

**SETTLEMENT AGREEMENT  
AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into as of this 26 day of November, 2007, by and between (1) Option Consommateurs and Premium Concept Inc. (“Plaintiffs” and / or “Class Representatives”), individually and as Class Representatives of the “Settlement Class”, as defined below; and (2) Dell Canada Inc. (“Dell”).

The Plaintiffs and Dell are collectively referred to herein as the “Parties.”

**I. RECITALS**

This Agreement is made for the following purpose and with reference to the following facts:

A. In January 2007, Plaintiffs filed a motion to obtain authorization to institute a class action (the “Action”) against Dell, before the Quebec Superior Court (the “Court”) in the Court file number 500-06-000380-077. The Action was based on problems related to the ventilation and / or power supply system of Dell Inspiron 5150 notebook computers (“**Inspiron 5150**”).

B. In August 2007, Dell notified its customers to inform them that Dell was offering a no charge return to depot warranty extension of **Inspiron 5150** until September 30, 2007 covering Qualifying Repairs.

C. On October 23, 2007, on a without prejudice basis, the Parties have signed an Agreement in Principle to form a framework to continue negotiation discussions to settle the Action.

D. Without any admission of responsibility, the Parties desire to settle the Action in its entirety with respect to all claims regarding **Inspiron 5150** sold in Quebec. The Parties intend this Agreement to bind Dell and the Plaintiffs and all members of the Settlement Class who do

not timely opt out of the Settlement Class, in conformity with the Notice to members published on October 26, 2007 in The Gazette and La Presse.

E. The Parties agree that the Court shall certify a class solely for the purpose of implementing the settlement provided for by this Agreement.

F. Dell denies wrongdoing or liability of any kind associated with the claims alleged in the Action and further contends that, for any purpose other than settlement, this action is not appropriate for class treatment. Dell contends that, among other things, it has complied at all times with all applicable laws. Dell further contends that the claims alleged in the Action are subject to binding arbitration between the individual purchasers of **Inspiron 5150** and Dell. Plaintiffs believe that they have filed a meritorious action and that class certification of all claims asserted in their Action is appropriate. Class Counsel and Plaintiffs have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class.

G. It is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release of any and all claims against Dell, arising from or relating in any way to the allegations contained in the Action, which concern **Inspiron 5150** sold in Quebec. Such release includes within its scope and effect all present and former parent companies, subsidiaries, affiliate companies, shareholders, officers, directors, employees, general partners, limited partners, agents, servants, registered representatives, attorneys, insurers, successors, component part suppliers and assigns of Dell.

NOW THEREFORE, in consideration of the terms, conditions and covenants herein, the undersigned agree as follows:

## II. DEFINITIONS

1. "Settlement Class" means: "*Every natural or legal person with less than fifty (50)*

*employees residing in Quebec (within the meaning of article 999 C.C.P.), who acquired a Dell Inspiron 5150 notebook computer.”*

2. “Class Member” means each member of the Settlement Class.

3. “Class Counsel” means:

SYLVESTRE FAFARD PAINCHAUD  
740, avenue Atwater  
Montréal (Québec) H4C 2G9  
Fax: (514) 937-6529  
e-mail: [s.bond@sfpavocats.ca](mailto:s.bond@sfpavocats.ca)

4. “Parties” means Plaintiff, the Settlement Class and Defendant.

5. “Dell” means Dell Canada Inc., an Ontario Corporation having a place of business at 155, Gordon Baker Road, suite 501, North York, Ontario M2H 3N5, and each of its parents, predecessors, subsidiaries, affiliates, officers, directors, partners, employees, agents, servants, assignees, counsel, successors, and/or other transferees or representatives.

### **III. CONSIDERATION FOR SETTLEMENT**

In exchange for the covenants and conditions provided for herein, the Parties agree to the following:

#### **A. Extended Warranty for Qualifying Repairs**

1. Dell will extend a no charge return to depot warranty extension on **Inspiron 5150** covering certain "Qualifying Repairs" until December 31, 2007 (“Extended Warranty”).

2. The “Qualifying Repairs” under the Extended Warranty are as follows:

- a. Repair to resolve thermal trip messaging code M1004;
- b. Heat sink replacements;

- c. AC adapter replacements necessary to resolve “insufficient power” and “cannot identify power source” messages; and
- d. Motherboard replacement necessary to resolve “no power” or “shutdown” situations.

