

AGREEMENT REGARDING ARBITRATION

WHEREAS, there is a dispute between the Settling States and the Participating Manufacturers regarding whether under the Master Settlement Agreement (“MSA”) the Participating Manufacturers are entitled to a 2003 NPM Adjustment, including whether the Settling States diligently enforced Qualifying Statutes during 2003 such that the 2003 NPM Adjustment does not apply to their Allocated Payments or to the corresponding MSA payments made by the Subsequent Participating Manufacturers;

WHEREAS, many Settling States and Participating Manufacturers have been engaged in litigation regarding whether the MSA provides that the dispute concerning the 2003 NPM Adjustment shall be resolved by arbitration before a single panel;

WHEREAS, the undersigned Participating Manufacturers and the undersigned Settling States have agreed to proceed with the arbitration of the 2003 NPM Adjustment dispute before a single panel as provided herein;

WHEREAS, every Settling State and Participating Manufacturer will be given a full opportunity both to sign this Agreement and to participate in the Arbitration, including a full opportunity to participate in the selection of the Arbitration panel, and the Parties reserve all rights with respect to any Settling State or Participating Manufacturer that does not participate in the Arbitration, including the right to contend that any such Settling State or Participating Manufacturer will be bound by the decisions of the Arbitration panel;

NOW, THEREFORE, the Signatory PMs and the Signatory States agree as follows:

1. Definitions.

The following definitions apply to the terms used in this Agreement. All capitalized terms not otherwise defined in this Agreement have the meaning given such terms in the MSA.

(a) “Arbitration” means the binding arbitration described in this agreement, which is being conducted to resolve the 2003 NPM Adjustment dispute pursuant to Section XI(c) of the MSA.

(b) References to a Settling State’s “diligent enforcement” mean the issue whether that Settling State diligently enforced a Qualifying Statute during 2003.

(c) References to Settling States or Participating Manufacturers that “join” the Arbitration mean any Settling State or Participating Manufacturer that (i) executes this Agreement or (ii) informs the Parties that it will submit the 2003 NPM Adjustment dispute for resolution in the Arbitration, whether because of a court order or otherwise.

(d) “Non-Signatory State” means a Settling State that has not executed this Agreement.

(e) The “NPM Adjustment” for a particular year means the NPM Adjustment pursuant to Section IX(d) of the MSA that would apply to the payments under Section IX(c) of the MSA due in April of the following year. For example, the 2003 NPM Adjustment means the NPM Adjustment pursuant to Section IX(d) of the MSA that would apply to the Participating Manufacturers’ payments under Section IX(c) of the MSA due in April 2004.

(f) “2003 NPM Adjustment dispute” means the dispute regarding whether the Participating Manufacturers are entitled to a 2003 NPM Adjustment, including the diligent enforcement of individual Settling States.

(g) “Parties” means the Signatory PMs and the Signatory States.

(h) “Signatory PM” means a Participating Manufacturer that has executed this Agreement by October 1, 2009.

(i) “Signatory State” means a Settling State that has executed this Agreement by October 1, 2009.

2. Arbitration Pursuant to Section XI(c) of the MSA.

(a) The 2003 NPM Adjustment dispute shall be resolved through the Arbitration pursuant to Section XI(c) of the MSA. The Arbitration shall include, without limitation, the matters set forth in Exhibit A.

(b) The same Arbitration panel that resolves the 2003 NPM Adjustment dispute as to the Parties shall, as part of the same Arbitration, also resolve such dispute as to all other Settling States or Participating Manufacturers that join the Arbitration. The Parties reserve all rights to contend that the same Arbitration panel shall, as part of the same Arbitration, also resolve the 2003 NPM Adjustment dispute, in whole or in part, as to any other Participating Manufacturer or Settling State.

(c) The Signatory States will cooperate in good faith with all other Settling States that join the Arbitration on or before October 1, 2009 to select promptly after such date their side’s neutral arbitrator pursuant to Section XI(c) of the MSA. Nothing in this Agreement precludes the Settling States participating in arbitrator selection from agreeing in their sole discretion to a method for that selection. If such selection does not occur on or before November 2, 2009, an arbitrator meeting the requirements of Section XI(c) of the MSA shall be selected promptly for their side by the International Institute for Conflict Prevention & Resolution, 575 Lexington Avenue, 21st floor, New York, New York 10022 (“CPR”). Those Signatory States that have previously identified a particular arbitrator hereby withdraw such identification and agree that they will approach the selection anew as provided herein.

(d) The Signatory PMs have previously designated the Honorable William Bassler as their side’s neutral arbitrator for the Arbitration. In the event that Judge Bassler is unable to serve as of October 1, 2009, the Signatory PMs will cooperate in good faith to select promptly after such date another neutral arbitrator pursuant to Section

XI(c) of the MSA. Nothing in this Agreement precludes the Participating Manufacturers participating in arbitrator selection from agreeing in their sole discretion to a method for that selection. If such selection does not occur on or before November 2, 2009, an arbitrator meeting the requirements of Section XI(c) of the MSA shall be selected promptly for their side by CPR.

