

ESCROW AGREEMENT

This Escrow Agreement is made and entered into this _____ day of _____, 20____, by _____ (the “Company”) and _____ (the “Escrow Agent”) and supersedes prior escrow agreements, if any, under which the Company and the Escrow Agent are currently operating regarding the Beneficiary States listed in Attachment A and those other MSA States that the Company and the Escrow Agent subsequently agree to include as Beneficiary States under this agreement.

WITNESSETH:

WHEREAS, all MSA States have enacted Non-Participating Manufacturer Statutes (“NPM Statute”) that require Tobacco Product Manufacturers that have not entered into the Master Settlement Agreement (referred to as “Non-Participating Tobacco Manufacturers” or “NPMs”) to establish a Qualified Escrow Fund, and

WHEREAS, the Company is an NPM and intends to comply with the NPM Statute by establishing a Qualified Escrow Fund with respect to MSA States in which the Company’s Cigarettes are sold.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties hereto agree as follows:

SECTION 1. Appointment of Escrow Agent.

The Company hereby appoints _____ to serve as Escrow Agent under this Escrow Agreement on the terms and conditions set forth herein. The Escrow Agent warrants that it is a federally or state chartered financial institution organized and existing under the laws of the State of _____, having assets of at least \$1 Billion (\$1,000,000,000), and is not an Affiliate of any Tobacco Product Manufacturer as

defined in the NPM Statute. By its execution hereof, the Escrow Agent hereby accepts such appointment and agrees to perform its duties and obligations set forth herein.

SECTION 2. Definitions.

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

B. **"Beneficiary State"** means a MSA State for whose benefit funds are being escrowed pursuant to the NPM Statute. 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 MSA 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 Escrow Agreement by written notice from the Company and is further authorized to revise Attachment A from time to time to reflect additional Beneficiary States as instructed by the Company.

C. **"Cost Basis"** means (i) for cash, the dollar amount deposited, and (ii) for the other Permitted Investments, the amount paid, excluding accrued interest, by the holder to buy the United States Treasury Securities or the Money Market Fund shares Permitted Investments. These amounts may also be known as the tax basis, book value, or tax cost basis.

D. **"Face Value"** means (i) for cash, the dollar amount deposited, (ii) for Money Market Funds, the number of shares held multiplied by the stated value per share, and (iii) for United States Treasury Securities, the amount of principal owed to the holder upon maturity of the security. These amounts may also be known as the par value or principal value.

E. **"Master Settlement Agreement"** or **"MSA"** means the settlement agreement entered into in 1998 by the four largest United States' tobacco manufacturing companies (the "Original Participating Manufacturers" or "OPMs") and 46 states of the United States (excluding Texas, Florida, Minnesota, and Mississippi), the District of Columbia, Guam, Northern Mariana Islands, the U.S. Virgin Islands, Puerto Rico, and American Samoa to settle certain claims against

the OPMs arising out of the sale, advertising, and consumption of certain tobacco products, including Cigarettes, a copy of which has been provided to the Escrow Agent by the Company and is available electronically at www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf.

F. **“Money Market Fund”** means a money market mutual fund invested solely in United States Treasury Securities and/or cash and regulated under Rule 2a-7 of the Investment Company Act of 1940.

G. **“MSA State”** means any one of the 46 states of the United States (excluding Texas, Florida, Minnesota, and Mississippi), the District of Columbia, Guam, Northern Mariana Islands, the U.S. Virgin Islands, Puerto Rico, and American Samoa, which jurisdictions settled under the MSA.

H. **“NPM Statute”** means the law or laws, as amended, enacted in each MSA State that require a Non-Participating Manufacturer to establish a Qualified Escrow Fund. The Company shall provide a copy of the NPM Statute for each Beneficiary State under this Escrow Agreement to the Escrow Agent.

I. **“Permitted Investments”** means the ways in which QEF Principal may be invested, which shall be limited to the following: (a) United States Treasury Securities, (b) cash, or (c) Money Market Fund.

