

**AGREEMENT BETWEEN**

**JTI-MACDONALD CORP.**

**(“JTI”)**

**- and -**

**THE COMMISSIONER OF COMPETITION**

**(“Commissioner”)**

**WHEREAS** the Commissioner is responsible for the administration and enforcement of the *Competition Act*, R.S.C. 1985, c. C-34 (the “*Act*”);

**AND WHEREAS** JTI is engaged throughout Canada in the manufacture and distribution of cigarettes and other tobacco products (“Tobacco Products” as defined in Appendix “A”) for sale to the public, using the descriptors “light” and “mild” and variants thereof, such as, but not limited to, “extra light”, “ultra light”, “extra mild” and “ultra mild” (“L/M Descriptors”);

**AND WHEREAS** the Commissioner commenced an Inquiry pursuant to s. 10 of the *Act* with respect to the use of L/M Descriptors in regard to Tobacco Products in Canada;

**AND WHEREAS** during the course of the Inquiry the Commissioner has requested that JTI discontinue use of L/M Descriptors in connection with Tobacco Products sold in Canada;

**AND WHEREAS** Health Canada has begun the process of introducing regulations to require discontinuance of L/M Descriptors;

**AND WHEREAS** in these circumstances JTI is prepared to cooperate with the Commissioner’s request.

**NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:**

**1. Application of this Agreement**

- 1.1 The provisions of this Agreement are subject to the definitions set forth in Appendix “A.”
- 1.2 The provisions of this Agreement shall apply to JTI and each of its Subsidiaries and Affiliates which are engaged in the sale or distribution of Tobacco Products in Canada.
- 1.3 Nothing in this Agreement is intended to modify JTI’s obligations under the *Tobacco Act*.

## **2. Cessation of Use of the L/M Descriptors**

- 2.1 Commencing no later than December 31, 2006, JTI will initiate the process of discontinuing the manufacturing and packaging of Tobacco Products for sale in Canada using L/M Descriptors according to a schedule for their discontinuance agreed upon between the Parties. A list of JTI's Tobacco Products covered by this Agreement is contained in Appendix "B". JTI agrees that by no later than April 30, 2007, it will discontinue manufacturing and packaging Tobacco Products for sale in Canada using L/M Descriptors on no less than 80 percent of its total production of such products for sale in Canada. Within 10 days of the date of this Agreement, and in accordance with the above requirement, JTI will provide to the Commissioner a schedule on either a brand family/category basis or a brand-by-brand basis for each product covered by this Agreement, setting out the date by which it will cease use of the L/M descriptors on those products. JTI shall cease use of L/M descriptors on all Tobacco Products for sale in Canada no later than July 31, 2007. The schedule to be provided by JTI pursuant to this clause shall form part of this Agreement.
- 2.2 Subject to the limitations of the *Tobacco Act* and the other terms of this Agreement, JTI may provide information to persons involved in the manufacture, packaging, distribution or sale of Tobacco Products and to members of the public in Canada which explains the changes to the packaging arising out of the obligations in this Agreement.

## **3. Sale of Existing Stock**

- 3.1 Nothing in this Agreement shall prevent JTI from selling or distributing any Tobacco Products in Canada bearing L/M Descriptors provided that such products were manufactured and packaged in the ordinary course by JTI before the dates set out in the schedule to be provided by JTI pursuant to clause 2.1 of this Agreement.

## **4. Public Notice**

- 4.1 JTI shall publish at its own expense a Public Notice. The Public Notice will be published in accordance with the arrangements agreed to by the Commissioner and JTI as set out in Appendix "C".
- 4.2 All information or documents obtained by the Commissioner during the Inquiry that are not already in the public domain will remain confidential except: (a) as required by law or (b) as required to enforce the *Act* or this Agreement. The Commissioner shall provide 10 days' notice of her intention to disclose any information or documents pursuant to the exceptions set out herein.

## **5. Other Manufacturers and Distributors**

- 5.1 The Commissioner shall use reasonable best efforts to obtain from other manufacturers and/or distributors in Canada of Tobacco Products, comparable commitments to discontinue their use of L/M Descriptors not later than December, 2007.

