

ROTHMANS, BENSON & HEDGES INC.

-and-

ROTHMANS INC.

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

-and-

**THE PROVINCES LISTED ON THE SIGNATURE PAGES ATTACHED
HERETO**

COMPREHENSIVE AGREEMENT

as of July 31, 2008

This Agreement made as of the 31st day of July, 2008,

BETWEEN:

Rothmans, Benson & Hedges Inc. (“**RBH**”)

- and -

Rothmans Inc. (“**RI**”)

- and -

Her Majesty the Queen in Right of Canada as represented by the Minister of Revenue and the Minister of Justice (“**Canada**”)

- and -

Each Province listed on the signature pages attached hereto (the “**Provinces**”)

RECITALS

In consideration of the mutual covenants herein and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, and without any admission of liability herein, the Parties agree to: (a) settle and finally resolve all Released Claims against the Released Entities pursuant to the terms of this Agreement; and (b) address the Parties’ shared objective of combating the manufacture, sale, distribution, transport and storage of illicit and contraband tobacco products in Canada, as follows.

DEFINITIONS

1. The following definitions apply in this Agreement:

“**Affiliate**” means, with respect to any Entity, any other Entity directly or indirectly (including through intervening Affiliates) controlling, controlled by, or under common control with, such other Entity. For the purposes of this definition, “control”, when used with respect to any Entity, includes the power to choose a majority of the Board of Directors and the terms “controlling” and “controlled” have meanings correlative to the foregoing. For avoidance of doubt, “Affiliate” shall not include Japan Tobacco Inc., R.J. Reynolds Tobacco Holdings, Inc.,

JTI Macdonald Corp. or any of their respective Affiliates (with the exception of Lane Limited and then only to the extent and during the period in which Lane Limited was an Affiliate of Rothmans, Benson & Hedges Inc. and for greater certainty this exception shall not apply during any period in which Lane Limited was or is an Affiliate of, or related in any way to, R.J. Reynolds Tobacco Holdings, Inc. or any of its Affiliates) or any of the current parties to the Actions or the CTMC.

“**Claim Over**” means any Released Claim which the Releasing Entities may bring against any Entity, other than a Released Entity, or any claim made by the Releasing Entities in the Actions that results in a claim made against the Released Entities in the Actions.

“**CTMC**” means the Canadian Tobacco Manufacturers’ Council.

“**Entity**” means an individual, corporation, partnership, limited liability company, association or organization and includes Governments.

“**Governments**” means Canada and the Provinces.

“**Net Sales Revenue**” shall mean the annual sales revenue from tobacco products and related accessories sold by RBH net of discounts or rebates, if any, minus an amount equal to any federal excise duty or taxes and provincial product or service taxes paid to the Governments on those tobacco products and related accessories, each of the aforementioned which, for calculation purposes throughout the term of this Agreement, shall be consistently applied and determined in accordance with the existing 2008 Canadian Generally Accepted Accounting Principles (“GAAP”). For greater certainty, RBH’s Net Sales Revenues for the fiscal year ending March 31, 2008 was Cdn. \$670,594,000.00 based on 2008 GAAP.

“**Parties**” means RBH, RI and the Governments.

“**Payments**” means the amounts payable pursuant to paragraphs 5 and 6 of this Agreement.

“**Philip Morris**” means Philip Morris USA, Inc., Philip Morris International, Inc. and Altria Group, Inc. and each of their Affiliates.

“**Released Claims**” means (excepting only the obligations under this Agreement); all manner of civil, administrative and regulatory proceedings, actions, causes of action, suits, duties, debts,

dues, accounts, bonds, covenants, contracts, complaints, claims, charges, and demands of whatsoever nature for damages, liabilities, monies, losses, indemnity, restitution, disgorgement, forfeiture, punitive damages, penalties, fines, interest, taxes, assessments, duties, remittances, costs, legal fees and disbursements, expenses, interest in loss, or injuries howsoever arising, known or unknown, including without limitation any claims arising at common law or in equity, by any federal or provincial statute or regulation and including all civil claims that may be allowable to the Releasing Entities within criminal or other proceedings in the form of restitution, disgorgement, forfeiture, punitive damages, penalties, fines or interest or otherwise, which hereto may have been or may hereafter arise in any way relating to, arising out of or in connection with:

- (a) any exportation transshipment or shipment out of Canada, smuggling, re-importation or transshipment into Canada or any of the provinces thereof of tobacco products manufactured, distributed or sold by the Released Entities (including aiding or participating in such activities), smuggling or any conduct in any way relating to smuggling, contraband tobacco products, the exportation, re-importation, transshipment or shipment of tobacco products manufactured, distributed or sold by Released Entities that were otherwise contraband, during the Relevant Period;
- (b) any failure by the Released Entities to pay taxes, duties, excise, customs or excise taxes or duties or other amounts payable on account of smuggled and/or re-imported and/or transhipped (including inter-provincial transshipments) and/or otherwise contraband tobacco products manufactured, distributed, sold by the Released Entities and/or sold, delivered or consumed in Canada, or any expenditures relating to enforcing or recovering any such tax, duty, excise or other amounts alleged to be payable, or any failure to file a return, form, account or any other required documentation in respect of such amounts (including aiding or participating in such activities) in relation to the Relevant Period; and
- (c) any after-the-fact conduct including any oral or written statements, representations or omissions related to the matters referred to in (a) and/or (b)

whether during the Relevant Period or afterward or during the negotiation of this Agreement.