J. **“Qualified Escrow Fund”** means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any Tobacco Product Manufacturer and having assets of at least one billion (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of Releasing Parties (as defined in the Master Settlement Agreement) and prohibits the Tobacco Product Manufacturer placing the funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with the applicable NPM Statute and this Escrow Agreement.

K. **“Qualified Escrow Fund Account”** or **“QEF Account”** means an escrow account consisting of segregated sub-accounts for each Beneficiary State established by the Company and maintained by the Escrow Agent into which the deposits required under the applicable NPM Statute are made.

L. **“Qualified Escrow Fund Principal”** or **“QEF Principal”** means the funds required by the applicable NPM Statute to be deposited and held for the benefit of one or more Beneficiary States in the QEF Account.

M. **“Qualified Escrow Fund Accumulated Principal”** or **“QEF Accumulated Principal”** means the aggregate amount of QEF Principal required to be held in each Beneficiary State’s QEF Sub-Account.

N. **“Qualified Escrow Fund Sub-Account”** or **“QEF Sub-Account”** means the subdivision of the QEF Account that holds only the QEF Principal deposited for the benefit of a single Beneficiary State.

O. **“Sales Year”** means the calendar year during which the Company sold Cigarettes in a Beneficiary State requiring the deposit of QEF Principal.

P. **“United States Treasury Securities”** means bills, notes, and bonds issued by the United States Treasury (i) maturing no more than (20) twenty years from the date of purchase by the Company, (ii) that are direct obligations (other than an obligation subject to variation in principal repayment) of the United States government, and (iii) backed by the full faith and credit of the United States of America; provided however, that United States Treasury Securities (iv) shall **not** include state and local government series securities of the United States Treasury.

SECTION 3. The Qualified Escrow Fund Account and Release of Funds Therefrom.

A. From time to time the Company shall tender to the Escrow Agent for deposit in the QEF Account the funds that the Company is required to place into a Qualified Escrow Fund pursuant to the NPM Statute of each Beneficiary State. The Company may appoint an authorized representative or agent, acting on its behalf, to give directions permitted of the Company under this Escrow Agreement, provided that in so doing, the Company shall also provide the Escrow Agent and the Attorney General for the Beneficiary States with evidence of that authorized appointment.

B. All funds received by the Escrow Agent pursuant to the terms of this Escrow Agreement shall be held, invested, and disbursed in accordance with the terms and conditions of

this Escrow Agreement and the applicable NPM Statute, regardless of the source of the funds—whether the funds are paid by the Company or by a third-party such as a Cigarette importer or an entity sharing liability with the Company for making the required QEF Principal deposits.

C. For each Beneficiary State in which the Company's Cigarettes were sold after enactment of that Beneficiary State's NPM Statute, the Company shall deliver to the Escrow Agent for deposit pursuant to this section the following amounts as such amounts are adjusted for inflation pursuant to Exhibit C of the Master Settlement Agreement:

1999:	0.0094241 per Unit Sold
2000:	0.0104712 per Unit Sold
2001 through 2002:	0.0136125 per Unit Sold
2003 through 2006:	0.0167539 per Unit Sold
2007 and thereafter:	0.0188482 per Unit Sold

D. The Company shall make deposits as frequently as required by the NPM Statute of the applicable Beneficiary State. Typically, the NPM Statute requires deposits annually or quarterly.

E. Segregated QEF Sub-Accounts:

1. The Company shall designate to the Escrow Agent the amount to be placed in the QEF Sub-Account by Sales Year 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 QEF Sub-Accounts separate and apart from all other funds of the Escrow Agent and the Company. The Escrow Agent shall allocate all funds as designated by the Company and received by the Escrow Agent among the applicable Beneficiary States, each with its own separate, segregated QEF Sub-Account and its own QEF Sub-Account number.

2. The Escrow Agent shall place and hold such funds in each QEF 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 shall further show a

Beneficiary State's QEF Sub-Account by Sales Year to identify the amount of QEF Principal attributable to Units Sold in each Sales Year.