## 6. General

- 6.1 This Agreement is entered into without any admission of liability on the part of JTI, its Subsidiaries or Affiliates, or any admission that it has engaged in any conduct which is in contravention of the *Act* including, without limitation, s.52(1) thereof, or any conduct which could form the basis for the issuance of any Order by the Competition Tribunal under any of the civil reviewable provisions of the *Act* including, without limitation, s. 74.01(1) thereof.
- 6.2 This Agreement does not constitute a finding of fact or law on any issue as against JTI, its Subsidiaries or Affiliates and shall not be read or construed as constituting, directly or indirectly, a finding of fact or law against JTI, its Subsidiaries or Affiliates on any issue in any Court, administrative tribunal, or in any proceeding. This Agreement shall not be read or construed as an agreement between JTI and the Commissioner on any issue of fact or law, other than the matters that are expressly agreed to in this Agreement.
- 6.3 Nothing in this Agreement shall be taken, directly or indirectly, as any kind of admission of any kind by JTI, its Subsidiaries or Affiliates now or in the future, nor shall it constitute a waiver of any rights or defences available to JTI, its Subsidiaries or Affiliates in any civil or penal proceeding at common law or Quebec civil law or under the *Act* or any other laws of Canada or a province, or otherwise.
- 6.4 Nothing in this Agreement constitutes an admission or acceptance of jurisdiction of the Competition Tribunal by JTI nor does this Agreement constitute a waiver of JTI's right to contest the applicability of the *Act* or the jurisdiction of the Commissioner to commence proceedings pursuant to the provisions of the *Act*.
- 6.5 This Agreement is entered into by JTI solely for the purpose of voluntarily cooperating with a request by the Commissioner to discontinue the use of L/M Descriptors and in anticipation of regulatory changes under the *Tobacco Act*.
- 6.6 This Agreement resolves all outstanding issues between the Commissioner and JTI, its Subsidiaries and Affiliates and its or their respective directors and officers in respect of the Commissioner's Inquiry into its use of L/M descriptors. Provided that JTI carries out its obligations under this Agreement, the Commissioner will not commence any proceedings in respect of the subject of this Inquiry against JTI, its Subsidiaries or Affiliates and its or their respective directors and officers.
- 6.7 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 6.8 This Agreement may be executed in counterpart and by facsimile and each such counterpart shall constitute an original and all of which taken together shall constitute one and the same instrument, dated as of the date set forth below.

## **7. Modification or Default**

- 7.1 If JTI believes that some modification of this Agreement is justified due to changed circumstances, JTI and the Commissioner agree to engage in good faith efforts to resolve the matter.
- 7.2 In the event of any dispute between the Parties as to the interpretation or application of this Agreement, including a dispute as to whether there has been a default in the performance of any of the obligations in this Agreement, the Parties agree to first engage in good faith efforts to resolve such dispute, before taking any other steps to resolve the dispute. In the event that JTI does not cease use of the L/M descriptors in accordance with clause 2.1 of this Agreement, or does not publish the Public Notice in accordance with clause 4.1 of this Agreement, the Commissioner may deliver a notice of default to JTI. JTI shall have 30 days to remedy any default. If the default has not been remedied during such 30 day period the Commissioner may, following the expiry of the 30 day period, file this Agreement with The Competition Tribunal for registration as a Consent Agreement between the Commissioner and JTI, pursuant to 74.12 of the *Act*. Without prejudice to JTI's right to assert any defences or arguments preserved by clause 6.4 of this Agreement, JTI consents to the registration of this Agreement as a Consent Agreement in such case and to the filing of the signed consent form which is attached as Appendix "D".

## **8. Term of this Agreement**

- 8.1 This Agreement shall remain in force from the date of its signing until such time as regulations pursuant to the *Tobacco Act* come into force prohibiting the use of L/M Descriptors in regard to Tobacco Products, and/or their packaging, whereupon this Agreement will terminate automatically, save and except the obligations set out in clause 4.2 of the Agreement which shall remain in full force and effect upon such termination.

## **9. Notice**

- 9.1 Any notice required to be given pursuant to any terms of this Agreement is valid if given by facsimile transmission or registered mail to:

**a. The Commissioner:**

Sheridan Scott  
Commissioner of Competition  
Competition Bureau Canada  
Place du Portage, Phase I,  
50 Victoria Street  
Gatineau, Quebec K1A 0C9

Telephone: 819-997-5300  
Facsimile: 819-953-5013

With copies to:

Jim Marshall  
Senior Counsel  
Competition Law Division  
Justice Canada  
Place du Portage, Phase I,  
50 Victoria Street  
Gatineau, Quebec K1A 0C9  
Telephone: 819-997-2834  
Facsimile: 819-953-9267

**b. JTI:**

Bruno Duguay  
2455 Ontario Street East  
Montreal, Quebec H2K 1W3  
Telephone: 514-598-2534  
Facsimile: 514-598-5688

With copies to:

Robert Russell  
Borden Ladner Gervais LLP  
40 King Street West  
Toronto, Ontario M5H 3Y4  
Telephone: 416-367-6000  
Facsimile: 416-367-6749

Dated at Gatineau, Quebec, this \_\_\_\_\_ day of November, 2006.

---

Sheridan Scott  
Commissioner of Competition

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of November, 2006.

---

Michel Poirier  
President and CEO  
JTI-Macdonald Corp.

---

Bruno Duguay  
Vice-President, General Counsel and Secretary  
JTI-Macdonald Corp.