- (d) For avoidance of doubt, Released Claims shall not include any claims
- (1) whether already commenced or that may be commenced, related to the recovery of alleged health care costs, unless such claims arise from (a), (b) or (c) above. This paragraph is not intended to limit the ability of a Releasing Entity to claim, in any health care cost recovery litigation, damages on an aggregated basis based on the actual incidence of smoking. For greater certainty, this Agreement does not limit the Releasing Entities' ability to introduce and rely on evidence of smoking incidence, even if such incidence may arise out of or is related to (a), (b) or (c) above, and a Released Entity shall not raise as a defence or lead any evidence that the actual incidence of smoking or the health care costs caused or contributed to by smoking should be reduced by reason of (a), (b) or (c) above;
 - (2) in proceedings bearing Court File Nos. 04-CL-5530 and 03-CV-253858 CM1, in the Ontario Superior Court of Justice (the "Actions"). For the avoidance of doubt, this exclusion shall not include any claims made against the Released Entities; or
 - (3) against the CTMC.

"Released Entities" means RBH, RI, Philip Morris, and each of their current and former Affiliates and each and any of their respective divisions, predecessors, successors and assigns and direct and indirect subsidiaries, as well as each and all of their respective current and former officers, directors, agents, servants and employees, including external legal counsel, and all of their respective heirs, executors and assigns. For avoidance of doubt, "Released Entities" shall not include Japan Tobacco Inc., R.J. Reynolds Tobacco Holdings, Inc., JTI Macdonald Corp. or any of their respective Affiliates (with the exception of Lane Limited and then only to the extent and during the period in which Lane Limited was an Affiliate of Rothmans, Benson & Hedges

Inc. and for greater certainty this exception shall not apply during any period in which Lane Limited was or is an Affiliate of, or related in any way to, R.J. Reynolds Tobacco Holdings, Inc. or any of its Affiliates) or any of the current parties to the Actions or the CTMC.

“**Releasing Entities**” means Her Majesty in Right of Canada and in Right of the Provinces and includes for greater certainty the Canada Revenue Agency and the Canada Border Services Agency.

“**Relevant Period**” means the period between January 1, 1985 and December 31, 1996, inclusive.

REPRESENTATIONS AND WARRANTIES

2. Each of RBH and RI represent and warrant that:

- (a) the terms of this Agreement are fair and reasonable;
- (b) the execution of this Agreement has been expressly authorized in the case of RI, by its Board of Directors and, in the case of RBH, by a unanimous resolution of its shareholders ;
- (c) it has obtained any and all approvals or authorizations required to enter into, execute and deliver this Agreement, to carry out its obligations hereunder, and for this Agreement to be binding upon it;
- (d) this Agreement has been duly executed and delivered by it and constitutes a legally binding obligation of it enforceable against it in accordance with its terms; and
- (e) it is not a party to any agreement, contract or understanding with any other party (other than an Affiliate) pursuant to which there are contributions, indemnities or other arrangements affecting its obligations hereunder.

3. Each of the Governments warrants and represents that:

- (a) the terms of this Agreement are in the public interest and are fair and reasonable;

- (b) it has obtained any and all approvals or authorizations required to enter into, execute and deliver this Agreement, to carry out its obligations hereunder, and for this Agreement to be binding upon it;
- (c) this Agreement has been duly executed and delivered by the Government and constitutes a legally binding obligation of that Government as a Releasing Entity that is enforceable against it in accordance with its terms; and
- (d) it has not assigned to any Entity any interest, in whole or in part, in the Released Claims.

4. Each of the Parties acknowledges that these representations and warranties are intended to be and will be relied upon and shall survive this Agreement and the Payments and continue in full force and effect for the benefit of the Parties.

PAYMENTS

5. In recognition and support of the Governments' past and continuing efforts to combat contraband and other illicit tobacco products, including the recently announced Contraband Tobacco Enforcement Strategy, which targets contraband or illicit tobacco products manufactured for sale in Canada by persons who do not pay applicable Canadian taxes, RBH agrees to make a payment of CDN \$50 million to Canada for Canada, and on behalf of and as agent for the Provinces, by December 15, 2008.