3. To obtain a Qualifying Repair, Class Members will contact Dell technical Support to the following toll free numbers (for consumer customer at 1-800-847-4096, for commercial customer at 1-800-387-5757), and follow Dell’s protocol for shipping their **Inspiron 5150** to a repair facility for repairs. If Dell Support determines that the **Inspiron 5150** requires a Qualifying Repair, the Class Member will ship the **Inspiron 5150** to a repair depot for repair at no expense to the Class Member. Dell will provide the shipping package. If Dell Support determines that the **Inspiron 5150** is experiencing a “no power” or “shutdown” situation, but is unable to determine remotely whether motherboard replacement is necessary, the Class Member will be able to send the laptop to a Dell repair depot at Dell’s expense. If the **Inspiron 5150** is determined at the repair depot to be a Qualifying Repair, Dell will repair the laptop at no charge. If the **Inspiron 5150** is determined at the repair depot not to be a Qualifying Repair, Dell will offer to repair the laptop at the Class Member’s expense. If a Class Member does not want Dell to repair the laptop, or is not willing to pay Dell to repair the laptop, Dell will require payment of its shipping and handling costs for return of the laptop, for a maximal amount of a fifty dollars (\$50.00). If a Class Member has a warranty, which is longer than the Extended Warranty, then the class member will follow, after December 31, 2007, the ordinary warranty process.

4. Services for the extension of warranty will also be available in French and

English.

5. The Extended Warranty will not cover any repairs or replacements that are necessary due to customer misuse/abuse of the **Inspiron 5150**. Doubts regarding whether the repair is necessary due to customer misuse/abuse will be resolved in the Class Member's favor.

6. Class Members are not limited in the number of times they may seek repair for Qualifying Repairs under the Extended Warranty during its duration.

7. Dell will be responsible for administrating the Extended Warranty program.

8. Dell will retain a professional, independent class action Claims Administrator ("ICA"), Analytics Incorporated, with oversight responsibilities for disputes. The ICA will offer bilingual services. Dell will pay all costs and fees charged by the ICA for work done under the Agreement.

9. All decisions regarding the determination that a repair is considered or not as a Qualifying Repair shall lie with Dell. If necessary, Dell will consult with Class Counsel and counsel to Dell to answer any questions or resolve any disputes that arise.

10. If Class Counsel and counsel to Dell cannot resolve a dispute that arises with respect to Qualifying Repairs, such dispute will be presented to the ICA for resolution. The ICA shall issue a final and non-appealable decision resolving the dispute. The ICA will inform Class Counsel and counsel to Dell of its decision.

11. Dell shall submit a written status report, before March 31, 2008, to Class

Counsel containing the following information:

- number of claims submitted by the Class Members for the extended warranty for Qualifying Repairs on **Inspiron 5150** offered by Dell until December 31, 2007;
- number of accepted claims by Dell;
- number of refused claims by Dell;
- the reason the claims were refused;
- number of claims referred to the ICA;

said report shall also be filed in the Court record before March 31, 2008.

**B. Claims Program for Reimbursable Repairs**

1. Class Member who can prove he / she paid Dell, or a third party, for “Qualifying Repairs” made before December 31, 2007 shall receive a 100% cash refund from Dell in the amount paid for the reimbursable repairs and related shipping costs as long as:

- a. on or before December 31, 2007 the member of the Class Member sends an email (to CA\_PFR\_TEAM@dell.com) or other appropriate form by mail to Dell (at 155 Gordon Baker Rd, Suite 501, North York, Ontario, M2H 3N5, Attn: Inspiron 5150 Program) that includes the Class Member’s name, address, service tag number (found on the bottom of the notebook), date of repair, and a copy of the repair receipt; and
- b. Dell received the communication and determines that the Class member is eligible for reimbursement based on a date of repair prior to December 31, 2007.

2. Claim Forms will be provided by Dell. Claim Forms and instructions regarding

submission of claim will be available on the Dell's website ([www.dell.ca](http://www.dell.ca)) in both French and English. Claim Forms may be submitted either by email or by mail.

3. If the repair occurred at Dell, Class Members will only need to submit a completed Claim Form indicating the repair occurred at Dell and will not need to include their invoice, receipt or other documentation showing service that was conducted with the Claim Form.

4. To receive reimbursement for shipping costs, Class Members must verify, through reasonable documentary evidence such as invoices, cancelled checks, credit card records, or the like, that they paid to ship their **Inspiron 5150** to Dell or a third party, for a Reimbursable Repair prior to December 31, 2007.

5. Class Members cannot obtain double reimbursement if they already obtained reimbursement following the voluntary extension of warranty and reimbursement for Qualifying Repairs offered by Dell in August 2007 on **Inspiron 5150**.

