortgages and President’s Choice Financial.
<b>WHO IS AFFECTED BY THE CLASS ACTIONS?</b>	The Class Actions affect the rights of all Class Members. If you are a Class Member, you are automatically included in the Class Actions and do not need to take any further steps right now to participate.
<b>WHAT SETTLEMENT HAS BEEN REACHED?</b>	CIBC has agreed to pay the total amount of CAD\$7.5 million in settlement of the Class Actions (the “ <b>Settlement</b> ”). The Settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by CIBC. The Settlement is subject to approval of the courts, and Class Members have a right to object to the Settlement.
<b>HOW DOES THIS AFFECT ME?</b>	Class Members who do not wish to participate in the lawsuit and settlement must opt out by <b>[NTD: specify date sixty (60) days after publication of first notice]</b> . A Class Member who opts out will not be entitled to participate in the Class Actions. However, his or her right to pursue a claim in a separate proceeding will not be affected.  If you would like to exclude yourself from the Class Actions, you can opt out by submitting a written request to the Claims Administrator: <a href="#">RicePoint Administration Inc.</a> Your request should include your full name, current address, and telephone number. If a Class Member does not timely and properly opt out of the Class Actions, or does not timely and properly file a claim form with the Claims Administrator, he or she will be forever barred from receiving any benefits under the Settlement, and from commencing or continuing any action against the Defendant relating to the subject mortgage prepayment charges.
<b>WHERE CAN I GET MORE INFORMATION?</b>	For more information about your rights and how to exercise them, please see the long-form notice online at: <a href="http://www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty">www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty</a> and/or <a href="http://www.branchmacmaster.com/class_actions/cibc-mortgages-prepayment-penalty">www.branchmacmaster.com/class_actions/cibc-mortgages-prepayment-penalty</a> .
<b>WHO IS CLASS COUNSEL?</b>	The law firm of Siskinds LLP represents Class Members in Ontario and the other provinces and territories, excluding British Columbia and Quebec:  Telephone (toll-free): ● Email: ●@siskinds.com Mail: 100 Lombard Street – #302, Toronto, ON, M5C 1M3, Attn: CIBC Mortgage Prepayments Class Action  The law firm of Branch MacMaster LLP represents Class Members in British Columbia:  Telephone (toll-free): ● Email: ●@branmac.com Mail: 777 Hornby Street – #1410, Vancouver, BC, V6Z 1S4, Attn: CIBC Mortgage Prepayments Class Action

***This notice was authorized by the Ontario Superior Court of Justice and the Supreme Court of British Columbia.***

## APPENDIX B

### NOTICE OF CERTIFICATION AND SETTLEMENT IN THE CIBC MORTGAGE PREPAYMENT PENALTY CLASS ACTIONS

**Read this notice carefully as it may affect your legal rights**

**This notice is directed to:**

Persons residing in Canada, except persons residing in the provinces of British Columbia and Quebec, who: (i) were or are mortgagors under mortgages issued by CIBC as mortgagee from 2005 onward on residential properties located in Canada; (ii) prepaid all or part of those mortgages; and (iii) in so doing paid a prepayment charge based on an Interest Rate Differential (“IRD”). An Interest Rate Differential compares the prevailing interest rates at the time of borrowing and the time of prepayment;

(this group of individuals is known as the “**Ontario Class**”)

-and-

Persons resident in British Columbia who (i) were or are mortgagors under mortgages issued by the defendant as mortgagee, (ii) prepaid part or all of the principal amounts secured by those mortgages from 2005 onwards; and (iii) paid a prepayment charge;

(this group of individuals is known as the “**British Columbia Class**”)

The Ontario Class and the British Columbia Class are defined collectively as the “**Class Members.**”

**\*Excluded Persons** are the Defendant CIBC Mortgages Inc. (“**CIBC**”) and its subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors, and assigns.

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS. YOU MAY NEED TO TAKE PROMPT ACTION.**

#### **Purpose of this Notice**

The purpose of this Notice is to advise Class Members of the certification and settlement of the class actions styled as *Jordan v CIBC Mortgage Inc.* and *Sherry v CIBC Mortgage Inc.* (the “**Class Actions**”) brought on behalf of the Class Members. The Notice provides Class Members with information about how to opt out of the lawsuit and settlement. **Class Members who wish to opt out must do so by ●. If you are a Class Member and wish to participate in the settlement of the Class Actions, no further action is required on your part at this time.**

#### **Certification of the Class Actions**

In October 2011, a class proceeding styled as *Jordan v CIBC Mortgage Inc.* was commenced in the Ontario Superior Court of Justice (the “**Ontario Court**”) against CIBC (the “**Ontario Action**”). Concurrently in October 2011, a class proceeding styled as *Sherry v CIBC Mortgage Inc.* was commenced in the British Columbia Supreme Court (the “**BC Court**”) against CIBC (the “**British Columbia Action**”).