## Appendix “A”

### Definitions

In accordance with Clause 1.1 of this Agreement, the following definitions shall apply:

- A. “Affiliate” shall have the meaning ascribed to it in subsection 2(2) of the *Act*;
- B. “Agreement” means this Agreement as entered into by JTI and the Commissioner;
- C. “Brand Name” means word(s) used by JTI to identify its products to consumers and includes, but is not limited to, trademark names of cigarettes and any words forming part of such trademark names;
- D. “Commissioner” means the Commissioner of Competition, appointed pursuant to section 7 of the *Act*, and authorized representatives of the Commissioner;
- E. “Descriptors” means the words used by JTI, either alone or in combination with each other, on its Tobacco Products to distinguish products sold under the same trademark or brand name;
- F. “JTI” means JTI-Macdonald Corp., a company incorporated under the laws of Nova Scotia, carrying on business under the name JTI-Macdonald Corp.;
- G. “L/M Descriptors” means the Descriptors “light” and “mild”, and combinations and variants thereof including “extra light”, “ultra light”, “extra mild” and “ultra mild” and any other combination of words that include the words “mild” or “light”;
- H. “Parties” means the Commissioner and JTI;
- I. “Person” includes a partnership, firm, corporation, association, trust, unincorporated organization, or other entity;
- J. “Subsidiary” shall have the meaning ascribed to it in subsection 2(3) of the *Act*.
- K. “Tobacco Products” means cigarettes and fine cut tobacco currently distributed in Canada by JTI;

## Appendix “B”

### JTI Brand Names

In accordance with Clause 2.1 of this Agreement, the following JTI Brand Names are covered by this Agreement:

<b><u>Cigarette Products</u></b>	
Camel Light	Studio Extra Light
Export ‘A’ Extra Light	Studio Light
Export ‘A’ Light	Vantage Light
Export ‘A’ Mild	Vantage Ultra Light
Export ‘A’ Special Light	Winston Light
Export ‘A’ Ultra Light	Winston Light 100’s
Legend Light	
Macdonald Menthol Light	
Macdonald Select Ultra Mild	
Macdonald Special Light	
Macdonald Special Extra Light	

<b><u>Fine Cut Products</u></b>	
Export ‘A’ Light Premium	Export ‘A’ Special Light 50% More
Export ‘A’ Light 50% More	Export ‘A’ Special Light 100% More
Export ‘A’ Light 100% More	

## Appendix “C”

### Public Notice

In accordance with Clause 4.1 of this Agreement, JTI’s Public Notice will read as follows:

**NOTICE BY JTI-MACDONALD CORP.**  
**RE: “LIGHT” AND “MILD” CIGARETTES**

At the request of the Commissioner of Competition, JTI-Macdonald Corp. has voluntarily agreed to discontinue the manufacture and packaging of tobacco products for sale in Canada using the descriptors "light" and "mild", or variants of these descriptors. JTI-Macdonald Corp. has agreed to accelerate removal of these descriptors from its tobacco products in advance of planned regulations requiring their removal, and to discontinue use of the descriptors, commencing no later than December 31, 2006, and ending no later than July 31, 2007.

JTI will publish the Public Notice on three occasions. The Public Notice will be published in the Wednesday and/or Saturday editions of the following newspapers. On the first occasion of publication, the Public Notice will be a one-sixth page format. On the second and third occasions of publication, the Public Notice will be a one-eighth page format. JTI may arrange the schedule for publication with another company or companies required to publish a similar notice provided that the initial publication of the Public Notice will be no later than 10 days following signing of this Agreement; that the Public Notice will be published on consecutive Wednesdays and Saturdays. In the event a newspaper does not publish on Saturday, the Public Notice will be published in the next edition of that newspaper.

National Post	Globe & Mail
Toronto Star	Ottawa Citizen
Montreal La Presse (Fr)	Montreal Gazette
Quebec Le Soleil (Fr)	Saint John Telegraph Journal
Halifax Chronicle Herald	St. John's Telegram
Vancouver Province	The Charlottetown Guardian
Calgary Herald	Whitehorse Star
Regina Leader Post	The News of the North, Yellowknife
Winnipeg Free Press	

**Appendix “D”**

**Consent Form**

To: The Competition Tribunal

1. In accordance with the terms of the Agreement dated \_\_\_\_\_, 2006, the Commissioner of Competition and JTI-Macdonald Corp. (“JTI”) consent to the filing of said Agreement with the Competition Tribunal for immediate registration as a consent agreement between the Commissioner of Competition and JTI pursuant to s. 74.12 of the *Competition Act*.
2. The name and address of the persons in respect of whom the consent agreement is made are:

Commissioner of Competition  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

JTI-Macdonald Corp.  
2455 Ontario Street East  
Montreal, Quebec  
H2K 1W3

Per: \_\_\_\_\_  
Sheridan Scott  
Commissioner of Competition

Per: \_\_\_\_\_  
Michel Poirier  
President and CEO  
JTI-Macdonald Corp.

Per: \_\_\_\_\_  
Bruno Duguay  
Vice-President, General Counsel and Secretary  
JTI-Macdonald Corp.