

SCHEDULE "D" to Settlement Agreement

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DISTRIBUTION PROTOCOL
IN THE MATTER OF *CHRISTOPHER PURVIS V. DELL USA LP*
AND DELL CANADA INC.

TABLE OF CONTENTS

	Page No.
PART I - DEFINITIONS	2
PART II - GENERAL PRINCIPLES	5
PART III - INFORMATION TO BE PROVIDED	6
PART IV - PHASE I NOTICE	6
PART V - PHASE II NOTICE AND OPT-OUT	8
PART VI - SETTLEMENT ADMINISTRATION.....	8
PART VII - PAYMENT OF CLAIMS.....	13

PART I - DEFINITIONS

1. In this Distribution Protocol any capitalized terms not defined below have the definitions set out in the Settlement Agreement.

- (a) “**Action**” means the Halifax action styled *Christopher Purvis v Dell USA LP and Dell Canada Inc.*, commenced in the Supreme Court of Nova Scotia bearing Hfx No. 500912;
- (b) “**Adjusted Payment**” means adjusted Eligible Economic Loss Claim Payments as determined in **Appendix B**;
- (c) “**Administration**” has the meaning set out in paragraph 2 of this Distribution Protocol;
- (d) “**Administration End Date**” means the date that is seven months after the Payment Date;
- (e) “**Administration Expenses**” means all fees, disbursements, expenses, costs, and taxes owed to the Settlement Administrator for its services administering the Settlement;
- (f) “**Administration Expenses Payment**” means the sum of \$100,000.00 to be paid by the Defendants to the Settlement Administrator, separate and apart from the Maximum Settlement Commitment;
- (g) “**Base Payment**” means the sum of \$85.00 to be paid from the Maximum Base Fund to each member of the Settlement Class who completes a valid and timely Settlement Distribution Form in accordance with this Distribution Protocol;
- (h) “**Class**” or “**Class Members**” mean the 14,179 individuals whose email addresses are listed on the Notice List;
- (i) “**Class Contact List**” means the list containing the names and contact information of the individuals who have contacted Wagners expressing interest in the Action, which information may be shared with the Settlement Administrator for the purposes of effecting notice and implementing the Settlement Agreement;

- (j) **“Class Counsel”** means Wagners;
- (k) **“Court”** means the Supreme Court of Nova Scotia;
- (l) **“Data Thefts”** means the theft of customer information from the Service Provider and the use of that information by third parties to carry out targeted tech support scam calls, as publicly disclosed by the Defendants on April 2, 2018 and January 25, 2019;
- (m) **“Defendants”** means Dell USA LP and Dell Canada Inc;
- (n) **“Distribution Protocol”** means this document;
- (o) **“Economic Loss Claim Supporting Documents”** means the documents defined in section 20(a)(i);
- (p) **“Effective Date”** means the date when the Court’s Order approving the Settlement Agreement becomes a Final Order;
- (q) **“Election Deadline”** means the date set in section 13;
- (r) **“Eligible Economic Loss Claim”** means a claim by a member of the Settlement Class for:
 - (i) a fraudulent credit card charge or other banking charge or financial loss incurred as a result of the Data Thefts; and/or
 - (ii) costs incurred to remediate or replace computers or technological equipment as a result of the Data Thefts;
- (s) **“Eligible Economic Loss Claim Payment”** means the sum, not exceeding \$3,000.00, to be paid to a Settlement Class Member who, in the opinion of the Settlement Administrator, has proven an Eligible Economic Loss Claim in accordance with this Distribution Protocol;
- (t) **“Excess Administration Expenses”** means any portion of Administration Expenses that exceeds the Administration Expenses Payment and which shall be paid from the Maximum Settlement Commitment;
- (u) **“Excess Base Fund”** means the amount determined in **Appendix A**;