The Class Actions challenged the validity of CIBC’s method for calculating mortgage prepayment charges, particularly the IRD formula. Prepayment charges can arise when borrowers pay off

more of their mortgage than they are entitled to under their mortgage agreement. On February 21, 2019, the Ontario Court certified the Ontario Action as a class proceeding on behalf of the Ontario Class Members.

The BC Court conditionally certified the British Columbia Action as a class proceeding on behalf of the British Columbia Class Members on June 30, 2014, and fully certified it in March 31, 2015. In subsequent decisions of the Court of Appeal for British Columbia and the BC Court, the scope of the certified class proceeding was both narrowed and broadened.

### **The Settlement**

CIBC has agreed to pay the total amount of CAD\$7.5 million in settlement of the Class Actions (the “**Settlement**”). The Settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by CIBC. The Settlement is subject to approval of the Ontario Court and the BC Court, and Class Members have a right to object to the Settlement. If the Settlement is approved by the courts, it will be paid into an interest-bearing account.

After deduction of Class Counsel Fees and Administration Expenses, the balance of the Settlement Funds (the “**Net Settlement Amount**”) will be distributed to Class Members in accordance with the Distribution Protocol.

Each Class Member who has filed a valid claim will receive a portion of the Net Settlement Amount calculated in accordance with the Distribution Protocol. The Distribution Protocol provides for a payment estimated at CAD\$224.00 to each claimant in accordance with a Chart that was developed with the assistance of an expert hired by Class Counsel, who reviewed a sample of the Defendant CIBC’s relevant mortgage files. Depending on when Class Members borrowed money and prepaid their mortgage loan, they may or may not be entitled to compensation. In the event that the total amount claimed exceeds the amount available for claims then each payment will be reduced on a pro rata basis. Once the allocations of all Class Members who have filed valid claims have been ascertained, the Net Settlement Amount will be allocated to those Class Members.

In the event that any amounts remain undistributed after the distribution of the Net Settlement Amount (whether as a result of a failure to locate claimants, the failure of any Class Member to make a valid claim, or as a result of any tax refunds or any distributed cheques having become stale-dated or ineligible for redemption), those amounts will be distributed to eligible Class Members in accordance with the Distribution Protocol (if sufficient to warrant a further distribution) or allocated *cy-près* to the Law Foundations of Ontario and BC.

### **What are your options?**

#### **Stay in these Class Actions and Do Nothing**

If the Settlement is approved by the Ontario Court and the BC Court, all Class Members will be bound by its terms unless they have already opted out of the Class Actions. You do not have to do anything to stay in these Class Actions. If any benefits, including any settlement funds, become available for distribution to the Class, you will be notified about how to ask for a share. You will be legally bound by all orders and judgments of the Court, and you will not be able to sue the Defendant about the legal claims in these cases.

#### **Stay in these Class Actions and Object to the Settlement or Class Counsel Fees**

If you want to object to the proposed Settlement with CIBC or the payment of Class Counsel's fees and expenses, you should do so by setting out your objection in writing addressed to Class Counsel at the address below.

### **Opt Out of these Class Actions**

If you want to keep your right to sue the Defendant CIBC on your own over the claims in these cases, you need to opt out from these Class Actions. If you remove yourself, you cannot get any money or other benefits from this lawsuit and you will not be represented by Class Counsel.

Any Class Member who does not wish to participate in the Settlement must opt out of the class proceeding by sending a completed Opt-Out Form to ● [NTD: Administrator] no later than 5:00 pm Eastern Standard Time on ● [NTD: date sixty (60) days after first publication of notice], 2021 (the "Opt-Out Deadline"). Those who opt-out will not be bound by the release in favour of the Defendant. The Opt-Out Form is attached as Appendix 'A' to this Notice. No Class Members will be permitted to opt-out of the Class Proceeding after the Opt-Out Deadline.

If you opt-out of the Class Actions and you wish to bring or maintain your own lawsuit against the Defendant, you will take full responsibility for initiating or continuing your lawsuit, and for the legal steps necessary to protect your claims. If the Settlement is approved by the courts and you have not opted out, you will not be able to bring or maintain any other claim or legal proceeding against the Defendant in relation to ●.

### **Copies of Settlement Documents**

Copies of the Settlement Agreement, Distribution Protocol, sample calculations demonstrating how the Distribution Protocol works, the claim form and the orders of the Courts may be found on the Claims Administrator's website above, at Class Counsel's websites ([www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty/](http://www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty/) and [www.branchmacmaster.com/class\\_actions/cibc-mortgages-prepayment-penalty/](http://www.branchmacmaster.com/class_actions/cibc-mortgages-prepayment-penalty/)) or by contacting Class Counsel via the contact information provided below.