3. Within the QEF Account established under this Escrow Agreement, the Escrow Agent shall maintain a separate QEF Sub-Account for each Beneficiary State sufficient to enable tracking of (a) the QEF Principal allocated to each Beneficiary State, (b) all dates, transaction descriptions, and amounts of deposits, withdrawals, interest or other appreciation on each QEF Sub-Account, and (c) all investments of QEF Principal held in each QEF Sub-Account. The Escrow Agent may also maintain within the QEF Account a separate sub-account for the benefit of the Company to which interest or other appreciation on the QEF Principal (the "Interest Account") may be deposited.

4. Upon receipt of authorized written notice from the Company, the Escrow Agent shall establish additional QEF Sub-Accounts for additional Beneficiary States, which shall be subject to the terms and conditions of this Escrow Agreement.

F. The Company shall receive the interest or other appreciation on the QEF Principal as earned, provided however, that the Escrow Agent shall not pay interest or other appreciation on QEF Principal to the Company (i) if doing so will cause the aggregate Face Value or the aggregate Cost Basis of the Permitted Investments in any QEF Sub-Account to drop below its QEF Accumulated Principal amount or (ii) if the aggregate Face Value or the aggregate Cost Basis of the Permitted Investments in any QEF Sub-Account is below its QEF Accumulated Principal amount. Whenever any interest or other funds are payable under this Escrow Agreement to the Company, such payment shall be subject to the payment of the Escrow Agent's fees, costs and expenses as provided in Section 9.

G. The NPM Statute of each Beneficiary State governs the release of QEF Principal from the applicable Beneficiary State's QEF Sub-Account and permits its release only under very limited circumstances, which include:

1. 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.

- i. 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 whose QEF Sub-Account would be reduced by the requested release of funds shall provide a written response to the Escrow Agent with copies to each other, within forty-five (45) calendar days from the date of receipt of this notice.
- ii. 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.
- iii. If no objection is received, the Escrow Agent shall pay the Released Claim after the expiration of the forty-five (45) calendar day period pursuant to payment instructions provided by the applicable Beneficiary State.
- iv. Funds shall be released from the QEF Sub-Account of the applicable Beneficiary State under this subsection (a) in the order in which they were placed into escrow and (b) only to the extent and at the time necessary to make payments required under such judgment or settlement.

2. To the extent that the Company establishes, pursuant to sub-paragraph (ii) below, that the amount required to be placed into escrow in a particular Sales Year for the applicable Beneficiary State was, depending on the law of such Beneficiary State, greater than either (A) that State's allocable share of the total payments that the Company would have been required to make in that year had it been a Participating Manufacturer under the

Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any adjustments or offsets described in Section IX(i)(3) of that Agreement other than the Inflation Adjustment); or (B) the Master Settlement Agreement payments, as determined pursuant to Section IX(i)(1) of that Agreement including after final determination of all adjustments, that the Company would have been required to make on account of such Units Sold in the Beneficiary State had it been a Participating Manufacturer under the Master Settlement Agreement (in either case the difference being referred to herein as the “Excess Amount”), such Excess Amount shall be released and revert back to the Company.

- i. To the extent established, the Escrow Agent shall pay the Excess Amount to the Company upon the joint written instruction of the Company and the Attorney General or the Attorney General’s Designee of the applicable Beneficiary State as set forth in Section 13 or upon entry of a final binding, non-appealable order of a court of competent jurisdiction handling such matter after any appeal or any right of appeal has been exhausted.
- ii. 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.

3. To the extent not released from escrow under sub-paragraphs 1 or 2 above, funds shall be released from escrow and revert back to the Company twenty-five (25) years after the original date on which they were placed into escrow. At least forty-five (45) days before the proposed date of release of such funds, the Escrow Agent shall notify the applicable Beneficiary State in writing of the amount of QEF Principal proposed to be

released from its QEF Sub-Account and provide bank records showing the date(s) on which such funds were deposited in the applicable QEF Sub-Account and the age of such deposits sought to be released under this provision.

