

termination of this Settlement Agreement. Both the individual and published forms of Notices shall be subject to Court approval, but the manner, timing, content, and substance of the Notices must be substantially the same as described in this Settlement Agreement. Except for the Notices and information in this Settlement Agreement, HP is not responsible for any information provided by or communications from Class Counsel. Should HP object to same, it first will attempt to address the complaint to Class Counsel and, if not satisfied, then may move the Court for relief.

**X.**

**OPT-OUT RIGHTS**

A. Putative Settlement Class Members have the right to exclude themselves ("opt-out") from this Settlement Agreement and from the Settlement Class by timely submitting to the Claims Administrator a completed opt-out notice as described in the Settlement Approval Order. Putative Class Members who so timely elect to opt-out shall be excluded from this Agreement and from the Settlement Class. Such opt-out rights must be exercised by the "Opt-Out Deadline" by which the Court establishes the deadline for filing the opt-out notice. It is anticipated the Opt-Out deadline will be the date which is 45 days after the date of publication of the Notices in the newspapers as described in paragraph IX. Within ten (10) days after the Opt-Out Deadline, the Claims Administrator shall furnish HP's Counsel and Class Counsel with a complete list of all timely and valid requests for exclusion. Any Putative Class Member who does not submit a properly completed opt-out notice by the Opt-Out Deadline shall be a Settlement Class Member and shall be bound by the terms of this Settlement Agreement and the Settlement Approval Order.

- B. In the event that more than 1,000 persons within the definition of the Settlement Class timely request exclusion or opt-out from the Settlement Class, HP shall have the right, but not the obligation, to terminate this Settlement Agreement and declare it null and void, by serving upon Class Counsel a written notice to this effect not later than twenty (20) days after the Opt-Out Deadline.
- C. In the event HP exercises its right of termination pursuant to this section, a notice to that effect shall be given to the Settlement Class. The publication, content and timing of such notice shall be consistent with the Notices and HP shall pay for the cost of such notice solely. This provision survives the termination of this Settlement Agreement.

## **XI.**

### **DISMISSAL OF RELATED ACTIONS**

- A. The action shall be dismissed, on consent, without costs and with prejudice. The Settlement Class Members and Class Counsel agree not to file any new or additional related actions or proceedings on behalf of Settlement Class Members upon the execution of a Settlement Agreement. The Parties further agree that in the event that the Court does not approve the Settlement Agreement, the Court's approval of the Settlement Agreement is reversed or modified on appeal or the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement, then the Settlement Class Members and the Class Counsel shall resume litigating without prejudice of any kind resulting from the Settlement Agreement.

**XII. STAY**

Unless and until this Settlement Agreement is terminated pursuant to its provision, all discovery, motions, pleadings, and other activity in the Action affecting the Parties shall be stayed.

**XIII. CLAIM ADMINISTRATION**

- A. Claims Administrator: The Court will appoint the Claims Administrator. At the Approval Hearing, the Plaintiff and HP will jointly recommend the appointment of Young America Inc. as the Claims Administrator(s), to be appointed by the Court for the purpose of reviewing the claim forms; analysing the completeness of the information and/or documentation contained therein; assigning the remedies described herein in respect of the eligibility of claims; and processing and classifying the Claim Forms, thereafter tendering to allow Settlement Class Members the settlement compensation to which they are entitled by this Settlement Agreement, including the processing and approval of Rebate Certificates, along with proof of purchase documents of a Qualifying Product, for payment by HP to the claimant (the "Claims Administration").
- B. The Claims Administrator shall be entitled to a reasonable fee and cost reimbursement approved by the Court. Class Counsel, HP, and HP's Counsel will have the right to continuing oversight of the Claims Administrator and Claims Administration. HP will pay the entire cost, expenses and fees of Claims Administration, in addition to other amounts payable hereunder. The Parties agree that this agreement has additional value to the Settlement Class.
- C. The Claims Administrator shall be under the authority and continuing jurisdiction of the Court. The Claims Administration process will be

subject to a contract between HP, Class Counsel, and the Claims Administrator that governs the respective duties and obligations of the Parties, in a form to be agreed upon between them. The Claims Administrator shall be subject to removal by the Court for cause. If the Claims Administrator resigns (as may be permitted in the Claims Administration contract approved by the Court), or is removed, the Court shall appoint a new Claims Administrator after notice and hearing, and approval by the Court. In the event HP or Class Counsel reasonably believe that the Claims Administrator is not properly applying any of the terms of this Settlement Agreement or in the event there is a question about the application of the terms of this Settlement Agreement by the Claims Administrator, then:

1. The objecting Party's counsel shall notify counsel for the other Parties to this Settlement Agreement in writing of their concern;
  2. Class Counsel and counsel for HP will meet within thirty (30) days of receipt of the written notification to try to resolve the concern;
  3. In the event Class Counsel and counsel for HP cannot resolve the concern, then the dispute shall be submitted to the Court.
- D. Prior to implementation of policies or procedures not provided for in this Settlement Agreement, the Claims Administrator shall notify counsel for HP and Class Counsel of the proposed policy or procedure. All such policies or procedures shall be consistent with the terms of this Settlement Agreement. Any dispute as to the implementation of any proposed policy or procedure shall be resolved by agreement between the Parties or, if no agreement can be reached, by submission to the Court.
- E. General Processing Guidelines: The Claims Administrator shall promptly process Claims Forms, approve or disapprove claims, process allowed

claims and tender the appropriate Rebate Certificates to allowed Settlement Class Members, and shall otherwise carry out and comply with the provisions of this Settlement Agreement that require administrative management. Within forty (40) days after the final date to submit a claim the Claims Administrator shall submit to the Court, HP's Counsel, and Class Counsel a written report stating the number of claim forms sent out by direct mailing, the number of claim forms requested and mailed out in response to the publication notifications, and the number of claim forms requested and mailed out in response to the website notifications.

- F. Rebate Certification Processing: Rebate Certificate for each allowed claim shall be delivered to the allowed claimant by the Claims Administrator placing the Rebate Certificate in the standard mail, forwarding address requested, to each of the allowed claimants at the address shown for the allowed claimant on claimant's Claim Form. For all allowed claimants to whom the Claims Administrator was unsuccessful in attempting to deliver negotiable instruments and as to whom the Claims Administrator recommends taking no further actions to deliver their negotiable instruments or Rebate Certificates, the Court will enter an order that states, for each, either that the Claims Administrator need not make any further effort to deliver the negotiable instruments or Rebate Certificate or that directs further efforts to be taken by the Claims Administrator. The cost of such delivery and efforts to deliver shall be borne by HP. With regard to Rebate Certificates that have been timely and properly redeemed, and that are submitted to the Claims Administrator along with documentation of proper proof of purchase of a Qualifying Product, the Claims Administrator shall promptly evaluate such documentation and Rebate Certificate and determine whether

payment is proper under the terms of this Settlement Agreement. The Claims Administrator shall make that determination within thirty (30) days after receipt of the Rebate Certificate and purchase documentation from the claimant. Within seven (7) days after making that determination, the Claims Administrator shall mail a written request to HP for HP to pay the Rebate Certificate amount to the claimant, providing the claimant's name and address. Within thirty (30) days of HP's receipt of the Claims Administrator's submissions of the Rebate Certificate payment request, HP shall mail a negotiable instrument to the claimant in the amount of that claimant's Rebate Certificate.

G. Appeal of Disallowed Claims: Any Settlement Class Member shall have the right to appeal the determination of the Claims Administrator regarding said claimant's disallowed claim.

1. A claimant who wishes to appeal the decision of the Claims Administrator must send written notice of appeal ("Appeal Notice") to the Claims Administrator by standard class mail within thirty (30) days of the later of (i) the date of the notice of that decision, or (ii) the date of the postmark on the envelope containing notice of that decision. The Appeal Notice shall state the reason(s), in detail, the claimant does not agree with the Claims Administrator's determination and request review. Within three (3) days of receipt of any such Appeal Notice, and before sending anything to the Appellate Officer, the Claims Administrator shall notify HP of the claimant's intent to appeal and the stated grounds in support thereof. HP shall then have seven (7) days from receipt of the Appeal Notice to evaluate the claim and determine whether to authorize the Claims Administrator to allow the claim.