### **Class Counsel**

The law firms of Siskinds LLP and Branch McMaster LLP are Class Counsel. Inquiries may be directed to:

**Siskinds, LLP  
Barristers & Solicitors**

100 Lombard Street, Suite 302  
Toronto, ON M5C 1M3

**Alex Dimson  
Jared S. Rosenbaum**

Tel: 416-362-8334  
Fax: 519-672-6065  
Email: [donna.mcevoy@siskinds.com](mailto:donna.mcevoy@siskinds.com)

**Branch MacMaster LLP  
Barristers & Solicitors**

777 Hornby Street, Suite 1410  
Vancouver, BC V6C 1S4

**Luciana Brasil  
Jillian Dean**

Tel: 604-654-2999  
Fax: 604-684-3429  
Email: [jdean@branmac.com](mailto:jdean@branmac.com)

### **Interpretation**

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**PLEASE DO NOT CONTACT THE COURTS WITH INQUIRIES ABOUT THE CLASS ACTIONS OR THE SETTLEMENT.** All inquiries should be directed to the Claims Administrator or Class Counsel.

***DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO COURT AND THE BC COURT***

## APPENDIX C

Court File No.: 5303/11CP	Vancouver Registry No.: S-116769
<b>ONTARIO SUPERIOR COURT OF JUSTICE</b>	<b>IN THE SUPREME COURT OF BRITISH COLUMBIA</b>
BETWEEN:	BETWEEN:
<b>ROBERT JORDAN</b>	<b>ERIN SHERRY</b>
Plaintiff	Plaintiff
- and -	- and -
<b>CIBC MORTGAGES INC.</b>	<b>CIBC MORTGAGES INC.</b>
Defendant	Defendant
Proceeding under the <i>Class Proceedings Act</i> , 1992	Proceeding under the <i>Class Proceedings Act</i>

## NOTICE PLAN

Capitalized terms used in this Plan of Notice have the meanings ascribed to them in the Settlement Agreement.

*Subject to such alternative or additional discretion by the Courts, notices provided for as contemplated in the Settlement Agreement will be disseminated as follows:*

### **PART 1 – NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

**The Short Form Notice of Certification and Settlement Approval Hearing will be disseminated as follows:**

#### Internet Publication

Electronic publication of the Short Form Notice of Certification and Settlement Approval Hearing will occur in the English language on Ontario and British Columbia Class Counsel's respective websites, and on a dedicated website maintained by the Claims Administrator.

#### Newspaper Publication



Print publication of the Short Form Notice of Certification and Settlement Approval Hearing will be at least a 1/6 page in size and will occur as soon as practicable following the issuance of the Notice Approval Order. Print and publication will be made in Canada, in the English language, in weekday editions of *The Globe and Mail, national edition* and the *Vancouver Sun*.

#### NewsWire Publication

The Short Form Notice of Certification and Settlement Approval Hearing will also be issued, in the English language, across *Canadian NewsWire*.

### **The Long Form Notice of Certification and Settlement Approval Motion will be disseminated as follows:**

#### Internet Publication

Electronic publication of the Long Form Notice of Certification and Settlement Approval Hearing will occur in the English language on Ontario and British Columbia Class Counsel's respective websites, and on a dedicated website maintained by the Claims Administrator.

#### The Claims Administrator

The Claims Administrator shall send the Long Form Notice of Certification and Settlement Approval Hearing to those persons and entities who have previously contacted Class Counsel or it for the purposes of receiving notice of developments in the Actions.

In addition, the Claims Administrator shall make a toll-free number and email address available to the public that will enable Class Members to contact it in order that they may, amongst other things: (a) opt-out of the Actions in accordance with the Opt-Out Procedure set out in the Settlement Agreement; (b) obtain more information about the Settlement and/or how to object to it; and/or (c) request that a copy of the Settlement Agreement be sent to them.

## **PART 2 – NOTICE OF SETTLEMENT**

### **The Short Form Notice of Settlement will be disseminated as follows:**

#### Newspaper Publication

Print publication of the Short Form Notice of Settlement will be at least a 1/6 page in size and will occur as soon as practicable following the date of the Settlement Approval Order becoming a Final Order, and, in any event, no later than fourteen (14) days following that date. Print and publication will be made in Canada, in the English language, in weekday editions of *The Globe and Mail, national edition* and the *Vancouver Sun*.

#### NewsWire Publication

The Short Form Notice of Settlement will also be issued, in the English language, across *Canadian NewsWire*.

#### Digital Advertisements

The Short Form Notice of Settlement will also be provided, in the English language, through advertisements placed on advertising and social media networks, including but not limited to:

Facebook/Instagram; Google Search; and YouTube/Google Display Network. Digital advertisements will be geo-targeted to Canada excluding Quebec and will generate 200,000 impressions, in the aggregate.

