

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Federal Communications Commission (the “FCC”) (collectively the “United States”); and Hewlett-Packard Company (“HP”); and Dan Cain, Pam Tingley, Dave Richardson, Dave Gillis and Barry Clauss (“Relators”) (the United States, HP and the Relators are collectively referred to as “the Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. HP is a corporation headquartered at 3000 Hanover St., Palo Alto, California, 94304.

B. The Schools and Libraries Program of the Universal Service Fund, commonly known as the “E-Rate Program” (“E-Rate”) was created by Congress in the Telecommunications Act of 1996 and is administered by the Universal Service Administrative Company (“USAC”) for the FCC. Under E-Rate, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections.

C. Relators Dan Cain and Pamela Tingley (“Cain Relators”) are individual residents of the State of Texas. On October 26, 2005, the Cain Relators filed a *qui tam* action in the United States District Court for Northern District of Texas captioned *United States ex rel. Cain v. Micro Systems Enterprises et al.*, No. 3-05CV1843-P (N.D. Tex.). Relators Dave

Richardson, Dave Gillis, and Barry Clauss (“Richardson Relators”) are individual residents of the State of Texas. On November 15, 2005, the Richardson Relators filed a *qui tam* action in the United States District Court for the Southern District of Texas captioned *United States ex rel. Richardson v. Analytical Computer Services, et al.*, No. H-05-3836. (S.D. Tex.) (hereinafter, the Cain and Richardson matters shall be referred to as “the Civil Actions”).

D. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against HP for engaging in the following conduct (the “Covered Conduct”) during the period from 2002 to 2005 in the Dallas and Houston Independent School Districts: (1) conspiring to rig the competitive bidding of E-Rate contracts; (2) subverting the competitive bidding processes for E-Rate contracts through the provision of gratuities, including meals, trips, and tickets, to school district representatives in violation of school district policies or rules and E-Rate Program rules; and (3) unjust enrichment from E-Rate contracts received as a result of violations of the competitive bidding processes.

E. This Agreement is neither an admission of liability by HP, which denies the claims described above, nor a concession by the United States that its claims are not well-founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. HP agrees to pay to the United States a total of \$16.25 million (the “Settlement Amount”). Of the Settlement Amount, \$7,402,441 is attributable to the allegations

related to the Dallas Independent School District, and \$8,847,559 is attributable to the allegations related to the Houston Independent School District. HP further agrees to pay the Cain Relators \$140,000 and the Richardson Relators \$110,000 for Relators' attorney's fees and costs ("Relators' Expenses"). The foregoing payments shall be made as follows:

a. HP agrees to pay the Settlement Amount to the United States by two separate simultaneous electronic funds transfers no later than 10 days from the Effective Date (as defined in Paragraph 28 below) of this Agreement as follows: (i) HP will transfer \$7,402,441 to the United States pursuant to written instructions provided by the United States Attorney's Office for the Northern District of Texas, and (ii) HP will transfer \$8,847,559 to the United States pursuant to written instructions provided by the United States Attorney's Office for the Southern District of Texas. Should HP fail to make the payments specified in this paragraph by 10 days from the Effective Date, or receipt of the aforementioned wire instructions, whichever is later, interest shall accrue on the Settlement Amount at the rate of three percent (3%) per annum from the Effective Date to the date of payment (the "Accrued Interest").

b. Contingent upon the United States receiving the Settlement Amount plus any Accrued Interest from HP and as soon as feasible after receipt, the United States agrees to pay to the Cain Relators \$1,424,969 and to the Richardson Relators \$796,280 (the "Relators' Share"), plus Relators' *pro rata* share of the Accrued Interest, if any.

c. HP agrees to pay Relators' Expenses by separate electronic funds transfer, pursuant to written instructions to be provided by Relators' attorney. HP agrees to make this electronic funds transfer no later than 10 days after the Effective Date of this Agreement or receipt of the aforementioned wire instructions, whichever is later.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims), below, in consideration of the obligations of HP in this Agreement, and conditioned upon HP's full payment of the Settlement Amount by or on behalf of HP, the United States (on behalf of itself, its officer, agents, agencies, administrators, and departments, including the FCC and USAC) agrees to release HP, together with its current and former employees, parent corporations, direct and indirect subsidiaries and affiliates, divisions, current or former owners, officers and directors, and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 ("FCA"), the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Contemporaneously with the execution of this Agreement, HP will enter a Compliance Agreement with the FCC, attached hereto at Appendix A, Compliance Agreement Regarding E-Rate Controls, Monitoring, and Audit Requirements, which is incorporated by reference into this Agreement.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims), below, in consideration of the obligations of HP in this Agreement, and conditioned upon HP's full payment of the Settlement Amount and the Accrued Interest (if any), Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, agree to release HP, together with its current and former employees, parent corporations, direct and indirect subsidiaries and affiliates, divisions, current or former owners, officers and directors, and the successors and assigns of any of them, (a) from any civil monetary claim the Relators have or

may have on behalf of the United States for the Covered Conduct under the FCA; and (b) for any claims they may have on their own behalf against HP and/or its current and former employees, parent corporations, direct and indirect subsidiaries and affiliates, divisions, current or former owners, officers and directors, and the successors and assigns of any of them, for conduct that occurred before the Effective Date.