6. The period for filing claims ("Claims Period") shall run until December 31, 2007. In order to be timely, claims for Reimbursable Repairs must be emailed or postmarked by December 31, 2007. Claims will not be accepted if emailed or postmarked after such mailing date.

7. Dell will be responsible for administering the Reimbursable Repairs program.

8. All decisions regarding the sufficiency of proof and amount of compensation for Reimbursable Repairs shall lie with Dell. If necessary, Dell will consult with Class Counsel and counsel to Dell to answer any questions or resolve any disputes that arise.

9. If Class Counsel and counsel to Dell cannot resolve a dispute that arises with respect to Reimbursable Repairs, such dispute will be presented to the ICA for resolution. The

ICA shall issue a final and non-appealable decision resolving the dispute. The ICA will inform Class Counsel and counsel to Dell of its decision.

10. Dell shall submit a written status report, before March 31, 2008, to Class Counsel containing the following information:

- number of claims submitted by the Class Members for Reimbursable Repairs for Qualifying Repairs on **Inspiron 5150** offered by Dell until December 31, 2007;
- number of accepted claims by Dell;
- number of refused claims by Dell;
- the reason the claims were refused;
- number of claims referred to the ICA;

said report shall also be filed in the Court record before March 31, 2008.

#### **IV. COURT APPROVAL**

##### **A. Preliminary Approval**

1. Upon full execution of this Agreement, the Parties will take all necessary steps to obtain an Order from the Court, substantially in a form to be agreed upon by the Parties prior to the hearing for approval of the settlement transaction scheduled to be held on November 27, 2007, granting conditional certification of the Settlement Class, granting preliminary approval of this Agreement, and approving the forms and methods of notice to the Settlement Class set forth herein ("Conditional Approval Order").

2. If the Court does not enter a Conditional Approval Order, this Agreement, as well as the Agreement in Principle, shall terminate and be of no force or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to obtain Court approval.

3. If the Court does not enter a Conditional Approval Order, Dell will not be entitled



to a reimbursement of disbursements related to publication of any notice to Class Members.

B. Final Approval

1. This Agreement is subject to a Final Order and Judgment granting final approval of the Agreement (“Final Order and Judgment”). Such Final Order and Judgment shall:

- a. Confirm certification of the Settlement Class for settlement purpose only;
- b. Release Dell from the Released Claims, as defined below, which any Class Member has, had, or may have in the future;
- c. Determine that this Agreement is fair, adequate and reasonable, and in the best interests of the Settlement Class;
- d. Reserve the Court’s continuing and exclusive jurisdiction over the Parties to this Agreement, including Dell and all Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties; and
- e. Confirm that the written status reports as described above will be filed in the Court Record.

V. NOTICE TO THE CLASS

A. The Parties agree to and will request approval by the Court of the following forms and methods of notice to the Settlement Class:

1. Dell will send a Notice of Settlement and a Claim Form to Class Members to their last known addresses detailing the settlement approved, within two (2) business days of the Final Order and Judgment, if the Court does not modify the Notice, and within four (4) business days if the Court modifies it. The Notice of settlement and the Claim Form will be sent in both French and English. The Notice of settlement, as well as, the Claim Form will be shown in advance to

Class Counsel.

2. Dell will post on its website ([www.dell.ca](http://www.dell.ca)) a Claim Form and the Notice of Settlement with an attached link to the Settlement Agreement signed between the Parties.

3. Plaintiff Option Consommateurs will post on its website ([www.option-consommateurs.org](http://www.option-consommateurs.org)) a Claim Form and the Notice of Settlement with an attached link to the Settlement Agreement signed between the Parties.

4. Plaintiff Option Consommateurs will do a press release that will be shown in advance to Dell for comments.

5. Dell will also assume the costs of the notices to Class Members.

#### **VI. PAYMENT OF ATTORNEYS' FEES AND COSTS**

In further consideration for settling this matter, including the release of the Released Claims by the Settlement Class, and subject to the approval of the Court, Dell agrees to pay, within ten (10) days of the Final Order and Judgment, an agreed-upon amount for fees of Cdn\$ 45,000 plus applicable taxes and disbursements not to exceed \$500.00 to Class Counsel. The above agreed amount paid to Class Counsel is limited and specific to negotiation and settlement of the Quebec proceedings only.