**The Long Form Notice of Settlement will be disseminated as follows:**

Individual Notice

Within thirty (30) days of the date of the Settlement Approval Order becoming a Final Order, Class Counsel shall direct the Claims Administrator to send the Long Form Notice of Settlement and the Claim Form to any and all putative Class Members who request it.

Internet Publication

Electronic publication of the Long Form Notice of Settlement will occur in the English language on Ontario and British Columbia Class Counsel's respective websites, and on a dedicated website maintained by the Claims Administrator.

The Claims Administrator

The Claims Administrator shall send the Long Form Notice of Settlement and the Claim Form to those persons that have contacted it as of the publication date regarding the Actions and have provided it with their contact information. The Claims Administrator shall make a toll-free number and email address available to the public that will enable Class Members to obtain more information about the Settlement, the claims process, and to request that a copy of the Settlement Agreement, the Long Form Notice of Settlement and the Claim Form be sent to them, directly. The Claims Administrator will also post the Settlement Agreement and the Long-Form Notice of Settlement on its dedicated website.

**APPENDIX D**  
**CIBC MORTGAGES PREPAYMENT CHARGE CLASS ACTIONS**  
**NOTICE OF SETTLEMENT APPROVAL**

This notice is directed to mortgagors under mortgages issued by CIBC Mortgages Inc. who: (i) reside in Canada, excluding British Columbia and Quebec, who paid a prepayment charge when they prepaid part or all of their mortgages from 2005 onward; or (ii) reside in British Columbia and paid a prepayment charge when they prepaid part or all of the principal amounts secured by their mortgages from 2005 onward (the “**Class Members**”).

<b>WHAT ARE THESE CLASS ACTIONS ABOUT?</b>	Two actions ( <i>Jordan v CIBC Mortgage Inc.</i> and <i>Sherry v CIBC Mortgage Inc.</i> , together the “ <b>Class Actions</b> ”) were brought against the defendant CIBC Mortgages Inc. (“ <b>CIBC</b> ”) in connection with the calculation of certain prepayment charges on mortgages entered into across Canada, excluding Quebec. The Class Actions apply to CIBC mortgages as well as mortgages through related entities such as Firstline Mortgages and President’s Choice Financial.
<b>WHO IS AFFECTED BY THE CLASS ACTIONS?</b>	The Class Actions affect the rights of all Class Members.  If you are a Class Member and you did not opt out, you are automatically included in the Class Actions and do not need to take any further steps right now to participate.
<b>WHAT SETTLEMENT HAS BEEN REACHED?</b>	CIBC has agreed to pay the total amount of CAD\$7.5 million in settlement of the Class Actions (the “ <b>Settlement</b> ”). The Settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by CIBC. The Settlement was approved by the Ontario Superior Court of Justice and the Supreme Court of British Columbia on ●.
<b>HOW DOES THIS AFFECT ME?</b>	Class Members who borrowed and prepaid on certain dates are eligible for compensation estimated at \$224. To claim compensation, Class Members must submit a completed claim form no later than ● (the “ <b>Claims Bar Deadline</b> ”). If you do not file a claim form by the Claims Bar Deadline, you may not be able to claim money from the Settlement, and your claim may be extinguished.
<b>WHERE CAN I GET MORE INFORMATION?</b>	For more information about how to claim compensation, please see the long-form notice online at: <a href="http://www.branchmacmaster.com/class_actions/cibc-mortgages-prepayment-penalty">www.branchmacmaster.com/class_actions/cibc-mortgages-prepayment-penalty</a> and/or <a href="http://www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty">www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty</a> .  <b>[NTD: Insert Claims Administrator info]</b>
<b>WHO IS CLASS COUNSEL?</b>	The law firm of Siskinds LLP represents Class Members in Ontario and the other provinces and territories, excluding British Columbia and Quebec:  Telephone (toll-free): ● Email: ●@siskinds.com Mail: 100 Lombard Street – #302, Toronto, ON, M5C 1M3, Attn: CIBC Mortgage Prepayments Class Action  The law firm of Branch MacMaster LLP represents Class Members in British Columbia:  Telephone (toll-free): ● Email: ●@branmac.com Mail: 777 Hornby Street – #1410, Vancouver, BC, V6Z 1S4, Attn: CIBC Mortgage Prepayments Class Action

*This notice was authorized by the Ontario Superior Court of Justice and the Supreme Court of British Columbia.*

## APPENDIX E

### NOTICE OF SETTLEMENT APPROVAL IN THE CIBC MORTGAGE PREPAYMENT CHARGE CLASS ACTIONS

Read this notice carefully as it may affect your legal rights

This notice is directed to:

Persons residing in Canada, except persons residing in the provinces of British Columbia and Quebec, who: (i) were or are mortgagors under mortgages issued by CIBC as mortgagee from 2005 onward on residential properties located in Canada; (ii) prepaid all or part of those mortgages; and (iii) in so doing paid a prepayment charge based on an Interest Rate Differential (“IRD”). An Interest Rate Differential compares the prevailing interest rates at the time of borrowing and the time of prepayment;

(this group of individuals is known as the “**Ontario Class**”)

-and-

Persons resident in British Columbia who (i) were or are mortgagors under mortgages issued by the defendant as mortgagee, (ii) prepaid part or all of the principal amounts secured by those mortgages from 2005 onwards; and (iii) paid a prepayment charge;

(this group of individuals is known as the “**British Columbia Class**”)

The Ontario Class and the British Columbia Class are defined collectively as the “**Class Members**.”

