



## **ESCROW AGREEMENT**

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### **SECTION 2. Definitions.**

(a) Capitalized terms used in this Escrow Agreement and not otherwise defined herein or in the Beneficiary State's NPM Statutes shall have the meaning given to such terms in the Master Settlement Agreement.

(b) "Account" means an escrow account consisting of segregated sub-accounts for each Beneficiary State maintained by the Escrow Agent as a Qualified Escrow Fund in which the funds required to be placed in a Qualified Escrow Fund are deposited in compliance with this Escrow Agreement.

(c) "Beneficiary State" means a State that is a party to the Master Settlement Agreement for whose benefit funds are being escrowed pursuant to this Escrow Agreement. For purposes of this Escrow Agreement, the initial Beneficiary States are those listed in Attachment "A" hereto, which is hereby incorporated herein by reference, and those other States that the Company and the Escrow Agent may hereafter agree to include as Beneficiary States. Escrow Agent is authorized to include other Beneficiary States under this Agreement by written notice from the Company and is further authorized to revise Attachment "A" from time to time to reflect additions as instructed by the Company.

(d) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by numerous States and major United States Tobacco Product Manufacturers, a copy of which has been provided to the Escrow Agent by the Company.

(e) "NPM Statutes" or "NPM Statute" are the laws enacted in each of the States that are parties to the Master Settlement Agreement and that require a Non-Participating Manufacturer to establish a Qualified Escrow Fund. The Company shall provide a copy of the NPM Statutes for each Beneficiary State under this Escrow Agreement to the Escrow Agent.

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For the year in which the NPM Statute was first enacted, the amount due by April 15 of the following year shall be based only on those Units Sold on and after the statute's effective date.

(d) Segregated Multi-State Sub-accounts:

(i) The Company shall designate to the Escrow Agent the amount to be placed in the Account and each sub-account for each Beneficiary State based on the Units Sold therein in accordance with the applicable Beneficiary State's NPM Statute. All funds shall be held by the Escrow Agent in sub-accounts separate and apart from all other funds and sub-accounts of each other

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_____ North Dakota	_____ Ohio
_____ Oklahoma	_____ Oregon
_____ Pennsylvania	_____ Rhode Island
_____ South Carolina	_____ South Dakota
_____ Tennessee	_____ Texas
_____ Utah	_____ Vermont
_____ Virginia	_____ Washington
_____ Washington, District of Columbia	
_____ West Virginia	_____ Wisconsin
_____ Wyoming	

(ii) The Escrow Agent shall place and hold such funds in such sub-account for the benefit of the applicable Beneficiary State or any Releasing Party located or residing in the applicable Beneficiary State. The Escrow Agent may further segregate a particular Beneficiary State’s sub-account to identify the annual escrow payments for the same Beneficiary State for purposes of release of funds from the same Beneficiary State’s sub-account under Section 3(f)(iii).

(iii) Within the Account established under this Escrow Agreement, the Escrow Agent shall maintain a separate sub-account ledger for each Beneficiary State sufficient to enable tracking of the principal amounts allocated to each of the Beneficiary States under this Escrow Agreement and all dates, purposes, and amount of deposits, withdrawals, or interest on each sub-account for each applicable Beneficiary State. The Escrow Agent may also maintain within the Account a separate sub-account for the benefit of the Company to which interest or appreciation on the principal (the “Interest Account”) may be deposited.

(iv) Upon written notice from the Company, the Escrow Agent shall establish additional sub-accounts for additional Beneficiary States which shall be subject to the terms and

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(e) The Company shall receive the interest or other appreciation on the funds deposited pursuant to Section 3 as earned. Whenever any interest or other funds are payable under this Agreement to the Company, such payment shall be subject to the payment of Escrow Agent's fees, costs and expenses as provided in Section 9.

(f) The funds deposited pursuant to Section 3 shall be released from the applicable Beneficiary State's sub-account only under the following circumstances:

(i) To pay a judgment or settlement on any Released Claim brought against the Company by the applicable Beneficiary State or by any Releasing Party located or residing in the applicable Beneficiary State. Promptly after receiving a written request for release of funds under this subsection and prior to any such release, the Escrow Agent shall provide written notice to the Company, to the Releasing Party, and to the Attorney General or Attorney General's Designee of the applicable Beneficiary State as set forth and defined in Section 13 herein. The notice shall specify in reasonable detail the amount of the funds to be released, the payee and the basis for the requested release (which shall be provided to the Escrow Agent by the person requesting payment). The Company and the Attorney General or Attorney General's Designee of the applicable Beneficiary State as set forth in Section 13 whose sub-account would be reduced by the release of funds shall provide a written response to the Escrow Agent with copies to each other, within thirty (30) calendar days from the date of receipt of this notice. Should the Company or the applicable Beneficiary State timely object in writing to a requested release of funds under this subsection, the Escrow Agent shall not authorize the requested release of funds until such objection has been finally resolved. If no objection is received, the Escrow Agent shall pay the Released Claim after the expiration of the thirty (30) calendar day period. Funds shall be released from escrow from the sub-account of the applicable Beneficiary State under this subsection (A) in the order in which they were placed into the applicable Beneficiary

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State's sub-account escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement; or

(ii) To the extent that the Company establishes, pursuant to subsection 3(g), that the

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(g) In connection with the release from escrow provided for in subsection 3(f)(ii) of this Escrow Agreement, the Company shall submit in writing to the Attorney General for the applicable Beneficiary State the Company's calculation establishing the Excess Amount. If the applicable Beneficiary State and the Company cannot agree on the existence of an Excess Amount, or the calculation of the Excess Amount, the dispute shall be resolved in a court of competent jurisdiction located in the applicable Beneficiary State, or if the laws of any Beneficiary State so require, then under the applicable Administrative Procedures Act of that Beneficiary State.