#### **VII. RELEASE**

A. Upon the Court's entry of the Final Order and Judgment, Plaintiff and Class Members hereby unconditionally release and forever discharge Dell, including but not limited to, its past and present affiliates, parents, subsidiaries, divisions, units, brother and sister business entities/corporations, assigns, agents, insurers, servants, employees, stockholders, directors, officers, representatives, predecessors, successors, partners and attorneys, and all persons acting

by, through or under them such as but not limited to, any retailers, resellers, or distributors from any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses or losses of any kind whatsoever, including any known or unknown claims, which Plaintiff or Class Members have or may claim to have against Dell based upon, arising out of, or in any way relating to any act, failure to act, omission, misrepresentation, fact, event, transaction, or occurrence from the beginning of time until the Effective Date of this Settlement Agreement that were raised or could have been raised in this Action relating to the **Inspiron 5150**, except for claims for personal injury or wrongful death (“Released Claims”).

B. Plaintiff and Class Counsel agree that they will not intentionally solicit, encourage, or foment litigation by any third party to pursue any claims or litigation against Dell that are substantially related or similar to any activities, practices, conduct or facts alleged in or underlying the Action, and involve **Inspiron 5150s** sold in Quebec.

#### **VIII. EFFECTIVE DATE OF AGREEMENT**

The Effective Date of this Agreement shall be the first day after which all of the following events and conditions of this Agreement had been met or have occurred:

1. All of the Parties and their counsel have executed this Agreement.
2. The Court has entered the Final Order and Judgment approving the Agreement;

#### **IX. NO ADMISSION OF LIABILITY**

A. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any other party.

B. Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or entities released under this Agreement, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the persons or entities released under this Agreement, in any proceeding in any court, administrative agency or other tribunal.

C. This Agreement is a settlement document and constitutes a transaction, which is valid only if approved by the Court pursuant to article 1025 of C.C.P.

D. To the extent permitted by law, the Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceedings, which may be instituted, prosecuted or attempted in breach of this Agreement.

## **X. MISCELLANEOUS PROVISIONS**

### **A. Parties' Authority**

The respective signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the respective Parties hereto to the terms and conditions hereof.

### **B. No Pending Action**

Each of the Plaintiffs represents and warrants that he or she is not aware of any other lawsuits or administrative proceedings involving Dell substantially related to any activities, practices, conduct or facts alleged in or underlying the Action.

### **C. Integration**

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as provided for herein.

D. Governing Law

The Agreement shall be construed in accordance with, and be governed by, the laws of Quebec.

E. Gender and Plurals

As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

F. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.

G. Cooperation of Parties

The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement agree to informally exchange information that is reasonably requested to demonstrate the fairness, adequacy, and reasonableness of the Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this

Agreement, Class Counsel shall, with the assistance and cooperation of Dell and its counsel, take all necessary steps to assure the Court's final approval of this Agreement, which is set for November 27, 2007.

H. No Prior Assignments

Plaintiffs represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

I. Captions and Interpretations

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

J. Modification

This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by writing signed by the Parties hereto.

K. Binding on Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

L. Execution Voluntary

This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to

each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties.

M. Notices

1. All Notices to Class Counsel provided for herein shall be sent by facsimile to: Me Jean-Pierre Fafard, Sylvestre Fafard Painchaud, 740 Atwater Avenue, Montreal (Quebec) H4C 2G9, Facsimile: (514) 937-6529; e-mail: s.bond@sfpavocats.ca with a hard copy sent by overnight mail.
2. All Notices to Dell provided for herein, shall be sent by facsimile to Me Julie-Martine Loranger, Associate, Gowling Lafleur Henderson LLP, 1 Place Ville Marie, 37th floor, Montreal (Quebec) H3B 3P4, telephone: (514) 392-9552, facsimile: (514) 878-1450, with a hard copy sent by overnight mail.
3. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Class Notice.

N. Retention of Jurisdiction

The Court shall retain jurisdiction to resolve any future disputes arising out of the terms and conditions of this Settlement Agreement and Release.

O. Language

The Parties have expressly required that this Agreement and all other related documents be drafted in the English language. Les Parties ont expressément exigé que la présente convention et tous les autres documents ou avis qui y sont afférents soient rédigés en langue anglaise.

P. Prevalence of the English version of the Agreement

The English version of this Agreement will prevail over the French Version.

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly-authorized counsel of record, all as of the day set forth below.

Dated: 27 nov 2007

  
**Option Consommateurs**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Premium Concept Inc.**  
represented by Michel Labrecque


Dated: 27 novembre 2007

**SYLVESTRE FAFARD PAINCHAUD**

  
\_\_\_\_\_  
Jean-Pierre Fafard, *Class Counsel*

Dated: 26 November, 2007

**DELL INC.**

  
\_\_\_\_\_  
Joseph Burke

Dated: 26 November, 2007

**GOWLING LAFLEUR HENDERSON LLP**

  
\_\_\_\_\_  
Julie-Martine Loranger, *Counsel to Dell Inc.*