**\*Excluded Persons** are the Defendant CIBC Mortgages Inc. (“**CIBC**”) and its subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors, and assigns.

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS. YOU MAY NEED TO TAKE PROMPT ACTION.**

#### **Important Deadline**

**Claims Bar Deadline** (to file a claim for compensation): ●

***Claims Forms may not be accepted after the Claims Bar Deadline. As a result, it is necessary that you act without delay.***

#### **Purpose of this Notice**

The purpose of this Notice is to advise Class Members of the approval of the Settlement of the class actions styled as *Sherry v CIBC Mortgage Inc.* and *Jordan v CIBC Mortgage Inc.* (the “**Class Actions**”) brought on behalf of the Class Members. The Notice provides Class Members with information about how to apply for compensation from the Settlement. **Class Members who wish to do so must do so by ●.**

#### **Court Approval of the Settlement**

In October 2011, a class proceeding styled as *Sherry v CIBC Mortgage Inc.* was commenced in the Supreme Court of British Columbia (the “**BC Court**”) against CIBC Mortgages Inc. (“**CIBC**” and the “**British Columbia Action**”). Concurrently in October 2011, a class proceeding styled as *Jordan v CIBC Mortgage Inc.* was commenced in the Ontario Superior Court of Justice (the “**Ontario Court**”) against CIBC (the “**Ontario Action**”).

The Class Actions challenged the validity of CIBC’s method for calculating mortgage prepayment charges, and in particular, the Interest Rate Differential (“**IRD**”) formula. An Interest Rate Differential compares the prevailing interest rates at the time of borrowing and the time of prepayment. Prepayment charges can arise when borrowers pay off more of their mortgage than they are entitled to under their mortgage agreement.

The BC Court conditionally certified the British Columbia Action as a class proceeding on behalf of the British Columbia Class Members on June 30, 2014, with full certification on March 31, 2015. In subsequent decisions of the Court of Appeal for British Columbia and the BC Court, the scope of the certified class proceeding was narrowed and broadened. Pursuant to the order dated ●, British Columbia Class Members were afforded the right to exclude themselves or “opt out” of the BC Class no later than ●. **This Notice does not affect persons who validly exercised the right to opt out. Persons who opted out are not entitled to participate in the Settlement.**

On February 21, 2019, the Ontario Court certified the Ontario Action as a class proceeding on behalf of the Ontario Class Members. Pursuant to this order, Ontario Class Members were afforded the right to exclude themselves or “opt out” of the Ontario Class no later than ●. **This Notice does not affect persons who validly exercised the right to opt out. Persons who opted out are not entitled to participate in the Settlement.**

The parties have engaged in lengthy settlement negotiations. On ●, the Plaintiffs and the Defendant executed a Settlement Agreement providing for the settlement of the Class Actions (the “**Settlement**”). The Settlement provides for the payment of CAD\$7.5 million (the “**Settlement Funds**”) in consideration of the full and final settlement of the claims of Class Members. The Settlement Funds include all legal fees, disbursements, taxes and administration expenses.

In return for the payment of the Settlement Funds, the Settlement provides that the claims of all Class Members asserted or which could have been asserted in the Class Actions will be fully and finally released and the Class Actions will be dismissed. The Settlement is not an admission of liability, wrongdoing, or fault on the part of CIBC, which denies the allegations against it.

On ●, the BC Court and Ontario Court approved the Settlement and ordered that it be implemented in accordance with its terms.

The BC Court and Ontario Court also awarded Class Counsel total legal fees, expenses and applicable taxes in the amount of CAD\$● (“**Class Counsel Fees**”), inclusive of disbursements of CAD\$●, plus HST. As is customary in such cases, Class Counsel conducted the Class Actions on a contingency fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. Class Counsel Fees will be deducted from the Settlement Funds before they are distributed to the Class Members.

Expenses incurred or payable relating to the approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Funds before they are distributed to Class Members.

### **Class Members’ Entitlement to Compensation**

Pursuant to the court orders approving the Settlement, the claims of Class Members which were or could have been asserted in the Class Actions are now released and the Class Actions have been dismissed. Class Members may not pursue individual or class actions for those claims, regardless of whether or not they file a claim for compensation from the Settlement. **The Settlement therefore represents the only means of compensation available to Class Members in respect of the claims raised in the Class Actions.**

Class Members will be eligible for compensation pursuant to the Settlement if they submit a completed claim form, including any supporting documentation, to the Claims Administrator, and their claim satisfies the criteria set out in the Distribution Protocol.