(h) When the Company has made the first deposit into a Qualified Escrow Fund for the benefit of a Beneficiary State, the Escrow Agent shall notify the Attorney General of the applicable Beneficiary State that the Qualified Escrow Fund has been established, and provide to the Beneficiary State a copy of this Escrow Agreement along with all relevant instructions from the Company and the amount of the deposit made for the Beneficiary State. Thereafter, at any





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thereof and issued by a bank or trust company organized under the laws of the United States of America or of any of the fifty states thereof (a “United States Bank”) and having combined capital, surplus and undistributed profits in excess of \$500,000,000; or (e) demand deposits with any United States Bank having combined capital, surplus and undistributed profits in excess of \$500,000,000. To the extent practicable, monies credited to any Account or sub-account shall be invested in such a manner so as to be available for use at the times when monies are expected to be disbursed by the Escrow Agent and charged to such Account or sub-account. In choosing among the investment options described in clauses (a) through (e) above, the Escrow Agent shall comply with any written instructions received from time to time from the Company if mutually agreed upon by Escrow Agent and Company. In the absence of such written instructions or mutual agreement on such instructions, the Escrow Agent shall invest such sums in accordance with clause (a) above.

### **SECTION 6. Duties and Liabilities of Escrow Agent.**

The Escrow Agent shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time by the provisions of this Escrow Agreement, and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct or unlawful acts or omissions. The only duties and responsibilities of the Escrow Agent shall be the duties and obligations specifically set forth in this Escrow Agreement. The Escrow Agent has no duty to perform any calculations with respect to the proper amount to be deposited by the Company in any given year or to insure that the Company deposits the proper amount in any given year.

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### **SECTION 7. Indemnification of Escrow Agent.**

The Company shall indemnify, hold harmless and defend the Escrow Agent from and

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appointed by the Company within ninety (90) days from the date such notice of resignation or removal has been given, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction located in the applicable Beneficiary State all or part of the escrowed funds held for the benefit of the applicable Beneficiary State by giving written notice

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### **SECTION 11. Governing Law.**

This Escrow Agreement shall be construed in accordance with and governed by the laws of the state where the Escrow Agent is incorporated, except that the applicable Beneficiary State's NPM statutes shall only be construed and applied according to, and governed by, the law of the applicable Beneficiary State.

### **SECTION 12. Jurisdiction and Venue.**

With the exception of any suit, action or proceeding involving a Beneficiary State or any Releasing Party located or residing in a Beneficiary State, any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, this Escrow Agreement shall be brought in a court of original jurisdiction for matters involving contract, equity and damage claims in the state where the Escrow Agent is incorporated.

### **SECTION 13. Notices.**

All notices required by this Escrow Agreement shall be in writing and shall be deemed to have been received (a) immediately if sent by facsimile transmission (with a confirming copy sent the same business day by registered or certified mail), or by hand delivery (with signed return receipt), or (b) the next business day if sent by nationally recognized overnight courier, in any case to the respective addresses as follows:

If to Company:



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### **SECTION 14. Severability.**

If any provision of this Escrow Agreement shall under any circumstances be deemed invalid or inoperative, this Escrow Agreement shall be construed with the invalid or inoperative provisions deleted and the rights and obligations of the parties shall be construed and enforced accordingly.

### **SECTION 15. Amendments.**

This Escrow Agreement may be amended only by written instrument executed by the Company and the Escrow Agent, provided, however, Attachment "A" may be amended to add Beneficiary States and new sub-accounts for such added Beneficiary States by written notice to the Escrow Agent from the Company, and the Escrow Agent may amend the list of Beneficiary States by attachment hereto. The waiver by any party of any breach of this Escrow Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Escrow Agreement, nor shall such waiver be deemed to

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**SECTION 17. Captions.**

The captions herein are included for convenience of reference only and shall be ignored in the construction and interpretation hereof.

**SECTION 18. Conditions to Effectiveness.**

This Escrow Agreement shall become effective when signed by the Company and Escrow Agent.

**SECTION 19. Resolution of Disputes.**

In the event of any disagreement resulting in adverse claims or demands being made in connection with the subject matter of this Escrow Agreement, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues. In any such event, the Escrow Agent shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and

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constitute adequate service. The Company agrees that upon final adjudication on such petition or interpleader action, the Escrow Agent, its servants, agents, directors, employees or officers will be relieved of further liability.

### **SECTION 20. Substitute Form W-9; Qualified Settlement Fund.**

The Company shall provide the Escrow Agent with a correct taxpayer identification number on a substitute Form W-9. If the company does not have such a number, a statement evidencing its status as an entity exempt from back-up withholding, within thirty (30) days of the date hereof (and, if it supplies a Form W-9, indicate thereon that it is not subject to be treated as a Qualified Settlement Fund for federal or state tax purposes pursuant to 26CFR1.468B-1). The Escrow Agent shall comply with all applicable tax filing, payment and reporting requirements, including, without limitation, those imposed under 26CFR1.468B, and if requested to do so shall join in the making of the relation-back election under such regulation.

[SIGNATURE BLOCKS]