6. In consideration of the agreements, undertakings and obligations of the Releasing Entities under this Agreement, and otherwise subject to the terms of this Agreement, RBH and RI shall pay to Canada, for Canada and on behalf of and as agent for the Provinces, as civil restitution, the Payments scheduled to total \$400 million over ten years as provided below in Canadian dollars:

- (a) RBH shall pay \$50 million by December 31, 2008;
- (b) by December 31 of each calendar year from and including 2009 through 2018, RI shall pay \$20 million each year; and

- (c) by April 30 of each calendar year beginning in 2010, an amount calculated as 4.32% of RBH's Net Sales Revenue for the then most recent completed calendar year less any amount paid to Canada in respect of that most recent completed year pursuant to sub-paragraph 6(b) above (i.e. \$20 million, if paid) which, for greater certainty, will be calculated as $(4.32\% \times \text{Net Sales Revenue} - \$20 \text{ million})$, and continuing until the earlier of: (1) such payments under this paragraph 6(c) totalling \$150 million in the aggregate have been made; or (2) April 30, 2019, at which point these payments shall cease and RBH shall have no obligation to make any further payment under this Agreement. For example, and for illustrative purposes only, if RBH's Net Sales Revenue for the calendar year ending December 31, 2009 was \$700 million, the Payment to be made by RBH before April 30, 2010 pursuant to this sub-paragraph c) would be \$10.24 million ($\$700 \text{ million} \times 4.32\%$, less \$20 million).

7. For each calendar year, RBH shall calculate its Net Sales Revenue and so advise Canada in writing by February 15th of the next year, and (beginning in fiscal 2010) shall pay the annual amounts owing pursuant to this Agreement on or before April 30th of that year.

8. Without prejudice to any other rights or remedies as provided in paragraphs 16, 17, 18, 19 and 20 of this Agreement, in the event that monetary liabilities (including all fees, expenses and disbursements on a full indemnity scale) are incurred by Released Entities in any way relating to, arising out of or in connection with any Released Claims or Claims Over made by a Releasing Entity or an Entity claiming through or on behalf of a Releasing Entity (and for the avoidance of doubt including such Government's crown-controlled corporations or crown agencies (a "Responsible Government")), the amount of the Payment due in the fiscal year in which the monetary liabilities are incurred, and Payments due in subsequent fiscal years, shall be reduced by such amounts incurred. Upon learning of the existence of any claim, action, suit, or proceeding that could give rise to such liabilities, RBH and RI may, upon giving 30 days notice to the Responsible Government, begin paying any funds which are then or thereafter due into an interest-bearing escrow account, up to the amount claimed in such claim, action, suit, or proceeding pending its resolution. The amount by which the Payments shall be so reduced or escrowed shall not exceed the then-remaining Responsible Government's share of the Payments (as set out in Schedule B hereto).

9. The Parties agree that any overdue Payments shall bear interest at the interest rate prescribed under Part XLIII of the *Income Tax Act Regulations* for the period of default. The Parties further agree that each Payment shall be deemed to be a liquidated and fixed amount on the date it is due.

10. RBH and RI each agrees and acknowledges that the Payments shall not be tax deductible to it. Each of RBH and RI further represents, warrants and confirms that this determination is firm and binding as of the date of this Agreement, that it waives any rights of objection or appeal with respect to the tax deductibility of the Payments and that no Government (or the Canada Revenue Agency) has offered or provided any assurances, rulings or agreements with respect to income taxes, which income taxes shall be calculated and remitted in the ordinary course.

11. Accompanying each Payment provided for in paragraph 6(c), RBH shall provide to Canada for Canada, and as agent for and on behalf of the Provinces a certificate from its external auditor and signed also by its Chief Financial Officer confirming that RBH has calculated Net Sales Revenue in accordance with the terms of the Agreement and shall remit promptly upon request such other materials as may be reasonably required by Canada for Canada, and as agent for and on behalf of the Provinces to verify Net Sales Revenue.

12. RBH shall also provide to Canada for Canada, and as agent for and on behalf of the Provinces each year within sixty days of its fiscal year end a certificate signed by its Chief Financial Officer confirming RBH's forecast or estimate based on its operating plan of Net Sales Revenue for the then current year which shall be maintained on a strictly confidential basis by the Governments.

13. RBH acknowledges and agrees that, acting reasonably, CRA may inspect, audit and examine RBH's books and records and review and utilize income tax returns, assessments and any other relevant information lawfully possessed by CRA for the purpose of verifying RBH's Net Sales Revenue.