To be eligible for compensation under the Settlement, Class Members must submit their claim form and supplementary documentation **no later than** ● ET on ● (the “**Claims Bar Deadline**”). Only Class Members are permitted to recover from the Settlement.

After deduction of Class Counsel Fees and Administration Expenses, the balance of the Settlement Funds (the “**Net Settlement Amount**”) will be distributed to Class Members in accordance with the Distribution Protocol.

Each Class Member who has filed a valid claim will receive a portion of the Net Settlement Amount calculated in accordance with the Distribution Protocol. The Distribution Protocol provides for a payment estimated at CAD\$224.00 to each claimant in accordance with a Chart that was developed with the assistance of an expert hired by Class Counsel, who reviewed a sample of the Defendant CIBC’s relevant mortgage files. Depending on when Class Members borrowed money and prepaid their mortgage loan, they may or may not be entitled to compensation. In the event that total amount claimed exceeds the amount available for claims then each payment will be reduced on a *pro rata* basis. Once the allocations of all Class Members who have filed valid claims have been ascertained, the Net Settlement Amount will be allocated to those Class Members.

In the event that any amounts remain undistributed after the distribution of the Net Settlement Amount (whether as a result of a failure to locate claimants, the failure of any Class Member to make a valid claim, or as a result of any tax refunds or any distributed cheques having become stale-dated or ineligible for redemption), those amounts will be distributed to eligible Class Members in accordance with the Distribution Protocol (if sufficient to warrant a further distribution) or allocated *cy-près* to the Law Foundations of Ontario and BC.

### **Administrator**

The Court has appointed [RicePoint Administration Inc.](#) as the Claims Administrator of the Settlement. The Claims Administrator will, among other things: (i) receive and process the Claim Forms; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Courts. The Claims Administrator can be contacted at:

Email: ●  
Telephone: ●  
Fax: ●

### **Filing a Claim**

All claims for compensation from the Settlement must be received by the Claims Administrator no later than ●.

The most efficient way to file a claim is to visit the Claims Administrator's website at ●. The website provides step-by-step instructions on how to file a claim. In order to verify claims, the Claims Administrator will require certain information and supporting documentation, including: (a) the date that the Class Member's mortgage was issued or most recently renewed; (b) the length of the mortgage term; and (c) the date that the Class Member's mortgage was prepaid. **Accordingly, Class Members should visit the Administrator's website as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.**

The Claims Administrator will also accept claim forms filed by mail or courier. To obtain a copy of the claim form, Class Members may print one from the Claims Administrator's website or contact the Claims Administrator to have one sent by regular mail or email. Forms sent by mail or courier should be sent to:

CIBC Mortgage Prepayment Charge Class Actions Settlement Claims Administrator  
**[NTD: Insert address]**

Class Members with questions about how to complete or file a claim form, or the documentation required to support a claim, should contact the Claims Administrator.

### **Copies of Settlement Documents**

Copies of the Settlement Agreement, Distribution Protocol, sample calculations demonstrating how the Distribution Protocol works, the claim form and the orders of the Courts approving the Settlement, the Distribution Protocol, and Class Counsels' Fees may be found on the Claims Administrator's website above, at Class Counsel's websites ([www.branchmacmaster.com/class\\_actions/cibc-mortgages-prepayment-penalty/](http://www.branchmacmaster.com/class_actions/cibc-mortgages-prepayment-penalty/) and [www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty/](http://www.siskinds.com/class-action/cibc-mortgages-prepayment-penalty/)) or by contacting Class Counsel via the contact information provided below.

### **Class Counsel**

The law firms of Siskinds LLP and Branch McMaster LLP are Class Counsel. Inquiries may be directed to:

**Siskinds, LLP  
Barristers & Solicitors**

100 Lombard Street, Suite 302  
Toronto, ON M5C 1M3

**Alex Dimson  
Jared S. Rosenbaum**

Tel: 416-362-8334  
Fax: 519-672-6065  
Email:  
donna.mcevoy@siskinds.com

**Branch MacMaster LLP  
Barristers & Solicitors**

777 Hornby Street, Suite 1410  
Vancouver, BC V6C 1S4

**Luciana Brasil  
Jillian Dean**

Tel: 604-654-2999  
Fax: 604-684-3429  
Email: [jdean@branmac.com](mailto:jdean@branmac.com)

**Interpretation**

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**PLEASE DO NOT CONTACT THE COURTS WITH INQUIRIES ABOUT THE CLASS ACTIONS OR THE SETTLEMENT.** All inquiries should be directed to the Claims Administrator or Class Counsel.

***DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO COURT AND THE BC COURT***



**SCHEDULE "1"**  
**DISTRIBUTION PROTOCOL**  
**CIBC MORTGAGE PREPAYMENT CHARGE CLASS ACTIONS**

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**DEFINITIONS**

1. The definitions set out in the Settlement Agreement apply to this Distribution Protocol and are incorporated herein.
  
2. For the purposes of this Distribution Protocol:
  - (a) **Class Periods** means the British Columbia Class Period and the Ontario Class Period.
  
  - (b) **British Columbia Class Period** means the period during which British Columbia Class Members paid an eligible Prepayment Charge, from October 7, 2005 to December 31, 2017.
  
  - (c) **Ontario Class Period** means the period during which Ontario Class Members paid an eligible Prepayment Charge, from October 7, 2009 to December 31, 2017.

- (d) **Eligible Claimant** means a Class Member who the Claims Administrator has identified as being entitled to receive settlement benefits, as described in this Distribution Protocol.
- (e) **Claims Bar Deadline** means one hundred and eighty (180) days from the commencement of the claims process, or such other date set by the Courts.

## **OBJECTIVE**

- 3. The objective of this Distribution Protocol is to distribute the Net Settlement Funds among Eligible Claimants in a simplified manner.

## **CLAIMS DISTRIBUTION PROCESS**

### **Determining Eligibility**

- 4. Eligible Claimants will be determined by the Claims Administrator based on a chart, detailed at paragraph 8 (the "Chart") that was developed with the assistance of an expert hired by Class Counsel, who reviewed a sample of the defendant CIBC's relevant mortgage files.
- 5. The Chart is derived from a formula, described in Appendix "1", hereto, which identifies the periods of time when Class Members were most likely to have paid a Prepayment Charge calculated with reference to an interest rate differential ("IRD") during the Class Periods.
- 6. The use of the Chart will allow the Claims Administrator to avoid complex individual determinations of Class Member's eligibility, which would be costly and which would require documentation that may no longer be available.
- 7. The Claims Administrator will determine if a Class Member is an Eligible Claimant by obtaining from the Class Member certain information, with whatever supporting documentation the Claims Administrator deems appropriate, particularly:

- (a) the date that the Class Member's mortgage loan was made or most recently renewed;
  - (b) whether the Class Member's mortgage loan was made by one of the Releasees;
  - (c) whether the Class Member's mortgage loan was for a fixed term at a fixed rate of interest;
  - (d) the length of the term of the Class Member's mortgage loan; and
  - (e) the date that the Class Member's mortgage loan was prepaid.
8. The Claims Administrator will then determine if a Class Member is an Eligible Claimant by reference to the Chart, set out below, which details the periods of time during which a Class Member was most likely to have paid a Prepayment Charge calculated with reference to an IRD:



- (b) For a claimant claiming on behalf of a Class Member or a Class Member's estate, the Claims Administrator shall be satisfied that:
    - (i) the claimant has authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs;
    - (ii) the person or estate on whose behalf the claim was submitted was a Class Member; and
    - (iii) the claimant has provided all supporting documentation required by the Claims Form or alternative documentation acceptable to the Claims Administrator, in its discretion acting reasonably, including up-to-date contact information for the Class Member or a representative of the Class Member's estate.
12. The Claims Administrator shall ensure that all claims for compensation are made only in respect of mortgage loans made by one of the Releasees.

**Deadline for Claims**

13. Any person who wishes to claim compensation shall deliver to or otherwise provide the Claims Administrator a claims form by the Claims Bar Deadline, or such other date set by the Courts. If the Claims Administrator does not receive a substantially complete claims form from a claimant by the Claims Bar Deadline, then the claimant shall not be eligible for any compensation from the Net Settlement Funds or otherwise.
14. By agreement between the Claims Administrator and Class Counsel, the Claims Bar Deadline may be extended up to a further one hundred and eighty (180) days, or as ordered by the Courts. Class Counsel and the Claims Administrator shall agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient

administration of the Settlement and it is in the best interests of the Class Members to do so.

#### **DISTRIBUTION OF NET SETTLEMENT FUNDS**

15. Subject to paragraphs 16 and 17, below, each Eligible Claimant shall be entitled to a payment of \$224.00 (the “**Claim Value**”), regardless of how many mortgage loans the Eligible Claimant prepaid during the Class Periods.
16. If the total value of the claims approved by the Claim Administrator in accordance with paragraph 11, above, exceeds the Net Settlement Funds, the Claim Value will be decreased so that the total value of approved claims is equal to the Net Settlement Funds. If the Net Settlement Amount exceeds the total value of the claims approved by the Claims Administrator in accordance with paragraph 11, above, the Claim Value will be increased so that the total value of approved claims is equal to the Net Settlement Funds, but notwithstanding any of the foregoing, the Claim Value will not exceed \$3,000.00.
17. Notwithstanding any other provision in this Distribution Protocol, if the distribution set out in paragraphs 15 and 16, above, would result in an unjust distribution of the Net Settlement Funds, Class Counsel will seek further directions from the Courts with respect to the distribution of the Net Settlement Funds.
18. The Claims Administrator shall process all claims in a cost-effective and timely manner, and in accordance with the terms of the Settlement Agreement, this Distribution Protocol, and orders of the Courts.