5. Notwithstanding any other term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including HP and Relators) are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any process or proceeding, administrative or judicial, for any agency suspension or debarment action;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of HP) who receive

written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual); are indicted, charged, or convicted; or who enter into a plea agreement related to the Covered Conduct; and

i. Any claim against any other party relating to the Covered Conduct.

6. Relators and their heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and, conditioned upon receipt of Relators' Share plus Relators' share of the Accrued Interest, Relators, for themselves individually, and for their heirs, successors, agents, and assigns, fully and finally release, waive, and forever discharge the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Actions; and from any other claims for a share of the Settlement Amount or the Accrued Interest; and in full settlement of any claims Relators may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relators arising under Title 26 of the United States Code, or any claims arising under this Agreement. Notwithstanding this paragraph, Relators are expressly not releasing any claims they may have against each other and/or their respective employees, agents, representatives or attorneys concerning the Covered Conduct, the Civil Actions or this Agreement.

7. Conditioned upon payment to Relators of the Relators' Expenses, and the funding by the United States of the funds described in paragraph 1(b), Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release HP, its subsidiaries,

affiliates, current and former owners, and their respective successors and assigns, and the current and former officers, directors, and employees of any of them, from any liability to Relators arising from the filing of the Civil Actions, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

8. HP waives and shall not assert any defenses HP may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment to the U.S. Constitution, or under the Excessive Fines Clause in the Eighth Amendment to the U.S. Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of Title 26 of the United States Code.

9. HP fully and finally releases the United States, the FCC, and USAC, and their agencies, employees, servants, and agents (jointly referred to as the "Releasees") from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that HP has asserted, could have asserted, or may assert in the future against the Releasees related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. HP fully and finally releases the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that HP has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and/or the Civil Actions and the Relators' investigation and prosecution thereof.

11. HP agrees to the following:

a. Unallowable Costs Defined: all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of HP, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) HP's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment HP makes to the United States pursuant to this Agreement and any payments that HP may make to Relators, including costs and attorneys fees, are "Unallowable Costs" for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by HP, and HP shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: HP further agrees that within 90 days of the Effective Date of this Agreement it shall identify any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by HP or any of its subsidiaries or affiliates from the United States. HP agrees that the

United States, at a minimum, shall be entitled to recoup from HP any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the United States Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by HP or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by HP, or the effect of any such Unallowable Costs on the amount of such payments.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine HP's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. HP agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, HP shall encourage, and agrees not to impair, the cooperation of its directors, officers, agents and employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. HP further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent.

13. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as specifically set forth in Paragraphs 2-10 above.

14. HP warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to HP, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which HP was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. HP agrees that this Agreement satisfies the requirements of the citation provision under subsections 47 U.S.C. §503(b)(5)(A)-(B), such that the FCC may issue a Notice of Apparent Liability against HP pursuant to 47 U.S.C. § 503(b)(4) if, after the Effective Date of this Agreement, HP engages in conduct of the type described as the Covered Conduct in Paragraph D of this Agreement.

16. Upon receipt of the payments described in Paragraph 1, above, the United States and Relators shall promptly sign and file a Joint Stipulation of Dismissal with prejudice of the Civil Actions as to HP pursuant to the terms of the Agreement.

17. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. HP represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. Relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Northern District of Texas.

21. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

22. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

23. The individuals signing this Agreement on behalf of HP represent and warrant that they are authorized by HP to execute this Agreement. The individuals signing this Agreement as attorneys for the Relators represent and warrant that he or she is authorized by Relators to execute this Agreement as their attorney. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

24. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

25. This Agreement is binding on HP's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

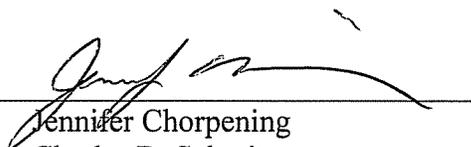
27. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

28. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: *Nov. 8, 2010*

BY: _____


Jennifer Chorpening
Charles D. Schmitz
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____