(e) The following procedures shall govern in the event that CPR is required to select an arbitrator for either side pursuant to Paragraphs 2(c)-(d). Any Party may notify CPR in the event that one (or both) of the sides has failed to select a neutral arbitrator within the time period set forth in Paragraphs 2(c)-(d) and request that CPR select an arbitrator for that side. The side for which the selection is to be made may (but shall not be required to) provide CPR with a list of candidates meeting the requirements of Section XI(c) of the MSA and containing any such candidate that any member of that side that joined the Arbitration on or before October 1, 2009 desires to be on the list. If the side provides such a list within 10 Business Days following the request to CPR, the selection shall be made from that list. In providing such a list, the side may further inform CPR of the vote, if any, received by each respective candidate (by number of votes) in that side's deliberations, provided that (i) such vote tallies shall not be binding on CPR and (ii) the information shall not state which particular Settling State or Participating Manufacturer voted for which candidate. A side's list and information that a side provides to CPR shall be confidential and shall not be disclosed to the other side or any arbitrator. A side's failure to provide, or delay in providing, a list or information described above shall not delay the selection of its arbitrator by CPR. The Parties shall cooperate in good faith in effecting the foregoing procedures and in ensuring that any Arbitrator selection is made by CPR as set forth above.

(f) Upon the selection of the sides' neutral arbitrators as provided in Paragraphs 2(c)-(e) above, the two arbitrators shall promptly select a third neutral arbitrator as provided in Section XI(c) of the MSA and the Arbitration shall then proceed.

(g) The Parties agree that they shall not object to any other Settling State or Participating Manufacturer joining the Arbitration, provided, however, that the Parties do not agree that Settling States or Participating Manufacturers joining the Arbitration after October 1, 2009 are entitled to participate in the selection of their side's neutral arbitrator or have a right to revisit any determinations made by the Arbitration panel prior to the date on which they join the Arbitration.

(h) The failure of any Settling State(s) or Participating Manufacturer(s) to execute this Agreement, to participate in the selection of the Arbitration panel, to join the Arbitration or to submit all or any part of the 2003 NPM Adjustment dispute for resolution by the Arbitration panel shall not relieve the Parties' obligations to select arbitrators and proceed with the Arbitration as set forth in this Agreement and shall not render such arbitrator selection invalid or inconsistent with Section XI(c) of the MSA. The Parties reserve all rights with respect to any Settling State or Participating Manufacturer that fails to execute this Agreement, to participate in the selection of the Arbitration panel, to join the Arbitration or to submit all or any part of the 2003 NPM Adjustment dispute for resolution by the Arbitration panel.

(i) The Arbitration panel shall not disclose or otherwise make known its determinations as to whether any Settling State diligently enforced a Qualifying Statute during 2003 until after the conclusion of the presentation of all evidence and written or oral argument in the Arbitration proceeding with respect to the diligent enforcement of all Settling States that join the arbitration by the date that the third arbitrator is selected and whose diligent enforcement the Signatory PMs contested in the Arbitration, and not until the earlier of (i) 180 days after the conclusion of the presentation of all evidence and written or oral argument in the Arbitration proceeding with respect to the diligent enforcement of all Settling States that join the arbitration by the date that the third arbitrator is selected and whose diligent enforcement the Signatory PMs contested in the Arbitration; or (ii) resolution of the diligent enforcement of Settling States with a combined Allocable Share of at least 80% through a combination of either (A) the Signatory PMs' written notice to all Notice Parties (as identified by NAAG) that they are no longer contesting the diligent enforcement of the Settling State in question or (B) the Arbitration panel's (or, in the event a Settling State's diligent enforcement is submitted to an adjudicator other than the Arbitration panel, such other trial-level adjudicator's) determination as to the diligent enforcement of the Settling State in question. The Parties will jointly request that the Arbitration panel inform them each time it has made a determination as to a Settling State's diligent enforcement (including the Settling State's identity), and will promptly provide the Arbitration panel with all information necessary for it to determine when the date for disclosure specified above occurs. Notwithstanding the foregoing, if a Non-Signatory State requests that the Arbitration panel disclose its determination as to such Non-Signatory State's diligent enforcement earlier than the date for disclosure specified above and the Arbitration panel grants such request, such earlier disclosure shall not be inconsistent with or relieve any Party's obligations under this Agreement.

(j) In the event the Arbitration panel determines that a Signatory State did not diligently enforce a Qualifying Statute during 2003 (a "Non-Diligent Signatory State"), for purposes of the 2003 NPM Adjustment, such determination will give rise to transfers from the Disputed Payments Account or offsets as provided in Section XI(i)(2) of the MSA as follows.