#### **Payment of Funds**

19. The Claims Administrator shall make arrangements to pay claims from the Net Settlement Funds as expeditiously as possible.

20. All payments will be calculated in Canadian currency and payments will be paid by cheque in Canadian currency.
21. The Claims Administrator shall keep clear records, such that any amounts remaining after the payment to Eligible Claimants can be identified as resulting from uncashed cheques, undeliverable cheques, the cap on the Claim Value, or otherwise, so that any such funds can be dealt with in accordance with the Settlement Agreement.
22. In the event that the distribution of cheques for the Claim Value to Eligible Claimants does not result in the distribution of the entirety of the Net Settlement Funds, the Claims Administrator will distribute any balance in accordance with Section 7 of the Settlement Agreement.
23. If directions from the Courts are sought in respect of the distribution of the Net Settlement Funds, to the extent that any amounts in issue would not affect the amounts payable in respect of all other claims, the Claims Administrator may proceed with payment of those other claims before the Courts provide directions.

## **MISCELLANEOUS**

### **Taxation of the Interest Earned on Settlement Funds**

24. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the funds in the Trust Account and shall have the discretion to pay any taxes imposed on such funds out of the funds in the Trust Account.

### **Reporting to Class Counsel**

25. The Claims Administrator shall provide regular reports to Class Counsel and counsel for the Defendant regarding the administration of the Settlement.

### **Communication with Class Members**

26. All written communications from the Claims Administrator to a Class Member shall be transmitted via regular first class mail to the last address provided by the Class Member to the Claims Administrator or by email, if consent has been given to communicate by email. For greater certainty, the Claims Administrator shall have no obligation to determine email addresses for Class Members.
  
27. The Claims Administrator shall not reissue payments to Eligible Claimants returned as undeliverable, or that become stale-dated six (6) months after they are issued.

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

28. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, records relating to each claim, until the termination of one (1) year after the last claim has been paid out and at such time shall dispose of the submissions, by shredding or such other means as will render the materials permanently illegible.

### **Confidentiality**

29. All information received in respect of the Class Members collected, used and retained by the Claims Administrator for the purposes of administering the Settlement Agreement, including evaluating the Class Member's eligibility status under the Settlement Agreement is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 (PIPEDA). The information provided by the Class Members is strictly private and confidential and will not be disclosed without the prior express written consent of the Class Member, except to Class Counsel or counsel for the Defendant, or in accordance with the Settlement Agreement, orders of the Court, and/or this Distribution Protocol.



## Appendix "1" – Description of Formula Underpinning the Chart

In the relevant mortgage contracts, CIBC calculates the Prepayment Charge as the greater of an IRD and three months' interest.

Based on this concept, the Chart considers the change in the Defendant's posted interest rates for mortgage loans between the date that the mortgage loan was made and the date that it was prepaid to estimate whether a Prepayment Charge was likely calculated with reference to the IRD or three months' interest.

For the purpose of the Chart, both the IRD and three months' interest are calculated as a percentage of the principal outstanding on the mortgage loan and they are calculated as follows:

The IRD is equal to the difference between (i) the posted interest rate when the mortgage loan was made or last renewed; and (ii) the posted interest rate for the remaining term at the time of prepayment, multiplied by the time in the remaining term. For example:

- 5-year mortgage loan made when Defendant's posted rate of interest was 5% per annum.
- Mortgage is prepaid after 2 years, when posted rate of interest for a 3-year mortgage loan was 4% per annum.
- IRD (as a percent of principal) would be determined as (initial posted rate minus posted rate at prepayment date) x outstanding term, or (5% - 4%) x 3 years remaining = 3% of principal at the time of prepayment.

Three months' interest is equal to (i) the posted rate of interest at the time the mortgage loan was made or last renewed; multiplied by (ii) 3/12; multiplied by (iii) the principal at the time of prepayment. For example:

5-year mortgage loan made when posted mortgage rate of interest was 5% per annum.

Three months' interest would be determined as  $5\% \times 3/12 = 1.25\%$  of principal at the time of prepayment.

In the example above, the Prepayment Charge would have been calculated with reference to the IRD because 3% of principal is higher than 1.25% of principal.

For the sake of simplicity, the Chart assumes that the posted mortgage rates in each quarter are the average of the posted mortgage rates on the first business day of each month in the quarter and assumes that originations, renewals and prepayments of mortgage loans occurred at the midpoint of each quarter.