- (v) **“Excess Economic Loss Fund”** means the amount determined in **Appendix A**;
- (w) **“Final Order”** means an Order after the later of: (i) the time for appeal has expired, and (ii) any appeals have been resolved;
- (x) **“Maximum Base Fund”** means the all-inclusive sum, not to exceed \$1,205,215.00, committed by the Defendants for Base Payments;
- (y) **“Maximum Economic Loss Fund”** means the all-inclusive sum, not to exceed \$215,000.00, committed by the Defendants for Eligible Economic Loss Claim Payments;
- (z) **“Net Settlement Funds”** means the amount available from the Maximum Base Fund and Maximum Economic Loss Fund to be distributed to Settlement Class Members as Base Payments and Eligible Economic Loss Claim Payments and to pay any Excess Administration Expenses, after deducting the Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium;
- (aa) **“Notice List”** means the list of email addresses for Class Members provided by the Defendants under section 5;
- (bb) **“Opt-Out Deadline”** means the date set in section 12;
- (cc) **“Opt-Out Form”** means the document attached as Schedule “B” to the Draft Order Approving Certification and Settlement (Schedule “B” to the Settlement Agreement”);
- (dd) **“Parties”** means the Plaintiff and the Defendants;
- (ee) **“Payment Date”** means the date that the Settlement Administrator first distributes payment to the Settlement Class Members, which shall be no later than 10 calendar days after the Settlement Administrator receives the Settlement Transfer Amount from the Defendants;
- (ff) **“Payment Direction”** means the Settlement Administrator’s direction to the Defendants directing the Defendants to pay the Settlement Transfer Amount to the Settlement Administrator (the Payment Direction will include the Settlement Administrator’s wire instructions);

- (gg) **“Plaintiff”** means Christopher Purvis;
- (hh) **“Remaining Economic Loss Fund”** means the amount determined in **Appendix A**;
- (ii) **“Service Provider”** means the third-party company used in the past by the Defendants to provide customer support services to customers;
- (jj) **“Settlement Administrator”** means RicePoint or such other third party administrator agreed upon by the parties and approved by the Court;
- (kk) **“Settlement Agreement”** means the settlement agreement entered into by the Parties and approved by the Court in the Action;
- (ll) **“Settlement Class”** means the Class except any person who validly opts-out of this Action;
- (mm) **“Settlement Distribution Form”** means the document attached as Schedule “E” to the Settlement Agreement;
- (nn) **“Settlement Transfer Amount”** means the amount determined in **Appendix A**; and
- (oo) **“Total Economic Loss Amount”** means the amount determined in **Appendix A**.

PART II - GENERAL PRINCIPLES

- 2. This Distribution Protocol is intended to govern (the **“Administration”**):
 - (a) notice to the Class of the proposed settlement (i.e. Phase I Notice);
 - (b) notice to the Class of certification and settlement approval (i.e. Phase II Notice);
 - (c) opt-outs by Class Members; and
 - (d) distribution of payments under the Settlement Agreement to Settlement Class Members.
- 3. The Administration will:

- (a) implement and conform to the Settlement Agreement, orders of the Court and this Distribution Protocol;
- (b) employ secure, paperless, web-based systems with electronic record-keeping wherever possible; and
- (c) where practicable, draw on methods of communication already available between the Parties and Class Members.

PART III - INFORMATION TO BE PROVIDED

4. Class Counsel will:

- (a) notify the Settlement Administrator of the date of issuance of the Phase I Notice Approval Order and the Effective Date; and
- (b) provide the Class Contact List to the Settlement Administrator as necessary to aid in distributing the Phase I and Phase II Notices and to otherwise further the implementation of the Settlement Agreement for the benefit of the Class.

5. The Defendants will:

- (a) provide the Notice List to the Settlement Administrator within 10 calendar days after the date of issuance of the Phase I Notice Approval Order; and
- (b) notify the Settlement Administrator of the amount of the Net Settlement Funds, within 20 calendar days after the Effective Date.

PART IV - PHASE I NOTICE

6. Within 20 calendar days of receiving the Notice List from the Defendants the Settlement Administrator will implement the Phase I Notice Plan, including sending the Phase I Notice by email to the email addresses recorded on the Notice List.

7. Within 10 calendar days after completing the above, the Settlement Administrator will notify the Parties of email addresses which were undeliverable (the “**Undeliverable List**”).

8. The Parties will work with the Settlement Administrator to update the email addresses on the Undeliverable List in the following manner:

- (a) Within 45 calendar days after notification under section 7 above:
 - (i) Class Counsel will review their Class Contact List to confirm whether an updated email address or mailing address is available for any Class Member on the Undeliverable List. Class Counsel will provide any such updated contact information to the Settlement Administrator; and
 - (ii) The Defendants will review their customer database to confirm whether an updated email address or mailing address is reasonably available for any Class Member on the Undeliverable List. The Defendants will provide any such updated contact information to the Settlement Administrator.
- (b) Within 5 calendar days after receipt of any updated contact information under section 8(a), the Settlement Administrator will send by email or standard mail, as applicable, the material in section 6 to Class Members on the Undeliverable List for whom updated contact information was identified; and
- (c) Within 5 calendar days after completing section 8(b), if there are any additional undeliverable addresses, Class Counsel and the Defendants will confer and attempt to agree on a reasonable solution.