14. RBH covenants and agrees that:

- (a) it will not conduct its business and operations in a manner so as to deliberately frustrate the objectives of this Agreement; and

- (b) it will take, with respect to existing trademarks and other assets, no action outside of the ordinary course of business which will cause a direct material adverse change to Net Sales Revenue unless RBH remedies any negative impact to the Payments within 30 days of such action. For greater certainty and the avoidance of doubt, a material adverse change to Net Sales Revenue shall include any change that has the effect of reducing Net Sales Revenue by a factor of 5% or more when compared to Net Sales Revenue for fiscal 2008. Any material adverse change to Net Sales Revenue shall be remedied by RBH calculating the proportionate contribution to Net Sales Revenue of the trademark or other assets that is the subject or cause of the material adverse change, for each of the two preceding years, averaging the proportionate contributions of such trademark or other assets to the Payment in each of the two preceding years, and then adding to the post-material adverse change Net Sales Revenue such averaged amount. For avoidance of doubt, it is the intention of the Parties by so doing that Net Sales Revenue shall continue to be calculated as if the material adverse change had not occurred.

TOBACCO COMPLIANCE MEASURES PROTOCOL

15. The Parties agree to the terms of the Tobacco Compliance Measures Protocol set out in Schedule A, which are aimed at assisting the Governments in combating the current trade in illicit and contraband tobacco products and which recognize that RBH is playing an active role in developing solutions that see all tobacco manufacturers and retailers competing fairly under the laws and regulations established by Government. The Parties shall perform the obligations and duties set out in Schedule A and for greater certainty, RBH shall perform the obligations of Participant as defined therein. The Parties acknowledge that there is no suggestion that RBH or any of the Released Entities have participated in any currently on-going trade of illicit or contraband tobacco products. The Parties further agree, for avoidance of doubt, that Schedule A and the terms thereof form part of this Agreement.

RELEASE

16. The Releasing Entities hereby, without any further action on the part of such Releasing Entities, absolutely and unconditionally fully release and forever discharge, the

Released Entities from the Released Claims. Without in any way limiting the generality of the foregoing, the Releasing Entities further agree that:

- (a) in the event that a proceeding, claim, action, suit or complaint with respect to a Released Claim is brought by Releasing Entity against a Released Entity, this release may be pleaded as a complete defence and reply, and may be relied upon in such a proceeding as a complete estoppel to dismiss the said proceeding; and
- (b) in the event of (a), the Releasing Entity that initiated the proceeding shall be liable for all reasonable costs, legal fees, disbursements and expenses incurred by the Released Entity as a result of such proceeding.

17. The Releasing Entities agree that they will not, in any Claim Over, attempt to recover on a judgment or enforce a judgment for any quantum of liability of any Released Entity, including on a joint or several basis.

18. If any Releasing Entity makes any Claim Over, and any Released Entity (a "**Claimed Over Released Entity**") is added to or required to respond to such Claim Over as a party thereto (for avoidance of doubt including as a third or subsequent party thereto), the Releasing Entity asserting the Claim Over (the "**Claiming Over Releasing Entity**") will be liable to all such Claimed Over Released Entities for all reasonable costs, legal fees, disbursements and expenses incurred, and for all damages, costs, penalties, fines or interest awarded, as a result of the Claim Over, on a full indemnity scale.

19. The Released Entities shall not incur any quantum of liability to the Releasing Persons in any manner whatsoever for the conduct or omission of the CTMC or any other member thereof during the Relevant Period relating to the Released Claims or the subject matter of the Actions.

20. RBH, RI and subsidiaries or other Released Entities which they or either of them controls or from whom either has authorization, hereby and without any further action on the part of any of them, absolutely and unconditionally fully releases and forever discharges the Releasing Entities including the Governments, and for the avoidance of doubt including crown-controlled corporations and crown agencies and each of them, together with ministers, employees, agents, and the heirs, executors, successors and assigns of each as applicable, from

any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims, demands which RBH, RI and subsidiaries or other Released Entities which they or either of them controls or from whom either has authorization, ever had, now has, or may hereafter have against any Releasing Entity or Government in any way relating to, arising out of or in connection with the Released Claims (excepting only the obligations under this Agreement) including but not limited to the investigation, prosecution, enforcement and/or collection by any Government of the applicable taxes, duties and/or tariffs relating to the Released Claims during the Relevant Period and further agrees that if they make any Claim Over paragraphs 17 and 18 herein shall apply *mutatis mutandis*. This release shall not be operative in any proceeding in which a Released Claim is made (or a Claim Over results in a Released Claim being made) against RBH, RI or subsidiaries or other Released Entities which they or either of them controls or from whom either has authorization, by a Releasing Entity or by an Entity claiming through or on behalf of a Releasing Entity, including the Governments and for avoidance of doubt such Governments' crown-controlled corporations or crown agencies.