2. Within ten (10) days of receipt by the Claims Administrator, the Claims Administrator will send copies of the Appeal Notice, as well as the Claim Form and supporting documents to the Appellate Officer in the event that HP elects not to allow the claim.
3. The Appellate Officer shall review the claim based solely on the information considered by the Claims Administrator.
4. The Appellate Officer shall resolve the dispute by choosing the relief, if any, to which he or she believes the claimant is entitled in accordance with the terms of this Settlement Agreement and **Section IV.C.**
5. Once a claim has been fully decided by the Appellate Officer, the claimant shall be notified of the decision by the Appellate Officer.
6. Neither HP, HP's Counsel nor Class Counsel will be liable for any action or inaction of the Appellate Officer.
7. The decision of the Appellate Officer shall be final and binding, and Settlement Class Members, their successors and assigns, Class Counsel, HP and any other party-in-interest may not appeal or seek review or vacate or otherwise challenge such determinations or awards in any subsequent Court or administrative proceeding, including without limitation any proceeding under any applicable federal or provincial law, rule or procedure.
8. HP shall pay the Appellate Officer's reasonable fees and expense incurred, it being understood that in no event shall HP be obligated to pay the Appellate Officer more than \$75.00 per hour and no greater than \$50,000.00 in the aggregate.
9. The Appellate Officer shall execute a retainer agreement in a form to be agreed upon the Parties.

10. The Appellate Officer shall be subject to removal by either HP's or Class Counsel for cause; and neither HP nor Class Counsel shall unreasonably oppose a removal for cause. In the event the Appellate Officer is removed, Class Counsel and HP's Counsel shall select another Appellate Officer by agreement. If the Appellate Officer, once appointed, resigns or is unable to continue servicing as the Appellate Officer, a replacement shall be selected by the same method used to select the replacements' predecessor.
- H. Closing of Administration: The Parties shall make a joint submission to urge the Court to establish a date in the Settlement Approval Order by which Claims Administration shall be fully completed and closed (the "Closing Date"). The Claims Administrator shall report the results of processing all claims and the distribution of the Rebate Certificates, to the Court, Class Counsel, and HP's Counsel in a final report, as of the Closing Date, due forty (40) days after the Closing Date. The Claims Administrator shall make any adjustments to the results as ordered by the Court. In addition, within forty (40) calendar days after the Closing Date, the Claims Administrator shall file a motion with the Court to close the Claims Administration and shall serve same on the HP's Counsel, Class Counsel, and any other persons who filed a pleading with the Court in the case, as an intervener or objector. When satisfied that the Class Administration should be closed, the Court will enter an order closing same and discharging the Claims Administrator and Class Counsel.

#### **XIV. CONTINUING JURISDICTION AND EXCLUSIVE VENUE**

- A. HP, Best Buy and each Settlement Class Member hereby irrevocably submits to the exclusive jurisdiction and venue of the Superior Court of

Justice of the Province of Ontario for any suit, action, proceeding, case, controversy, or dispute relating to this Settlement Agreement and Exhibits hereto, negotiation and performance or breach of same. All Settlement Class Members, HP and Best Buy are barred and enjoined from commencing or continuing any suit, action, proceeding, case, controversy, or dispute relating to this Settlement Agreement and Exhibits hereto and negotiation, performance or breach of same, in any Court or other body other than the Ontario Superior Court.