9. After implementation of the Phase I Notice Plan, the Settlement Administrator will record any updated contact information provided by a Class Member who contacts the Settlement Administrator if the Class Member:

- (a) Directly received the Phase I Notice; or
- (b) Learned of the Phase I Notice without having received it (e.g., through a means of indirect notice), and is subsequently confirmed to be a Class Member by the Settlement Administrator following its standard authentication protocol.

10. For the purposes of implementing the Phase II Notice Plan, the Settlement Administrator will continue to update the email addresses on the Notice List as a result of information obtained

through the processes set out in sections 8-9 up to the time of implementation of the Phase II Notice Plan.

PART V - PHASE II NOTICE AND OPT-OUT

Dissemination

11. Within 10 calendar days after the Effective Date, the Settlement Administrator will send the following documents by email to the email addresses recorded on the Notice List as such Notice List has been updated through the steps outlined in section 8 above:

- (a) Phase II Notice, containing hyperlinks to the Opt-Out Form and Settlement Distribution Form.

12. The “**Opt-Out Deadline**” will be 60 calendar days after the date of implementation of the Phase II Notice Plan.

13. The “**Election Deadline**” will be 90 calendar days after the date of implementation of the Phase II Notice Plan.

Opt-Out Procedure

14. The Settlement Administrator will accept Opt-Out Forms that meet the following conditions:

- (a) complete;
- (b) sent on or before the Opt-Out Deadline; and
- (c) signed with a pen or electronic signature.

15. Within 5 calendar days after the Opt-Out Deadline, the Settlement Administrator will report to the Parties the names of each Class Member who has opted-out of the Action.

PART VI - SETTLEMENT ADMINISTRATION

Forms Deadline

16. Settlement Distribution Forms must be:

- (a) received electronically by the Settlement Administrator on or before the Election Deadline; or
- (b) if sent by mail, postmarked on or before the Election Deadline and received within 15 calendar days of the Election Deadline.

Adjudication of Claims

17. Within 30 calendar days after the Election Deadline, the Settlement Administrator will complete the review of claims for Base Payments, as follows:

- (a) The Settlement Administrator will review each Settlement Distribution Form submitted by a Settlement Class Member individually and determine whether each Settlement Distribution Form has been properly completed;
- (b) A Settlement Distribution Form will be properly completed where the Settlement Class Member has filled-out each field, including:
 - (i) name;
 - (ii) method of settlement payment distribution;
 - (iii) email address or mailing address to receive settlement payments; and
 - (iv) declaration of eligibility for settlement payments as a Settlement Class Member.

18. For greater certainty, Settlement Class Members are not required to submit any proof or supporting documents to support a claim for a Base Payment.

19. Within 5 calendar days of completing section 17 above, the Settlement Administrator will notify the Parties of the number and total sum of Base Payments to be made.

20. Within 60 calendar days after the Election Deadline, the Settlement Administrator will complete the adjudication of Eligible Economic Loss Claims, as follows:

- (a) The Settlement Administrator will review each Eligible Economic Loss Claim submitted by a Settlement Class Member individually and determine whether the Settlement Class Member is entitled to an Economic Loss Claim Payment, based

on the Economic Loss Claim Supporting Documents and information in the Settlement Distribution Form;

- (i) Economic Loss Claim Supporting Documents shall consist of:
 - (A) in the case of a claim for a fraudulent credit card or other banking charge or financial loss:
 - (I) copies of credit card or banking statements showing a fraudulent charge or payment that is from the period between June 2017 to February 28, 2019; and
 - (II) a statutory declaration that the fraudulent charge or payment:
 - (1) was unauthorized and the Class Member did not receive any authorized goods or services in exchange for the payment; (2) was not reimbursed by the Class Member's financial institution or any other person; and (3) is reasonably related to the Data Thefts, insofar as the credit card or banking charge or other financial loss was incurred after the Class Member:
 - a. provided direct access to their computer to a third party who contacted the Class Member after the Data Thefts purporting to be a Dell representative, and such third party obtained credit card or banking information without authorization through this access to the Class Member's computer; or
 - b. provided the applicable credit card or banking information to a third party who contacted the Class Member after the Data Thefts purporting to be a Dell representative; or
 - (B) in the case of costs incurred to remediate or replace computers or technological equipment:

- (I) copies of receipts or invoices showing repairs or purchases completed between June 2017 and February 28, 2019; and
 - (II) a statutory declaration that the repairs or purchase: (1) would not have been performed had unauthorized third parties not contacted Class Members following the Data Thefts; (2) were not reimbursed by the Class Member's financial institution or any other person; and (3) reasonably related to the Data Thefts, insofar as they relate to:
 - a. services to remove malware, spyware, or fake anti-virus software that could have been installed by unauthorized third parties who contacted Class Members following the Data Thefts;
 - b. the purchase of anti-virus software after a third party contacted the Class Member after the Data Thefts purporting to be a Dell representative; or
 - c. the required purchase of a replacement device due to the activities of unauthorized third parties who contacted Class Members following the Data Thefts; and
 - (C) other supporting documentation to supplement the documents referred to in sections 20(A) and 20(B) above that the Class Member reasonably believes supports their Economic Loss Claim, not to exceed an additional 5 pages.
- (b) If the Settlement Administrator determines a Settlement Class Member is entitled to an Eligible Economic Loss Claim Payment, the Settlement Administrator will determine whether the Settlement Class Member is entitled to the full amount claimed or a lesser amount, though in no case will any Eligible Economic Loss Claim Payment exceed \$3,000.00.

21. Within 5 calendar days after completing section 20 above, the Settlement Administrator will notify the Parties of the number and total sum of Eligible Economic Loss Claim Payments and calculate the Settlement Transfer Amount in accordance with **Appendix A**.

22. There will be no appeal from the Settlement Administrator's determinations under sections 17-20.

23. In adjudicating claims under sections 17-20, the Settlement Administrator may make reasonable efforts to contact Settlement Class Members who have submitted an incomplete Settlement Distribution Form and allow them 15 calendar days for the information to be provided.

Adjust Economic Loss Claim Payments, If Necessary

24. If the Total Economic Loss Amount is:

- (a) greater than the Remaining Economic Loss Fund, or the Maximum Economic Loss Fund (where **Appendix A** resulted in no Remaining Economic Loss Fund), the Settlement Administrator will adjust Eligible Economic Loss Claim Payments under **Appendix B**.
- (b) less than the Remaining Economic Loss Fund, or the Maximum Economic Loss Fund (where **Appendix A** resulted in no Remaining Economic Loss Fund), then no adjustment under **Appendix B** will be performed.

Report to Parties and Settlement Transfer Amount Direction

25. Within 5 calendar days after completing section 24, the Settlement Administrator will report to the Parties (the "**Administrator's Report**"):

- (a) Settlement Transfer Amount, as determined in **Appendix A**; and
- (b) a breakdown of the Settlement Administrator's calculations sufficiently detailed to allow the Parties to independently confirm the Settlement Transfer Amount.

26. Within 10 calendar days after receiving the Administrator's Report, the Parties shall either:

- (a) confirm the Settlement Transfer Amount; or

(b) provide comments on the calculation of the Settlement Transfer Amount.

27. If there are comments on the Settlement Administrator's calculation of the Settlement Transfer Amount, the Parties and the Settlement Administrator will cooperate diligently to resolve any issues with the calculation.

28. After the Parties confirm the Settlement Transfer Amount, the Settlement Administrator will issue the Payment Direction to the Defendants.

29. Within 45 calendar days after the Payment Direction is received, the Defendants will pay the Settlement Transfer Amount to the Settlement Administrator. The Defendants will have no obligation to pay further amounts to the Settlement Administrator.

30. Where the Settlement Administrator requires clarification to carry out any stage of the Administration, they shall seek clarification from the Parties, who shall cooperate diligently to provide further direction and agree to adjust any timelines accordingly, if necessary.

PART VII - PAYMENT OF CLAIMS

31. Within 10 calendar days after receiving the Settlement Transfer Amount, the Settlement Administrator shall distribute to the Settlement Class, following the method of distribution indicated in Settlement Class Members' Settlement Distribution Forms:

(a) Base Payments; and

(b) Eligible Economic Loss Claim Payments or Adjusted Payments, if an adjustment is required by section 24.

(c) The date of distribution shall be the Payment Date.

32. Before the settlement payments have expired, the Settlement Administrator will send a follow-up communication to Settlement Class Members who have not redeemed their payments.