USE OF AGREEMENT

21. The Parties acknowledge that this Agreement once executed may be public.
22. The Releasing Entities shall be estopped from relying upon this Agreement, any plea made, any statement of fact submitted or any conviction recorded in any criminal proceeding related hereto in any civil, administrative or regulatory proceeding whatsoever as evidence against any Released Entity of any liability or violation of any law.
23. The Releasing Entities acknowledge and agree that nothing contained in this Agreement, or any plea made, any statement of fact submitted or any conviction recorded in any related contemporaneous criminal proceeding shall constitute an admission by any Released Entity that it has committed a tobacco related wrong within the meaning of any provincial or federal legislation providing for recovery of health care benefits or costs as such legislation may now or in the future read.
24. No application for or renewal of a licence, right or permit under tobacco control or taxation legislation shall be denied and no such existing licence, right or permit shall

be suspended or cancelled by reason of the entering into of this Agreement, or by any plea made, any statement of fact submitted or any conviction recorded in any criminal proceeding related hereto.

25. In the event that any of the Releasing Entities or their representatives are subpoenaed or otherwise compelled by law to give evidence with respect to this Agreement or the Released Claims, such Releasing Entity shall provide notice forthwith to all other Parties.

COSTS

26. Each Party shall bear its own legal and other costs to date, including the costs of proceedings, disputes, negotiations, and inspections incurred which relate to the subject matter of the Agreement, as well as any costs incidental to the negotiation and execution of this Agreement.

INVALIDITY/SEVERABILITY AND LEGALITY

27. If any provision of this Agreement shall be held to be illegal or unenforceable, whether in whole or in part, the validity and enforceability of the remainder of the Agreement, or its validity and enforceability as against other Parties, shall not be affected save and except that the Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the greatest extent possible, the intent and purpose of such void or unenforceable provision.

COUNTERPARTS

28. This Agreement may be executed in counterparts and such counterparts, taken together, shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or electronic mail, with originals to follow shall be deemed to be originals and accepted as such.

SUCCESSION AND ASSIGNMENT

29. This Agreement shall be binding upon the Parties and shall inure for the benefit of the Releasing Entities and the Released Entities and their legal representatives, successors and assigns.

MODIFICATION, WAIVER AND PERFORMANCE

30. This Agreement may be modified, waived or amended only by the written agreement of authorized representatives of the Parties affected by such modification, waiver or amendment.
31. The Parties agree to take such further acts and steps, and execute and deliver such further documents, as may be reasonably required to implement and/or give effect to this Agreement and its terms.

GOVERNING LAW

32. This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein.

ARBITRATION AND DISPUTE RESOLUTION

33. It is the intention of the Parties to settle consensually, by negotiation or agreement, any disputes with respect to performance, procedure and management arising out of this Agreement.
34. Any notice of a dispute shall be delivered by RBH, RI or Canada (as the case may be) to the other in writing and shall be dealt with in the first instance for Canada by the Director General, Excise and GST/HST Rulings Directorate, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency and for RBH by the Executive Vice President, Legal and Regulatory Affairs or equivalent, and for RI by the Executive Vice President or equivalent, who shall promptly discuss and attempt to resolve the dispute.
35. Any dispute between the Parties to this Agreement arising out of or relating to this Agreement or any breach, clarification, or enforcement of any provision of this Agreement or any conduct contemplated herein, that remains unresolved 90 days after the date of the notice of dispute, may be referred to arbitration in accordance with the *Commercial Arbitration Code* (the "**Code**"), being a schedule to the *Commercial Arbitration Act* R.S.C. 1985, c. 17 (2nd Supp.). Arbitrations shall be with a sole arbitrator. The Parties will select a mutually agreeable arbitrator within 30 days of the delivery of the notice of dispute who shall

serve as arbitrator in respect of any disputes hereunder, unless and until he or she becomes unable or unfit to act as arbitrator (in which case the Parties shall immediately appoint a successor arbitrator within 30 days). If the Parties are unable to agree on the arbitrator, he or she shall be appointed, upon request of a Party, by the court or other authority specified in article 6 of the Code.

36. The arbitrator shall have all of the jurisdiction of a Superior Court judge of a province to grant both legal and equitable remedies. The arbitrator may abridge any time limit herein for the referral of the dispute to arbitration, in his or her discretion, in the event of urgency.

37. The arbitration proceedings shall be conducted in Ottawa, unless otherwise agreed by the Parties to the dispute. Consistent with relevant law, and any applicable law governing disclosure obligations, the arbitration proceedings shall be confidential to the extent possible, and the Parties shall not disclose the nature or scope of the proceedings, or any information obtained in or arising out of the proceedings, to any third party. No amicus curiae or "friend of the court" briefs may be filed in the proceedings. The arbitrator shall provide the rules of the proceedings and shall issue a written opinion stating the reasons for the relief granted. The Parties agree that the orders, decisions, and awards of the arbitrator shall be exclusively enforceable in the Federal Court, and any action to compel arbitration shall be commenced in the Federal Court.