(i) Upon the disclosure of such determination pursuant to Paragraph 2(i) above, the Parties shall jointly and promptly instruct the Independent Auditor to calculate for each Non-Diligent Signatory State the aggregate amount of the 2003 NPM Adjustment that would be allocated pursuant to Sections IX(d)(2) and IX(d)(4) of the MSA to that Non-Diligent Signatory State's Allocable Share of the MSA payments from all Signatory PMs. In performing that calculation, the Independent Auditor shall (A) regard as final the Arbitration panel's (or, in the event a Settling State's diligent enforcement is submitted to an adjudicator other than the Arbitration panel, such other trial-level adjudicator's) determination as to any Settling State's diligent enforcement, (B) assume that a Settling State diligently enforced a Qualifying Statute during 2003 in the event the Signatory PMs have given written notice to all Notice Parties (as identified by NAAG) that they are no longer contesting that Settling State's diligent enforcement, and (C) assume that a Settling State did not diligently enforce a Qualifying Statute during

2003 in the event its diligent enforcement both continues to be contested by the Signatory PMs and has not yet been determined by the Arbitration panel (or, in the event a Settling State's diligent enforcement is submitted to an adjudicator other than the Arbitration panel, by such other trial-level adjudicator). The Parties shall jointly and promptly provide the Independent Auditor with all determinations and notices necessary to perform those calculations. The Independent Auditor shall then allocate such aggregate amount for each Non-Diligent Signatory State among the Signatory PMs, in the case of Original Participating Manufacturers ("OPMs"), as separately instructed by the OPMs, and in the case of Subsequent Participating Manufacturers, as provided in Section IX(d)(4) of the MSA. Each such amount allocated to a Signatory PM that paid the disputed 2003 NPM Adjustment amounts either to the Settling States or into the Disputed Payments Account shall be deemed an overpayment by that Signatory PM under Section XI(i)(2) of the MSA and shall give rise to an immediate transfer from the Disputed Payments Account or offset (whichever is applicable to the Signatory PM in question) as provided in Section XI(i)(2) of the MSA, including interest or earnings on such amounts as specified in the MSA and Escrow Agreement.

(ii) Each time there is a subsequent resolution of the diligent enforcement of a Settling State that had been assumed not to have diligently enforced in prior calculations under Paragraph 2(j)(i)(C) as a result of either (A) the Signatory PMs' written notice to all Notice Parties (as identified by NAAG) that they are no longer contesting that Settling State's diligent enforcement or (B) the Arbitration panel's (or, in the event a Settling State's diligent enforcement is submitted to an adjudicator other than the Arbitration panel, such other trial-level adjudicator's) determination as to that Settling State's diligent enforcement, the Parties shall jointly and promptly instruct the Independent Auditor to revise the calculations described in Paragraph 2(j)(i) for each Non-Diligent Signatory State on the basis of such subsequent resolution, employing the assumptions set forth in that Paragraph. In the event that a determination as to any Settling State's diligent enforcement that was regarded as final in prior calculations under Paragraph 2(j)(i)(A) is subsequently reversed, vacated or otherwise set aside with finality, the Parties shall jointly and promptly instruct the Independent Auditor to revise the calculations described in Paragraph 2(j)(i) for each Non-Diligent Signatory State on the basis of such subsequent resolution. Any additional amounts of the 2003 NPM Adjustment allocated to a Non-Diligent Signatory State as a result of any revised calculation shall be allocated among the Signatory PMs and shall be deemed further overpayments giving rise to further transfers or offsets as described in the last two sentences of Paragraph 2(j)(i).

(iii) The Signatory PMs reserve all rights to seek (A) additional or earlier transfers or offsets as provided in the MSA with respect to the Allocable Share of the MSA payments of any Non-Signatory State and (B) earlier transfers or offsets on account of any Signatory State to the extent provided for in the MSA in the event the Arbitration panel determines that the Independent Auditor's approach to the 2003 NPM Adjustment as described in its Notices declining to

apply such Adjustment to the Participating Manufacturers' payments was incorrect.

(iv) In the event a Signatory PM actually receives and continues to retain an additional or earlier transfer(s) or offset(s) under the circumstances described in Paragraph 2(j)(iii), and a subsequent transfer or offset due to that Signatory PM under Paragraphs 2(j)(i)-(ii) would result in that Signatory PM receiving in the aggregate more than the maximum 2003 NPM Adjustment it could receive under the MSA (including interest or earnings as specified in the MSA and Escrow Agreement) assuming no Settling State diligently enforced a Qualifying Statute during 2003, the transfer or offset to that Signatory PM under Paragraphs 2(j)(i)-(ii) shall be reduced to the extent necessary to eliminate the excess over such maximum amount. If a transfer or offset due to a Signatory PM were reduced pursuant to the preceding sentence, and that Signatory PM is subsequently found not to be entitled to and returns the additional or earlier transfer(s) or offset(s) that gave rise to such reduction such that the reduction would have been lower or would not have taken place had the return occurred prior to the reduction, the excess reduction shall be deemed an overpayment giving rise to a transfer or offset as described in the last sentence of Paragraph 2(j)(i).