- B. It is expressly agreed and stipulated that the Ontario Superior Court shall have exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to the subject matter of any of the following actions, suits, or proceedings whether judicial, administrative or otherwise, which may be instituted by any person, individually or derivatively, with respect to (a) the validity or enforceability of this Settlement Agreement, (b) the authority of HP or Best Buy to enter into or perform this Settlement Agreement in accordance with its terms, (c) the remedies afforded by this Settlement Agreement, legal fees, costs, and expenses provided for in this Settlement Agreement, or (d) any other foreseen or unforeseen case or controversy in Canada related to or impacted by this Settlement Agreement. This reservation of jurisdiction does not limit any other reservation of jurisdiction in this Settlement Agreement.
- C. Further, the Parties agree that all cases and controversies against the Released Parties regarding the Settlement Agreement should be heard only in this Court and that the Putative Class Members should be enjoined from bringing any such suits, except in this Court.
- D. The Parties agree to request that the Court include the substance of the foregoing provisions in its Settlement Approval Order. In the event of a

case, controversy, or dispute arising out of the negotiation of, approval of, performance of, or breach of this Settlement Agreement, the Court shall award substantial indemnity costs and GST to the prevailing party. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties hereto irrevocably waive and agree not to assert, by way of motion, as a defence or otherwise, any claims or objection that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum.

**XV. TOLLING OF STATUTE OF LIMITATIONS**

HP and Best Buy agree that, with respect to any claims asserted in the Action which are subsequently asserted by any Putative Class Member who has properly opted out of the Settlement Agreement, individually or on behalf of a class, HP and Best Buy shall not assert any statute of limitations, repose, or laches defence that is premised upon the time period of April 10, 2003, through and including the date of that class member's opt-out notice. Further, in the event that the Court does not approve this Settlement Agreement, or the Court's approval of this Settlement Agreement is reversed or modified on appeal, or this Settlement Agreement is terminated pursuant to the provisions of this Settlement Agreement, HP and Best Buy agree that, with respect to any claims asserted in the Action which are subsequently asserted, or maintained in any existing or subsequently filed class action lawsuit, by any member of the Settlement Class, individually or on behalf of a class, HP and Best Buy shall not assert any statute of limitations, repose, or laches defence that is premised upon the time period of April 10, 2003 through and including the later of the following dates: the entry of the Court's

order disapproving this Settlement Agreement, the appellate Court's reversal decision, or the termination of this Settlement Agreement.

**XVI. NO PRESUMPTION AGAINST DRAFTER**

None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof of the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Settlement Agreement was drafted with substantial input by all Parties, and no reliance was placed on any representations other than those contained herein.

**XVII. GOVERNING LAW**

This Settlement Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the Province of Ontario except for any conflict of law provisions in said laws of Province of Ontario that may otherwise require the application of the laws of a jurisdiction other than that of the Province of Ontario to the performance, validity, construction or enforcement of this Settlement Agreement.

**XVIII. SUCCESSORS AND ASSIGNS**

This Settlement Agreement shall be binding upon and enure to the benefit of the successors and assigns of the Parties hereto, except that the claims preclusive effect of the Settlement Approval Order on this Settlement Agreement and the release herein provided only enures to successors and assigns to the extent of the successor liability assumed from the Released Parties with respect to claims within the scope of this Agreement that are released and not to any other independent liability that the successor or assign may have. Without limiting the

generality of the foregoing, each and every covenant and agreement herein made by Class Counsel and the plaintiff on behalf of themselves and on behalf of the Settlement Class, shall be binding upon all Settlement Class Members.

**XIX.**

**OTHER PROVISIONS OF THE SETTLEMENT**

- A. Except as provided herein, HP, Best Buy and other Released Parties shall bear no other expenses, costs, damages or fees alleged or incurred by the plaintiff or any other Settlement Class Member, or by any of their solicitors, experts, advisors, agents or representatives.
- B. In the event that this Settlement Agreement is not approved by the Court in substantially its present form, or the Settlement Class is not certified, or if such approval is modified in any way not permitted by this Settlement Agreement, or set aside on appeal, or the settlement does not become final for any other reason, including the exercise by HP or Best Buy of the right to declare this Settlement Agreement null and void hereunder, the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the parties (except for those provisions surviving herein) and, to the extent permitted by law, shall not be used in the Action or in any other proceeding for any purpose and any final judgment entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.
- C. Any party may bring a motion to have the Settlement Agreement vacated in such case.
- D. The Parties acknowledge that it is their intent to consummate this Settlement Agreement and agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing

terms and conditions of this Settlement Agreement. The Parties agree that neither they nor their counsel shall comment publicly in any way on the terms of the settlement, Settlement Agreement, or the initiation, prosecution, or resolution of the action except (i) as agreed to by all Parties to this Settlement Agreement, or (ii) as required by judicial process, in order to carry out the terms of the settlement, including compliance with the Settlement Approval Order, or as otherwise required by Court order or by governmental rule or regulation applicable to that party. HP and Best Buy are entitled to communicate with the Putative Class Members about this Action and this Settlement Agreement in the ordinary course of its business. However, HP and Best Buy will not aid or encourage any objections to this Settlement Agreement (or any of its terms or provisions) nor to certification of the Settlement Class, nor encourage any Putative Class Member to elect to opt-out. Class Counsel shall encourage Putative Class Members to participate and not to opt-out. In addition, Class Counsel and HP's Counsel shall make all best efforts to enforce the jurisdictional provisions of this Settlement Agreement.

E. HP and Best Buy have indicated their intent to vigorously contest every claim in the Action. HP and Best Buy maintain that they have consistently acted in accordance with governing laws at all times and vigorously denies all of the material allegations in the Action. HP and Best Buy nonetheless have concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Settlement Agreement. HP and Best Buy have reached that conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, the expense that would be necessary to defend the Action throughout trial and through any appeals that might be taken, the benefits

of disposing of protracted and complex litigation, and the desire of HP and Best Buy to conduct their businesses unhampered by the distractions of continued litigation.

F. The Parties agree that to the fullest extent permitted by law, neither this Settlement Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of HP, Best Buy and the Released Parties; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of HP, Best Buy and the Released Parties in any civil, criminal or administrative proceeding in any Court, administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce the Settlement Agreement, the Settlement Approval Order, except that HP, Best Buy and the Released Parties may file the Settlement Agreement and/or the Settlement Approval Order in any action that may be brought against it in order to support a defence or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim. HP and Best Buy have denied and continue to deny each and all of the Released Claims alleged in the Action.

G. All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated by reference.

H. This Settlement Agreement contains the entire agreement between the Parties hereto and supersedes any prior agreements or undertakings

between them. All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto.

I. Upon the Effective Date, each of the Released Parties shall be deemed to have released and discharged all of the Settlement Class Members and all counsel in the Action from any claims arising out of, relating to, or in connection with the institution, prosecution, assertion, or resolution of the Action or the Released Claims, except to the extent provided for in this Settlement Agreement.

J. This Settlement Agreement may be modified only by a written instrument signed by or on behalf of all Parties hereto or their successors-in-interest.

K. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

L. The Court shall have exclusive and continuing jurisdiction over the implementation, interpretation and execution of this Settlement agreement, with respect to all Parties hereto and all beneficiaries hereof, including all Settlement Class Members. Any and all requests or applications regarding the enforcement, construction, or interpretation of the Settlement Agreement, any orders or the Settlement Approval Order entered by the Court, or the conduct of the policies and procedures described herein must be made, if at all, by motion to the Court in the Action.

M. The rights and obligations of the Parties to this Settlement Agreement shall be construed and enforced in accordance with and governed by the laws of the Province of Ontario.

**EXECUTED AND DELIVERED** on or about the 14<sup>th</sup> day of March, 2004, but to be made effective as of the date on which the Court approves the Settlement Agreement.

**HEWLETT PACKARD COMPANY**

Per:

\_\_\_\_\_  
(c/s)

**HEWLETT-PACKARD (CANADA) CO.**

Per:

\_\_\_\_\_  
(c/s)

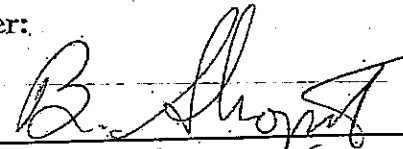
**BEST BUY CANADA LTD. operating as  
Future Shop**

Per:

\_\_\_\_\_  
(c/s)

**BARRY SKOPIT SALES INC.**

Per:

  
\_\_\_\_\_  
Barry Skopit, president (c/s)

I have authority to bind the Corporation