CONFIDENTIAL NATURE OF DISCUSSIONS

38. The Parties agree that all discussions and negotiations related to or associated with this Agreement have been conducted on a strictly confidential basis and that the Governments have each insisted that, prior to this Agreement becoming effective, no disclosure of the existence of such negotiations or discussions be made.

NOTICE AND PAYMENTS:

39. All notices under this Agreement shall be made as follows:

(a) **to Rothmans Benson & Hedges Inc. at:**

1500 Don Mills Road

Toronto, Ontario M3B 3L1

Attention: Executive Vice President Regulatory and Legal Affairs
Facsimile #: 416.448.9601

With a copy (which shall not constitute notice to RBH) to:

Gowling, Lafleur, Henderson LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Attention: Dean Blain
Facsimile #: 416.369.7250

(b) **to Rothmans Inc. at:**

1500 Don Mills Road
Toronto, Ontario M3B 3L1

Attention: Executive Vice President
Facsimile #: 416.448.9601

With a copy (which shall not constitute notice to RI) to:

Gowling, Lafleur, Henderson LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Attention: Dean Blain
Facsimile #: 416.369.7250

(c) **to Canada at:**

Office of the Assistant Commissioner - Assistant Commissioner - Sous-
Commissaire, Legislative Policy & Regulatory Affairs Branch -

Direction générale de la politique législative et des affaires
Réglementaires
Canada Revenue Agency - Agence du revenu du Canada
320 Queen Street
Ottawa, Ontario
K1A 1G1
Facsimile #: (613) 957-2067

With copies (which shall not constitute notice to Canada or the Governments)
to:

Assistant Deputy Attorney General
The Department of Justice, Tax Law Branch
234 Wellington Street, East Tower, 8th Floor
Ottawa, Ontario
K1A 0H8

40. All payments shall be made payable to the Receiver General for Canada at any Canada Revenue Agency location.

OFFICIAL LANGUAGES

41. Both versions of this Agreement in the official languages are equally binding, enforceable and authentic.

EXECUTION

IN WITNESS WHEREOF this Agreement has been executed by the authorized representatives with effect from the date specified on the first page of this Agreement.

ROTHMANS BENSON & HEDGES INC.

Per:

Name:

Title:

Per:

Name:

Title:

ROTHMANS INC.

Per:

Name:

Title:

Per:

Name:

Title:

**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA**

Per:

Name:

Title:

Per:

Name:

Title:

Additional Signature Pages:

The Minister of _____ of the Province of _____ hereby executes this
Comprehensive Agreement on behalf of the Province of _____ ;

This Agreement constitutes a valid and binding agreement of the Province of _____
and is enforceable in accordance with its terms.

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF**

Per:

Name:

Title:

Schedule A

TOBACCO COMPLIANCE MEASURES PROTOCOL

SCHEDULE "A"
TO THE COMPREHENSIVE AGREEMENT

TOBACCO COMPLIANCE MEASURES PROTOCOL

as of July 31, 2008

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TOBACCO COMPLIANCE MEASURES PROTOCOL

PART 1 – RECITATIONS

- 1.1 Recognizing the role of enhanced smuggling enforcement as a means to achieve a reduction of the Contraband market, the federal, provincial and territorial governments committed substantial resources to their anti-smuggling efforts. Historically, these efforts made a significant positive contribution to the capacity of Governments to combat smuggling. The Protocol is intended to further those continuing efforts.
- 1.2 The Contraband market is complex and continually evolving. Canada's current situation presents challenges that are unique within the global environment. Further, the subject of the Contraband market is far-reaching and usually involves the cooperation of several partner Government organizations, each contributing unique expertise in their respective jurisdictions. To tackle the growing Contraband market, the Royal Canadian Mounted Police has developed the *Contraband Tobacco Enforcement Strategy* (CTES), as a major step in a strategically driven process. The CTES recognizes that the legitimate industry, including both manufacturers and retailers, has been playing and is looking to continue to play an active role in developing solutions that allow tobacco manufacturers and retailers to compete fairly under the Applicable Laws. The CTES recognizes that the Contraband market impacts all Canadians.
- 1.3 The Participant recognizes the Governments' continuing efforts in combating the Contraband market and recognizes that these efforts have required, and will continue to require, expenditure of substantial public funds and manpower. The Participant therefore has agreed to provide reasonable assistance, both direct and indirect, to the Governments including a payment of \$50 million as part of the payments under the Agreement, in recognition and support of these efforts.
- 1.4 The Protocol further builds on the initiatives and efforts of both the Governments and the Participant to combat the Contraband market. The Governments are committed to combating the serious issue of the Contraband market and will continue to work diligently to maintain and enhance compliance with Applicable Laws. The Participant will continue to cooperate with the Governments in their efforts to fight against the Contraband market. The Protocol is an expression of the cooperation between the Governments and the Participant working towards that common objective.