(v) The Parties agree that the Arbitration panel shall resolve their disagreement as to whether, under Section XI(i)(2)(A) of the MSA, a transfer from the Disputed Payments Account to a Participating Manufacturer should be accomplished through a transfer from the Disputed Payments Account to such Participating Manufacturer or through an offset in favor of such Participating Manufacturer accompanied by a transfer to the Settling States. The Parties will jointly request that the panel resolve, and announce its decision with respect to, such issue prior to the panel's disclosure of any determination by it of any Settling State's diligent enforcement. Each amount allocated pursuant to Paragraphs 2(j)(i)-(ii) to a Signatory PM that paid the disputed 2003 NPM Adjustment amounts into the Disputed Payments Account shall be transferred from the Disputed Payments Account in accordance with the Arbitration panel's decision. The Parties also agree that the Arbitration panel shall resolve their disagreement as to the circumstances, if any, in which, under Section XI(i)(1)(B) of the MSA, a transfer from the Disputed Payments Account should be made to a Settling State that is determined to have diligently enforced a Qualifying Statute during 2003 or whose diligent enforcement the Signatory PMs no longer contest. The Parties will jointly request that the panel resolve, and announce its decision with respect to, such issue prior to the panel's disclosure of any determination by it of any Settling State's diligent enforcement. Any amounts due to be transferred to a Signatory State by virtue of the Arbitration panel's decision with respect to such issue shall be transferred from the Disputed Payments Account in accordance with the Arbitration panel's decision.

(vi) In the event that the Independent Auditor does not fully and correctly apply the provisions of Paragraphs 2(j)(i), (ii) or (iv) (a

“misapplication”) and a Signatory PM as a result receives more or less in a transfer or offset under Paragraphs 2(j)(i)-(ii) than it is entitled to at that time under this Agreement, or a Signatory State is allocated more or less under Paragraphs 2(j)(i)-(ii) than it is entitled to at that time under this Agreement, the Parties agree that they will cooperate to restore all Parties to the position they would have been in had such Paragraphs been fully and correctly applied by jointly and promptly instructing the Independent Auditor to correct the misapplication.

3. Partial Liability Reduction for the 2003 NPM Adjustment.

Except as provided in Paragraph 6, the following provisions shall apply, for purposes of the 2003 NPM Adjustment, with respect to Signatory States that execute this Agreement by January 30, 2009 and whose diligent enforcement is determined by the Arbitration panel:

(a) If the Arbitration panel determines that such a Signatory State did not diligently enforce a Qualifying Statute during 2003, each Signatory PM, promptly after receiving a transfer of funds or offset under Paragraphs 2(j)(i)-(ii) allocated to that Signatory State’s MSA payments pursuant to Sections IX(d)(2) or IX(d)(4) of the MSA, shall severally reimburse that Signatory State (in a manner as directed by that Signatory State) in an amount equal to the percentage set forth in Paragraph 3(b) of the amount that Signatory PM received by way of such transfer or offset. This reimbursement obligation shall not apply until such transfer or offset allocated to that Signatory State’s MSA payments is actually received by the Signatory PM in question. As used in this Agreement: (i) a transfer from the Disputed Payments Account is actually received when the full amount of such transfer to that Signatory PM, including any applicable interest or earnings, allocated to that Signatory State’s MSA payments is completed; and (ii) an offset is actually received when the full amount of the offset, including any applicable interest, allocated to that Signatory State’s MSA payments is applied to reduce a subsequent MSA payment due from that Signatory PM and the Payment Due Date for such payment has taken place. Notwithstanding the preceding sentence, if (i) a Signatory PM receives a transfer of funds or offset under Paragraphs 2(j)(i)-(ii) allocated to a Signatory State’s MSA payments that would be considered actually received as defined above except that the amount of such transfer or offset is less than the full amount that such Signatory PM should have received under those Paragraphs and (ii) the amount received is greater than such full amount as reduced by the reimbursement percentage set forth in Paragraph 3(b) (the “net full amount”), the Signatory PM in question shall promptly reimburse the Signatory State in question in an amount equal to the excess over the net full amount. Any reimbursement paid pursuant to the preceding sentence shall count toward, and shall not increase, such Signatory PM’s total reimbursement obligation under this section.

(b) The reimbursement percentage shall be: (i) 10%, if the combined Allocable Share of the Signatory States that execute this Agreement by January 30, 2009 is equal to 43%; (ii) 20%, if the combined Allocable Share of the Signatory States that execute this Agreement by January 30, 2009 is equal to or greater than 80%; and (iii) if the combined Allocable Share of the Signatory States that execute this Agreement by

January 30, 2009 is more than 43% but less than 80%, then the percentage reduction shall be calculated based on a straight-line approach between the amounts set forth in (i) and (ii) (i.e., equal to the sum of (A) 10% plus (B) 10% multiplied by a fraction, the numerator of which is the combined Allocable Share of the Signatory States that execute this Agreement by January 30, 2009 less 43 and the denominator of which is 37 (the difference between 43% and 80%)). (For example, if the combined Allocable Share of the Signatory States that execute this Agreement by January 30, 2009 is 50%, then the percentage reduction shall be 11.9%: (A) 10% plus (B) 10% multiplied by (7 [50% less 43%] divided by 37, or 1.9%.)