4. Other conditions as specified in a Beneficiary State's NPM Statute.

H. When the Company has made the first deposit into a QEF Sub-Account, the Escrow Agent shall notify the Attorney General of the applicable Beneficiary State that the QEF Sub-Account has been established and provide to the Beneficiary State a copy of this Escrow Agreement, a copy of any instructions from the Company regarding investment of QEF Principal, and the amount of the deposit made for the Beneficiary State. Thereafter, monthly, quarterly or as otherwise requested by the applicable Beneficiary State and, if no request is made, annually by April 30 of each year, the Escrow Agent shall provide to each applicable Beneficiary State:

1. Any new instructions from the Company regarding investment of the QEF Principal, and
2. Bank statements for each Beneficiary State's QEF Sub-Account showing:
 - i. the amount of deposits and withdrawals made by the Company, including the identity of the payor(s) or payee(s), the date(s), transaction description, and dollar amount(s) of any deposits or withdrawals,
 - ii. the amount of QEF Principal attributable to each Sales Year,
 - iii. the manner in which all QEF Principal in the QEF Sub-Account is invested including the Face Value, Cost Basis, and market value of each investment, a description of each investment, its date of purchase by the Company, and its maturity date, if applicable,
 - iv. totals for the Face Value, Cost Basis, and market value of all cash and investments of QEF Principal in each QEF Sub-Account, and
 - v. the QEF Accumulated Principal for each QEF Sub-Account.

I. All amounts credited to a QEF Sub-Account, except for interest or other appreciation on the funds, which shall be payable to the Company as provided herein, shall be retained in such

QEF Sub-Account until disbursed therefrom in accordance with the provisions of this Escrow Agreement.

J. Notwithstanding anything to the contrary contained herein, the Escrow Agent shall not be authorized to make distributions of QEF Principal in payment of Released Claims owed to any Beneficiary State (or the Releasing Party located or residing in such Beneficiary State) other than from the QEF Principal deposited in the QEF Sub-Account held for such Beneficiary State. The Escrow Agent and the Company are prohibited from: (1) exercising set-off, recoupment, or any other claim or right against any of the QEF Principal escrowed pursuant to this Escrow Agreement, or (2) accessing or allowing the Company to access the QEF Sub-Account of one Beneficiary State to remove or transfer QEF Principal to the QEF Sub-Account of another Beneficiary State without the written consent of the Company and the Attorneys General of all Beneficiary States involved in the request for transfer of funds; provided however, that nothing contained herein shall prohibit the release or transfer of any funds from the Company's interest account to another account upon written direction of the Company.

K. If the Company intends to sell, assign, convey, gift, or transfer in any manner any of the Company's rights to the funds in the QEF Account or the earning thereon (including without limitation, the right to interest or other appreciation on QEF Principal, or the right to receive QEF Principal as permitted under the NPM Statute) to any person or entity, the Company shall send notification, including the name and complete address to whom such sale, assignment, conveyance, gift, or transfer is being made, in writing to all Beneficiary States with QEF Sub-Accounts no less than forty-five (45) days in advance of such transaction. The Company acknowledges that a change in ownership and control over any of its rights or interests under this Escrow Agreement cannot be completed or acknowledged by the Escrow Agent until after the Escrow Agent shall have received all necessary U.S. Patriot Act compliance information and completed a satisfactory regulatory compliance review. The Company further acknowledges that a gift or transfer of its rights does not constitute an assignment of its responsibilities hereunder, and that any sale or assignment of its rights and obligations hereunder shall first satisfy all legal

obligations of the Company under this Escrow Agreement and any applicable federal or state laws or regulations.

L. The Escrow Agent shall notify all applicable Beneficiary States: (i) if there is a change in the ownership or control of the QEF Account or any of its QEF Sub-Accounts, (ii) if any action is taken against the funds in the QEF Account or any of its QEF Sub-Accounts, including without limitation, forfeiture, garnishment, liens or assignment. Notice shall be provided in writing and shall be provided as soon as possible, but in no event later than seven (7) calendar days after the event has occurred.

SECTION 4. Failure of Escrow Agent to Receive Instructions.