33. Where a Settlement Class Member disputes that they have received their settlement payment, as calculated by the Settlement Administrator, the Settlement Administrator will be responsible for determining:

- (a) if the settlement payment was sent to the Settlement Class Member by email money transfer, whether the email money transfer was accepted;
- (b) if the settlement payment was sent as a cheque by standard mail, whether the cheque was deposited; or
- (c) if an error by the Settlement Administrator resulted in failure to properly issue the settlement payment.

34. If the Settlement Administrator determines that either section 33(a) or 33(b) applies to a Settlement Class Member's complaint, the Settlement Administrator will have no obligation to re-issue payment.

35. If the Settlement Administrator determines that section 33(c) applies to a Settlement Class Member's complaint, the Settlement Administrator will re-issue payment at its own cost.

36. The "**Administration End Date**" will be 7 months after the Payment Date.

37. Before the Administration End Date, payments that are not deliverable or which expire or become stale dated may be reissued on the Settlement Class Member's request, in addition to the Settlement Administrator sending the follow-up communication as outlined in section 32.

38. After the Administration End Date, neither the Parties nor the Settlement Administrator will have any further obligation to process disputes or complaints raised by Settlement Class Members relating to the Administration.

39. On the Administration End Date, the Settlement Administrator will:

- (a) return to the Defendants any unused Net Settlement Funds;
- (b) render a final invoice for the Administration Expenses; and
- (c) provide the Final Report on Administration to the Parties.

Appendix A - Calculation of Settlement Transfer Amount

The Settlement Administrator will calculate the Settlement Transfer Amount as follows:

1. ***Determine Inputs***

- (a) Determine the total amount required to make Base Payments to Settlement Class Members who submitted valid and timely Settlement Distribution Forms and subtract that amount from the Maximum Base Fund—any remainder is the “**Excess Base Fund.**”
- (b) Determine the total amount required to make all Eligible Economic Loss Claim Payments (the “**Total Economic Loss Amount**”) and subtract that amount from the Maximum Economic Loss Fund—any remainder is the “**Excess Economic Loss Fund.**”

2. ***Determine Administration Expenses and Deduct Excess Administration Expenses***

- (a) Provide an invoice to date of Administration Expenses incurred and an updated estimate of future Administration Expenses to be incurred up to the Administration End Date, i.e. the total Administration Expenses.
- (b) If the sum of amounts required to make Base Payments to Settlement Class Members, the Total Economic Loss Amount, and the Administration Expenses incurred to date exceed the Net Settlement Funds, the Settlement Administrator will provide and the Parties will agree on a fixed sum to cover future Administration Expenses up to the Administration End Date. If the total Administration Expenses up to the Administration End Date are estimated to exceed the Administration Expenses Payment, the excess amount will be the “**Excess Administration Expenses.**”
- (c) If there are Excess Administration Expenses, deduct the Excess Administration Expenses from:
 - (i) first, the Excess Base Fund, if any;
 - (ii) second, the Excess Economic Loss Fund, if any;

- (iii) third, if the Excess Base Fund and Excess Economic Loss Fund do not cover all the Excess Administration Expenses, the Total Economic Loss Amount will be reduced by the amount required to pay the balance of the Excess Administration Expenses, resulting in the “**Remaining Economic Loss Fund**” and the Eligible Economic Loss Claim Payments will be adjusted as described in Appendix B.

3. ***Determine the Settlement Transfer Amount***

- (a) The “**Settlement Transfer Amount**” is the sum of the following (the total cannot exceed the Net Settlement Funds):
 - (i) Excess Administration Expenses;
 - (ii) amount required to make all Base Payments to Settlement Class Members who submitted valid and timely Settlement Distribution Forms; and
 - (iii) amount required to make all Eligible Economic Loss Claim Payments after accounting for any pro rata adjustment described in Appendix B.

Appendix B – Adjustment to Eligible Economic Loss Claim Payments, If Necessary

If an adjustment is required by section 24 of the Distribution Protocol, the Settlement Administrator will:

1. ***Determine the Pro Rata Factor***

- (a) Divide the Total Economic Loss Amount into percentage shares for each Eligible Economic Loss Claim Payment—the result is the “**Pro Rata Factor**” for each Eligible Economic Loss Claim Payment:

2. ***Determine the Adjusted Payment***

- (a) Apply the Pro Rata Factor for each Eligible Economic Loss Claim Payment to the Remaining Economic Loss Fund or Maximum Economic Loss Fund (where **Appendix A** resulted in no Remaining Economic Loss Fund)—the result is the adjusted payment for each Eligible Economic Loss Claim Payment.