BY: _____

J. Scott Hogan
Assistant United States Attorney
Northern District of Texas

DATED: _____

BY: _____

Jill Venezia
Assistant United States Attorney
Southern District of Texas

HP - DEFENDANT

DATED: _____

BY: _____

John F. Schultz
Vice President and Deputy General Counsel, Litigation
HP

DATED: _____

BY: _____

James J. Rohn, Esquire
Counsel for HP

THE UNITED STATES OF AMERICA

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J. Scott Hogan
Assistant United States Attorney
Northern District of Texas

DATED: BY: _____
Jill Venezia
Assistant United States Attorney
Southern District of Texas

HP - DEFENDANT

DATED: 11/05/10 BY: John F. Schultz (AKB)
John F. Schultz
Vice President and Deputy General Counsel, Litigation
HP

DATED: BY: _____
James J. Rohn, Esquire
Counsel for HP

THE UNITED STATES OF AMERICA

DATED: BY: _____
Jennifer Chorpening
Charles D. Schmitz
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: BY: _____
J. Scott Hogan
Assistant United States Attorney
Northern District of Texas

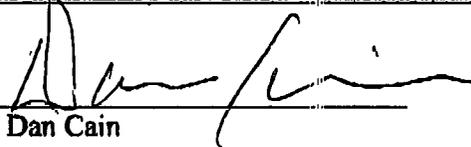
DATED: BY: _____
Jill Venezia
Assistant United States Attorney
Southern District of Texas

HP - DEFENDANT

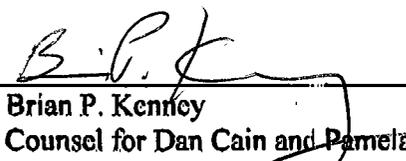
DATED: BY: _____
John F. Schultz
Vice President and Deputy General Counsel, Litigation
HP

DATED: BY: James J. Rohn
James J. Rohn, Esquire
Counsel for HP

DAN CAIN AND PAMELA TINGLEY - RELATORS

DATED: 11-04-2010 BY: 
Dan Cain

DATED: BY: _____
Pamela Tingley

DATED: 11-8-10 BY: 
Brian P. Kenney
Counsel for Dan Cain and Pamela Tingley

DAVID RICHARDSON, DAVID GILLIS, AND BARRY CLAUSS - RELATORS

DATED: BY: _____
Dave Richardson

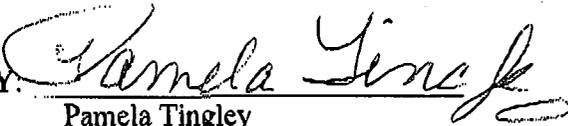
DATED: BY: _____
Dave Gillis

DATED: BY: _____
Barry Clauss

DATED: BY: _____
James L. Reed
Counsel for Dave Richardson, Dave Gillis,
and Barry Clauss

DAN CAIN AND PAMELA TINGLEY - RELATORS

DATED: BY: _____
Dan Cain

DATED: BY: 
Pamela Tingley

DATED: BY: _____
Brian P. Kenney
Counsel for Dan Cain and Pamela Tingley

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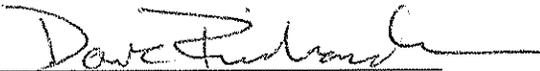
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DATED: BY: _____
Dan Cain

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Pamela Tingley

DATED: BY: _____
Brian P. Kenney
Counsel for Dan Cain and Pamela Tingley

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Dave Gillis

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Barry Clauss

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Counsel for Dave Richardson, Dave Gillis,
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Pamela Tingley

DATED: BY: _____
Brian P. Kenney
Counsel for Dan Cain and Pamela Tingley

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DATED: BY: _____
Dave Richardson

DATED: BY: *Dave Gillis*
Dave Gillis

DATED: BY: _____
Barry Clauss

DATED: BY: _____
James L. Reed
Counsel for Dave Richardson, Dave Gillis,
and Barry Clauss

DAN CAIN AND PAMELA TINGLEY - RELATORS

DATED: BY: _____
Dan Cain

DATED: BY: _____
Pamela Tingley

DATED: BY: _____
Brian P. Kenney
Counsel for Dan Cain and Pamela Tingley

DAVID RICHARDSON, DAVID GILLIS, AND BARRY CLAUSS - RELATORS

DATED: BY: _____
Dave Richardson

DATED: BY: _____
Dave Gillis

DATED: 11-5-2010 BY: Barry Clauss
Barry Clauss

DATED: BY: _____
James L. Reed
Counsel for Dave Richardson, Dave Gillis,
and Barry Clauss

DAN CAIN AND PAMELA TINGLEY - RELATORS

DATED: BY: _____
Dan Cain

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Pamela Tingley

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Counsel for Dan Cain and Pamela Tingley

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Dave Richardson

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Dave Gillis

DATED: BY: _____
Barry Clauss

DATED: 11/8/10 BY: James L. Reed
James L. Reed
Counsel for Dave Richardson, Dave Gillis,
and Barry Clauss