Except as to responses or objections to notice of a request for payment on any Released Claim, which shall be governed by subsection 3.G.1 above, in the event that the Escrow Agent fails to receive any written instructions contemplated by this Escrow Agreement, the Escrow Agent shall refrain from taking any action required to be taken under any section of this Escrow Agreement pursuant to written instructions until such written instructions are received by the Escrow Agent. In so refraining, the Escrow Agent shall be fully protected from any liability arising out of its inaction.

SECTION 5. Investment of QEF Principal by the Escrow Agent.

The Escrow Agent shall invest QEF Principal only in Permitted Investments; provided however, that at all times (i) the aggregate Face Value of such Permitted Investments in each QEF Sub-Account, and (ii) the aggregate Cost Basis of such Permitted Investments in each QEF Sub-Account shall both be equal to or greater than the QEF Accumulated Principal in each QEF Sub-Account. Consistent with Section 3.F herein, the Escrow Agent shall not pay interest or other appreciation on QEF Principal to the Company: (i) if doing so will cause the aggregate Face Value or the aggregate Cost Basis of the Permitted Investments in any QEF Sub-Account to drop below its QEF Accumulated Principal amount or (ii) if the aggregate Face Value or the aggregate Cost Basis of the Permitted Investments in any QEF Sub-Account is below its QEF Accumulated

Principal amount. The Escrow Agent shall retain interest or other appreciation on QEF Principal until the deficit in the aggregate Face Value and/or the aggregate Cost Basis has been cured and shall not be permitted to set-off the Escrow Agent's fees, costs and expenses from such interest or other appreciation until the deficit is cured. To the greatest extent practicable, Permitted Investments shall be administered in such a manner that QEF Principal will be available in cash for use at the times when QEF Principal is expected to be disbursed by the Escrow Agent from the QEF Account pursuant to the applicable NPM Statute. In choosing among the Permitted Investments for the QEF Accumulated Principal, the Escrow Agent may follow any written instructions received from time to time from the Company if mutually agreed upon by Escrow Agent and Company, so long as such instructions are not contrary to the Permitted Investment limitations set forth herein. In the absence of such written instructions or mutual agreement on such instructions, the Escrow Agent shall maintain the QEF Principal in cash, shares of a Money Market Fund, or United States Treasury Securities maturing within one year of the date of purchase.

If the Company has pre-existing investments that are not Permitted Investments under this Escrow Agreement, but were permitted under the prior escrow agreement, the Company may continue to own these specific investments until they mature or are sold by the Company; provided, however, that the aggregate Face Value in each QEF Sub-Account and the aggregate Cost Basis in each QEF Sub-Account shall both be equal to or greater than the QEF Accumulated Principal in each QEF Sub-Account, as required in Section 5 herein.

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 ensure that the Company deposits the proper amount in or for any given year.

SECTION 7. Indemnification of Escrow Agent.

The Company shall indemnify, hold harmless and defend the Escrow Agent from and against any and all losses, claims, liabilities, and reasonable expenses, including the reasonable fees of its counsel, specifically including in-house counsel fees, which it may suffer or incur in connection with the performance of its duties and obligations under this Escrow Agreement and including any action taken under Section 19 hereof, except for those losses, claims, liabilities and expenses resulting solely and directly from its own gross negligence, willful misconduct, or unlawful act or omission. The Escrow Agent may seek the advice of counsel at any time, and such reasonable attorney fees shall be in addition to the administrative fees charged by the Escrow Agent for serving as Escrow Agent. The Escrow Agent may charge such costs against the interest which accrues on the QEF Principal if not otherwise paid by the Company, but the QEF Principal in any or all of the QEF Sub-Accounts shall not be charged, used as an offset, or otherwise encumbered by the Escrow Agent or the Company.

SECTION 8. Resignation or Removal of Escrow Agent.