(c) In the event a Signatory PM receives an earlier transfer or offset as a result of an Arbitration panel determination that the Independent Auditor's approach to the 2003 NPM Adjustment as described in its Notices declining to apply such Adjustment to the Participating Manufacturers' payments was incorrect, such earlier transfer or offset shall not trigger reimbursement obligations, but that Signatory PM shall continue to have all reimbursement obligations under Paragraphs 3(a)-(b) in the amount(s) and at the time(s) that would have been applicable had such earlier transfer or offset not taken place.

(d) If a Signatory PM is found not to be entitled to and returns a transfer or offset in whole or in part (whether directly or through an increased MSA payment), including without limitation because any of the Arbitration panel's determinations are vacated, modified or corrected, and the Signatory PM has paid a reimbursement under this Paragraph 3 with respect to that transfer or offset, such Signatory PM shall receive a full dollar-for-dollar credit for the amount of the reimbursement paid against the amount it returns.

(e) Nothing in this Paragraph 3 shall affect the allocation of the 2003 NPM Adjustment as to any Settling State that does not execute this Agreement by January 30, 2009.

4. Release of Certain Funds Paid into the Disputed Payments Account.

Each Signatory PM that paid amounts attributed to the 2005 NPM Adjustment into the Disputed Payments Account will promptly instruct the Escrow Agent and the Independent Auditor to release from that Account an amount equal to (i) such amounts attributed to the 2005 NPM Adjustment, multiplied by (ii) the aggregate Allocable Share percentage (expressed as a decimal) of all Signatory States that executed this Agreement by January 30, 2009. However, in the event the aggregate Allocable Share percentage of all Signatory States that executed this Agreement by January 30, 2009 is 80% or more, each such Signatory PM will promptly instruct the Escrow Agent and the Independent Auditor to release from that Account all such amounts attributed to the 2005 NPM Adjustment.

5. No Effect on the Firm's Determinations.

Nothing in this Agreement shall be deemed to affect, amend or supersede either the provisions of the Agreement Concerning Procedures Implementing Section IX(d)(1)(C) of the Master Settlement Agreement or the MSA with respect to the determinations by the Firm pursuant to Sections IX(d)(1) and IX(d)(2) of the MSA, including, but not limited to, the entity assigned to make such determinations and the process by which such determinations are to be made.

6. Effect on Pending and Other Appeals.

(a) If a Signatory State had an appeal or petition for review pending as of June 30, 2008 of an order requiring arbitration of the 2003 NPM Adjustment dispute, the Signatory State's execution of and performance under this Agreement shall not waive such appeal or petition for review (or right, if any prior to the arbitration, to appeal to or seek review from a higher court of the decision rendered on such appeal or petition). The Signatory PMs shall not disclose or otherwise refer to this Agreement in any proceeding referred to in the preceding sentence in which a Signatory State is a party. If the Signatory State prevails in whole or in part on such appeal or petition (or on further review thereof), the terms of this Agreement shall continue to apply except (i) to the extent such terms are inconsistent with and cannot be performed without violating the court's decision and (ii) in the event the appellate or reviewing court's unreversed opinion permits the Signatory State to submit its diligent enforcement to an adjudicator other than the Arbitration panel, the Signatory State may do so, but if it does so in whole or in part the reimbursement obligation set forth in Paragraph 3 above shall not apply to that Signatory State. Nothing in this Agreement shall waive any right of the Signatory PMs to appeal or seek review of a decision permitting any Settling State to submit any part of the 2003 NPM Adjustment dispute to any adjudicator other than the Arbitration panel.

(b) Except as provided above, each Signatory State waives any right it may have to appeal or challenge the arbitrability of the 2003 NPM Adjustment dispute before the Arbitration panel as provided in this Agreement, including without limitation in any post-arbitration appeal or in any challenge to the Arbitration panel's award by way of motion to vacate or modify or otherwise. All Signatory States preserve: (i) all other rights, if any, to appeal or otherwise challenge the Arbitration panel's award with respect to the 2003 NPM Adjustment dispute; and (ii) all rights, if any, to appeal or otherwise challenge orders compelling arbitration of any NPM Adjustment dispute for any other year.

7. Compliance with Court Orders.

The Parties agree that performance under this Agreement and participation in the Arbitration as provided herein complies, with respect to the 2003 NPM Adjustment dispute, with the Signatory States' respective courts' orders compelling arbitration, and that, upon the request of any Signatory State, the Signatory PMs shall support that Signatory State in obtaining a court order to that effect.

8. Most Favored Nation.

If one or more Signatory PMs enter into a separate agreement with a Settling State under which such Settling State agrees to participate in the Arbitration or otherwise arbitrate the 2003 NPM Adjustment dispute whose overall terms are more favorable to such Settling State than the terms of this Agreement, then the overall terms of this Agreement shall be revised so that the Signatory States that executed this Agreement by January 30, 2009 will obtain from the Signatory PMs party to such separate agreement overall terms as relatively favorable as those obtained by such Settling State. Revision of this Agreement pursuant to this Paragraph shall not be required by virtue of the Agreement to Resolve Forum Issue dated March 15, 2007 among the Commonwealth of the Northern Marianas Islands and certain Signatory PMs.