PART 2 – DEFINITIONS

2.1 The definitions in Article 2.1 apply to the *Tobacco Compliance Measures Protocol*. The definitions, as used herein, have the following meanings:

“**Affiliate**” means with respect to any Entity, any other Entity directly controlling, controlled by, or under common control with, such Entity. For purposes of this definition, “control”, when used with respect to any Entity, means the power to choose a majority of the board of directors and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agreement**” means the *Comprehensive Agreement* to which the Protocol is annexed.

“**Applicable Laws**” means laws and regulations of Canada, including federal, provincial and territorial, as applicable in the circumstances.

“**Applicable Taxes**” means Taxes that are required to be paid according to all Applicable Laws.

“**Applicant**” means an Entity, who if approved in accordance with Appendix 2, *Know Your Customer*, would be an Approved Contractor.

“**Approved Contractor**” means an Entity who stores, ships, distributes, imports, exports or purchases the Participant’s Tobacco Products and is approved by the Participant in accordance with the process set out in Appendix 2, *Know Your Customer*.

“**Blocked Contractor**” means an Approved Contractor whose business relationship with the Participant has been terminated pursuant to Article 2.7 of Appendix 2, *Know Your Customer*.

“**Contraband**” means not in compliance with any Act of Parliament or of the legislature of a province or territory respecting the taxation of or tax-related controls on tobacco or any regulations made under it.

“**CRA**” means the Canada Revenue Agency.

“**Designated Government Official**” means an official of a Government who is acting within its mandate in relation to the taxation of or tax-related controls on Tobacco Products.

“**Designated Volume**” means a volume of the Participant’s Tobacco Products in a calendar year in excess of:

- 1000 Master Cases of cigarettes;
- 10,000 kg of Tobacco Products, other than cigarettes; or
- an equivalent combination of the above.

“**Director of Compliance**” means the person as set out in Appendix 3, *Director of Compliance*.

“Due Diligence” means a commercially reasonable investigation conducted by the Participant of an Applicant relating to the storage, shipment, distribution, importation, exportation, or purchase of the Participant’s Tobacco Products as set out in Appendix 2, *Know Your Customer*.

“Entity” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

“Facility” means a place of business located inside of Canada where the Participant’s Tobacco Products are manufactured.

“First Purchaser” means an Approved Contractor who purchases the Designated Volume of the Participant’s Tobacco Products.

“Foreign Facility” means a place of business located outside of Canada where the Participant’s Tobacco Products intended for the Canadian market are manufactured.

“Governments” means the federal and provincial governments of Canada, as applicable.

“Intended Market of Retail Sale” means, to the extent known, the geographic market in which the Participant intends the Participant’s Tobacco Products to be sold in the domestic, foreign, duty-free and Tax-Relieved Sale markets.

“Master Case” means a case containing 10,000 cigarettes of the same stock keeping unit (SKU).

“Money Laundering” means the process used to disguise the source of money or assets derived from criminal activity.

“Participant” means Rothmans, Benson & Hedges Inc.

“Protocol” means this *Tobacco Compliance Measures Protocol* and its appendices.

“Protocol Administrator” means the Director, Excise Duties and Taxes Division, Canada Revenue Agency.

“Reasonable Quantities” means in excess of:

- 50,000 cigarettes;
- 50 kg of Tobacco Products, other than cigarettes; or
- an equivalent combination of the above.

“Retail Demand” means the estimated or actual demand for the Participant’s Tobacco Products in an Intended Market of Retail Sale.

“Seizure” means a seizure of Reasonable Quantities of suspected Contraband Tobacco Products from an Entity (or in certain specific instances, multiple Entities if shown to be acting in concert with one another), in a single location (or in certain specific instances, multiple locations in close

proximity if shown to be part of the same scheme), at a single point in time (or in certain specific instances, multiple points in time in close proximity if shown to be part of the same scheme).

“Subsequent Purchaser” means any Entity who, in a calendar year, purchases from a First Purchaser more than:

- 1000 Master Cases of cigarettes;
- 10,000 kg of Tobacco Products, other than cigarettes; or
- an equivalent combination of the above,

of the Participant’s Tobacco Products.

“Supplemental Payment” means a payment to be made by the Participant in accordance with the Protocol, and is equal to the sum of all Applicable Taxes that were not paid but were otherwise due and payable at the time of the Seizure. For the avoidance of doubt “at the time of the Seizure” includes up to the time of Seizure but not any subsequent or anticipated transactions or sales.

“Tax” means any tax, duty, special duty, levy or charge, imposed on the manufacture, production, distribution, purchase or sale of Tobacco Products where that tax is imposed under an Act of Parliament or of the legislature of a province or territory specifically respecting the taxation of or tax-related controls on Tobacco Products or any regulations made under it.