The Escrow Agent may resign at any time by giving the Company and all of the Attorneys General of the Beneficiary States covered by this Escrow Agreement ninety (90) days prior written notice of such intention. The Company may remove the Escrow Agent, as such, by giving the Escrow Agent and all of the Attorneys General of the Beneficiary States covered by this Escrow Agreement ninety (90) days prior written notice of such removal. When an Escrow Agent resigns or is removed, the Company shall execute a new Escrow Agreement with the new Escrow Agent. Upon the effective date of its resignation or removal, the Escrow Agent shall deliver the escrow funds held hereunder only to such successor escrow agent directed by the written instructions of the Company, and shall provide written notice of the delivery of the escrow funds in the QEF Account to all of the Attorneys General of the Beneficiary States covered by this Escrow

Agreement. Following receipt of the escrow funds, the new Escrow Agent shall immediately provide to all of the Attorneys General of the Beneficiary States covered by this Escrow Agreement that information required by Section 3.H of the Escrow Agreement. After the effective date of its resignation or removal, the Escrow Agent shall have no duty with respect to the escrow funds except to hold such property in safekeeping and to deliver same to its successor or as is directed in writing by the Company. If no successor Escrow Agent has been 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 of such action to the Company and all of the Attorneys General of the Beneficiary States.

In addition, the court to which funds in the QEF Account have been tendered may order such funds held by the State Treasurer of the underlying Beneficiary State if consented to by that Beneficiary State.

SECTION 9. Escrow Agent Fees and Expenses.

The Company shall pay the Escrow Agent its reasonable fees and expenses, including all reasonable expenses, charges, counsel fees, and other disbursements incurred by it or by its attorneys, agents and employees in the performance of its duties and obligations under this Escrow Agreement. Subject to the limitation found in Section 5 herein, fees, costs and expenses may be paid from interest or other appreciation earned on funds held in the QEF Account, but the QEF Principal in all QEF Sub-Accounts shall not be charged, used as an offset or otherwise encumbered by the Escrow Agent or the Company.

SECTION 10. Intended Beneficiaries; Successors.

No persons or entities other than the Beneficiary States and the Releasing Parties located or residing within them are intended beneficiaries of this Escrow Agreement, and only the Beneficiary States, the Releasing Parties, the Company and the Escrow Agent shall be entitled to

enforce the terms of this Escrow Agreement. The provisions of this Escrow Agreement shall be binding upon and inure to the benefit of the undersigned parties hereto and their respective successors.

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 Statute 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 electronic mail 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:

If to the Escrow Agent:

If to the Beneficiary State(s), to the Attorney General Offices of all Beneficiary States as shown on Attachment A to the Escrow Agreement and incorporated herein by reference:

If the Company or the Escrow Agent changes its address for notices required by the Escrow Agreement, that entity shall immediately notify the other undersigned party and the Beneficiary States of that change. Written notice required by this Escrow Agreement shall be deemed sufficient and adequate if sent to the last known address of the Company, Escrow Agent, or the applicable Beneficiary State(s) in the manner provided under this section.

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 QEF 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 be or

construed as a waiver by any other party. The Escrow Agent or the Company shall provide a copy of each amendment to the Escrow Agreement within forty-five (45) days of its execution to all Beneficiary States.

SECTION 16. Counterparts.

This Escrow Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument. Delivery by electronic mail of a signed counterpart shall be deemed delivery for purposes of acknowledging acceptance hereof.

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 the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all parties have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjudged and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. In addition

to the foregoing remedies, the Escrow Agent is hereby authorized in the event of any such disagreement, to petition any state court of competent jurisdiction located in the capital city of the applicable Beneficiary State, or such other city as may be agreed to in writing by the applicable Beneficiary State, for instructions or to interplead the funds or assets so held into such court. The undersigned parties agree to the jurisdiction of either of said courts over their persons, waive personal service of process, and agree that service of process by certified or registered mail, return receipt requested, to the address set forth in Section 13 shall 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 the most recently published Form W-9 (or W-8 for a foreign entity) as authorized by the U.S. Internal Revenue Service (“IRS”). If the Company does not have such a number, a statement properly completed by it and expressly authorized by the IRS 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.

COMPANY:

By: _____

Title: _____

Date: _____

ESCROW AGENT:

By: _____

Title: _____

Date: _____