9. No Waiver.

The provisions of Paragraphs 2(j)(i)-(ii) shall not waive the Parties' respective positions as follows:

(a) The provisions of Paragraphs 2(j)(i)-(ii) that the Arbitration panel's (or, in the event a Settling State's diligent enforcement is submitted to an adjudicator other than the Arbitration panel, such other trial-level adjudicator's) determinations as to any Settling State's diligent enforcement shall be regarded as final, and that the Arbitration panel's determination that a Signatory State did not diligently enforce a Qualifying Statute during 2003 shall give rise to immediate transfers and/or offsets, shall not waive or otherwise affect: (i) any Party's right, if any, to seek to vacate, modify or correct any such determination; (ii) any Party's position with respect to whether any decision by the Arbitration panel other than a determination as to a Settling State's diligent enforcement should be regarded as final or whether any decision by the Arbitration panel other than a determination as to a Signatory State's diligent enforcement should give rise to an immediate transfer from the Disputed Payments Account or offsets under Section XI(i)(2) of the MSA; (iii) any Party's position with respect to whether a Signatory State that the Arbitration panel determines did diligently enforce a Qualifying Statute during 2003 is entitled to an immediate transfer to it of its Allocable Share of the funds in the Disputed Payments Account attributable to the 2003 NPM Adjustment or prompt payment from any Participating Manufacturer that did not pay the disputed 2003 NPM Adjustment amounts either to the Settling States or into the Disputed Payments Account; or (iv) any Party's position with respect to whether, and if so, how a Participating Manufacturer that paid the full amount due from such Participating Manufacturer reflected in the Independent Auditor's Final Calculation for 2003 and did not place any funds in the Disputed Payments Account for 2003 and has no MSA payment obligations in the year following the Arbitration panel's (or such other trial-level adjudicator's) determination against which amounts may be offset should receive the benefit of any 2003 NPM Adjustment allocated to it.

(b) The assumption to be employed by the Independent Auditor under Paragraphs 2(j)(i)(B) and 2(j)(ii)(A) shall apply only for purposes of performing the

calculations under Paragraphs 2(j)(i)-(ii) and shall not waive or otherwise affect a Signatory State's rights, if any, to either contest the diligent enforcement of any other Settling State or seek reallocation among the Settling States. Nothing in Paragraphs 2(j)(i)-(ii) shall: (i) affect the Arbitration panel's consideration or decision whether the Independent Auditor's approach to the 2003 NPM Adjustment as described in its Notices declining to apply such Adjustment to the Participating Manufacturers' payments was incorrect; or (ii) apply to the NPM Adjustment for years other than 2003. Nothing in Paragraph 2(j), including the assumption to be employed by the Independent Auditor under Paragraph 2(j)(i)(C), shall affect the allocation, if any, of the 2003 NPM Adjustment to any Non-Signatory State.

(c) The provisions of Paragraphs 2(j)(i)-(ii) concerning the amounts of such immediate transfers and/or offsets and the assumption to be employed by the Independent Auditor under Paragraphs 2(j)(i)(B) and 2(j)(ii)(A) shall not waive or otherwise affect a Party's position as to what extent, if any, the amount of the 2003 NPM Adjustment allocable to a Non-Diligent Signatory State should be reduced as a result of any payment or consideration received by the Signatory PMs from a Settling State in connection with the Signatory PMs' notice that they are no longer contesting such Settling State's diligent enforcement.

10. Counterparts; Subsequent Executions.

This Agreement may be executed in counterparts. Any Settling State may execute this Agreement by delivering a copy signed by its Attorney General (or other appropriate State representative with authority to enter into this Agreement) to the undersigned at any time before October 1, 2009. Any Participating Manufacturer may execute this Agreement by delivering a copy signed by an appropriate company representative with authority to enter into this Agreement to the undersigned at any time before October 1, 2009. Electronically transmitted, facsimile or photocopied signatures shall be considered valid as of the date delivered, although the original signature pages shall thereafter be provided as follows: Signatory States shall send their original signature page(s) to Elli Leibenstein, Esq., Kirkland & Ellis, 200 East Randolph Drive, Chicago, IL 60601; Signatory PMs shall send their original signature page(s) to Karen Leaf, Deputy Attorney General, Office of the Attorney General of California, P.O. Box 944255, Sacramento, CA 94244-2550. The failure of a Settling State or Participating Manufacturer to execute this Agreement shall not prevent it from otherwise joining the Arbitration at any time.

11. No Third Party Beneficiaries.

No portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a party hereto.

12. Notices.

All notices and other communications required by this Agreement shall be in writing and shall be deemed received (a) immediately if sent by electronic mail or by

hand delivery (with signed return receipt), or (b) the next Business Day if sent by nationally recognized overnight courier to the respective addresses as provided by the Parties. If a Party changes its address for notices required by this Agreement, that entity shall immediately notify the other Parties of that change. Written notice required by this Agreement shall be deemed sufficient and adequate if sent to the last known address in the manner provided under this Paragraph.

13. Non-Admissibility.

No evidence of the negotiations of this Agreement, or any drafts of the Agreement, shall be admissible in any dispute between the Parties as to the meaning of the Agreement.

14. Construction.

No Settling State or Participating Manufacturer shall be considered the drafter of this Agreement, or any provision thereof, for 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.

IN WITNESS THEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date specified below.

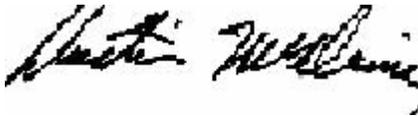
December 8, 2008



Talis J. Colberg
Attorney General of Alaska



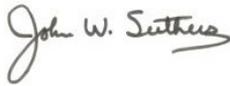
Terry Goddard
Attorney General of Arizona



Dustin McDaniel
Attorney General of Arkansas



Edmund G. "Jerry" Brown Jr.
Attorney General of California



John Suthers
Attorney General of Colorado



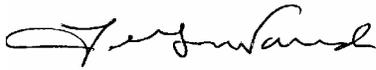
Richard Gebelein
Acting Attorney General of Delaware



Peter Nickels
Attorney General of the District of Columbia



Mark J. Bennett
Attorney General of Hawaii



Lawrence Wasden
Attorney General of Idaho



Tom Miller
Attorney General of Iowa

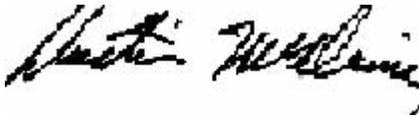
December 8, 2008



Talis J. Colberg
Attorney General of Alaska



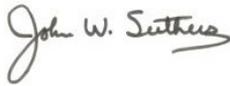
Terry Goddard
Attorney General of Arizona



Dustin McDaniel
Attorney General of Arkansas



Edmund G. "Jerry" Brown Jr.
Attorney General of California



John Suthers
Attorney General of Colorado



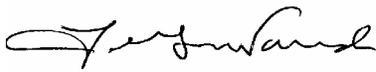
Richard Gebelein
Acting Attorney General of Delaware



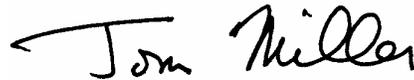
Peter Nickles
Attorney General of the District of Columbia



Mark J. Bennett
Attorney General of Hawaii



Lawrence Wasden
Attorney General of Idaho

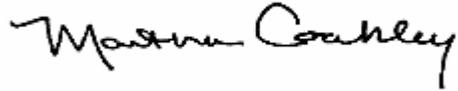


Tom Miller
Attorney General of Iowa

December 8, 2008



G. Steven Rowe
Attorney General of Maine



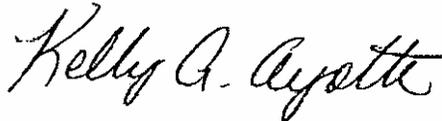
Martha Coakley
Attorney General of Massachusetts



Michael A. Cox
Attorney General of Michigan



Jon Bruning
Attorney General of Nebraska



Kelly Ayotte
Attorney General of New Hampshire



Anne Milgram
Attorney General of New Jersey



Wayne Stenehjem
Attorney General of North Dakota



Tom Corbett
Attorney General of Pennsylvania



Rob Cooper
Attorney General of Tennessee



Mark Shurtleff
Attorney General of Utah

December 8, 2008



William H. Sorrell
Attorney General of Vermont



Robert McDonnell
Attorney General of Virginia

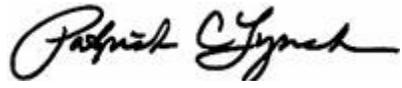


Rob McKenna
Attorney General of Washington



Bruce A. Salzberg
Attorney General of Wyoming

January 6, 2009

A handwritten signature in black ink, reading "Patrick C. Lynch". The signature is written in a cursive style with a prominent initial "P" and a long, sweeping underline.

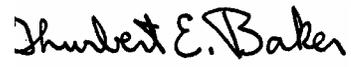
Patrick C. Lynch
Attorney General of Rhode Island

January 12, 2009

A handwritten signature in black ink, reading "Lisa Madigan". The signature is written in a cursive, flowing style with a prominent loop at the end of the last name.

Lisa Madigan
Attorney General of Illinois

January 16, 2009

Handwritten signature of Thurbert E. Baker in black ink.

Thurbert E. Baker
Attorney General of Georgia

Handwritten signature of Gary King in black ink.

Gary King
Attorney General of New Mexico

January 20, 2009

A handwritten signature in black ink, appearing to read "Darrell McGraw". The signature is written in a cursive style with a large initial 'D' and 'M'.

Darrell McGraw
Attorney General of West Virginia

January 21, 2009

A handwritten signature in cursive script, reading "Douglas Gansler". The signature is written in black ink and is positioned above the printed name.

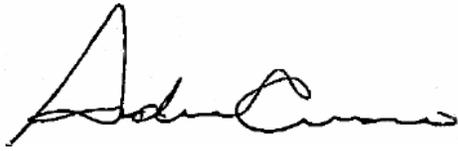
Douglas Gansler
Attorney General of Maryland

January 23, 2009

A handwritten signature in black ink, appearing to read "Lawrence Long". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail.

Lawrence Long
Attorney General of South Dakota

January 26, 2009

A handwritten signature in black ink, appearing to read "Andrew M. Cuomo". The signature is fluid and cursive, with a prominent initial "A" and a long, sweeping underline.

Andrew M. Cuomo
Attorney General of New York

A handwritten signature in black ink, appearing to read "Hardy Myers". The signature is cursive and somewhat stylized, with a clear "H" and "M".

Hardy Myers
Attorney General of Oregon

A handwritten signature in black ink, appearing to read "Steve Bullock". The signature is cursive and somewhat stylized, with a clear "S" and "B".

Steve Bullock
Attorney General of Montana

January 27, 2009

A handwritten signature in black ink, appearing to read 'Richard Blumenthal', written in a cursive style.

Richard Blumenthal
Attorney General of Connecticut

A handwritten signature in black ink, appearing to read 'Henry McMaster', written in a cursive style.

Henry McMaster
Attorney General of South Carolina

January 28, 2009

A handwritten signature in black ink, appearing to read "Troy King". The letters are stylized and connected.

Troy King
Attorney General of Alabama

A handwritten signature in black ink, appearing to read "James D. Caldwell". The signature is highly stylized and cursive.

James D. "Buddy" Caldwell
Attorney General of Louisiana

A handwritten signature in black ink, appearing to read "Antonio M. Sagardía De Jesús". The signature is cursive and somewhat difficult to decipher.

Antonio M. Sagardía De Jesús
Secretary of Justice of Puerto Rico

January 29, 2009



Greg Zoeller
Attorney General of Indiana



Stephen N. Six
Attorney General of Kansas



Jack Conway
Attorney General of Kentucky



Chris Koster
Attorney General of Missouri



Vincent Frazier
Attorney General of Virgin Islands

January 30, 2009

A handwritten signature in black ink, reading "Catherine Cortez Masto". The signature is written in a cursive style with a large initial "C" and "M".

Catherine Cortez Masto
Attorney General of Nevada

EXHIBIT A

The following is a list of substantive matters that will be included in the Arbitration. The Signatory States and the Signatory PMs each recognize that it is possible that additional disputed substantive matters will become evident as the respective positions of the Settling States and Participating Manufacturers unfold and/or during the course of the arbitration process, and that procedural and evidentiary issues may likewise arise during the course of the arbitration process. This list shall not waive any Signatory State's or Signatory PM's right to contend that the Arbitration shall include additional matters. This list is not intended to suggest the order in which the Arbitration panel shall hear or determine the listed matters. This list shall not be submitted to the Arbitration panel except in connection with a dispute about the scope of the Arbitration or whether a matter should be included in the Arbitration. In no event shall the description of any of the matters listed below be considered by the Arbitration panel in connection with its consideration of the merits of any of these matters or be deemed an acknowledgment by any Party that it is appropriate to frame any of these matters in such manner.

1. Whether the Independent Auditor was correct in not applying the 2003 NPM Adjustment to the Participating Manufacturers' 2006 or prior annual payments, including whether the Independent Auditor should have applied the NPM Adjustment where it found a Market Share Loss and the Firm found that the MSA was a significant factor contributing to that Market Share Loss.
2. Whether the June 2003 settlement agreements release in whole or in part, or provide a basis for excluding evidence relating to, the 2003 NPM Adjustment.
3. Whether individual Settling States diligently enforced a Qualifying Statute in 2003. This issue includes the Parties' disagreements regarding: (a) whether the Settling States or the Participating Manufacturers bear the burden of proof on diligent enforcement; and (b) "units sold" and collection of escrow payments on sales of cigarettes and RYO not bearing an excise tax stamp of the Settling State and/or on which it did not collect state excise tax.
4. (a) Whether under Section XI(i)(2)(A) of the MSA, a transfer from the Disputed Payments Account to a Participating Manufacturer should be accomplished through a transfer from the Disputed Payments Account to such Participating Manufacturer or through an offset in favor of such Participating Manufacturer accompanied by a transfer to the Settling States; and (b) under Section XI(i)(1)(B) of the MSA, under what circumstances, if any, should a transfer be made from the Disputed Payments Account to a Settling State that is determined to have diligently enforced a Qualifying Statute or whose diligent enforcement the Participating Manufacturers no longer contest.
5. To the extent a Settling State may assert that the 2003 NPM Adjustment should be applied to another Settling State pursuant to Section IX(d)(2) of the MSA, a determination as to the validity of any such assertion.