“Tax-Relieved Sale” means the sale of a tobacco product in Canada where:

- (a) the Taxes imposed on the sale under an Act of the legislature of a province or territory are expressed to be exempted under an Act of Parliament; and
- (b) the Taxes imposed under Part IX of the *Excise Tax Act* are expressed to be exempted under an Act of Parliament.

“Tobacco Products” means any product that is manufactured in whole or in part from raw leaf tobacco by any process.

PART 3 – ADMINISTRATION AND APPLICATION OF THE PROTOCOL

- 3.1 As noted in the Agreement, the Participant and Governments agree to the terms of the Protocol.
- 3.2 The Protocol Administrator shall act as an intermediary on behalf of the Governments for the administration and application of the Protocol, including having carriage of all actions under Part 6, *Arbitration*.
- 3.3 The Protocol Administrator will confer with the applicable Governments concerning the Seizure of Tobacco Products bearing a brand that is under the control of the Participant.
- 3.4 A Designated Government Official, when requesting information under the Protocol, shall submit its request in writing, with reference to the relevant provision(s) in the Protocol on which it is based, to the Protocol Administrator.
 - (a) The Protocol Administrator may forward the request to the Participant's Director of Compliance with reference to the relevant provision(s) in the Protocol on which it is based.
 - (b) The Director of Compliance will respond directly to the Protocol Administrator.
 - (c) The Protocol Administrator will forward a copy of the Director of Compliance's response to the Designated Government Official.
- 3.5 The Protocol Administrator may, subject to Applicable Laws and Part 5 of the Protocol, disclose information obtained under this Protocol (including personal information) to the Governments for the purposes of the Protocol. Where information can be so disclosed, the Protocol Administrator will forward to the Governments information that the Participant is required to provide as detailed under specific Articles of the Protocol.
- 3.6 The Governments will meet annually with the Protocol Administrator to discuss issues and concerns with the Protocol including the Participant's compliance with the Protocol.
- 3.7 The Governments and the Participant will meet annually to review the success of efforts under the Protocol, exchange information, discuss additional measures relating to emerging issues in the Contraband market, including illegal manufacturers located in Canada or in other countries, and make any changes to the Protocol, as agreed to by the Governments and the Participant, for its ongoing administration.

PART 4 – TOBACCO COMPLIANCE AND ANTI-CONTRABAND MEASURES

- 4.1 The Protocol is applicable to Tobacco Products under the control of the Participant including Tobacco Products manufactured in Canada by the Participant, imported into Canada by the Participant, distributed in Canada by the Participant, exported from Canada by the Participant or sold in Canada by the Participant. These Tobacco Products are described as the Participant's Tobacco Products.

- 4.2 The Participant confirms its ongoing commitment and obligation to comply with all Applicable Laws in connection with the Governments' efforts to combat Contraband Tobacco Products.
- 4.3 The Governments recognize that the Participant has existing initiatives such as the measures set out in Appendix 1, *Existing Tobacco Control Initiatives*.
- 4.4 The Participant will implement and maintain a monitoring system to identify and keep an inventory of its tobacco manufacturing equipment. The monitoring system will include details of manufacturing equipment acquisitions, as well as dispositions, leases, rentals and transport, including identification of Entities involved in these transactions and activities.
- 4.5 The Participant will implement changes to the Tobacco Products stamping regime, including the application of a dual federal stamp and provincial tear tape marking system, if and as required under Applicable Laws.
- 4.6 The Participant agrees, to the extent permissible under all Applicable Laws and the Protocol using commercially reasonable efforts, to implement policies and practices to establish a more comprehensive compliance regime directed toward anti-contraband, anti-fraud, anti-smuggling and anti-tax evasion measures, as follows:
- (a) Implement the compliance program set out in Appendix 2, *Know Your Customer*.
 - (b) Maintain a system that will enable it to abide by its obligations with respect to reporting on Tax-Relieved Sales as set out in Appendix 2, *Know Your Customer*.
 - (c) Implement the program set out in Appendix 3, *Director of Compliance*.
 - (d) Design training programs for the Participant's employees whose activities involve the storage, shipment, distribution, importation, exportation or sale of Tobacco Products and the establishment of policies and business practices relating thereto, designed to educate and inform them about their compliance obligations under the Protocol.
 - (e) Facilitate a Designated Government Official's inspection of a Foreign Facility as set out in Appendix 4, *Foreign Facility*.
 - (f) Provide information to the Protocol Administrator, in response to reasonable requests submitted in accordance with the Protocol, as follows:
 - (i) Information obtained in the ordinary course of the Participant's business concerning Retail Demand;
 - (ii) Information relating to the storage, shipment, distribution, importation, exportation or sale of the Participant's Tobacco Products; and

- (iii) Other information required to be submitted by the Participant under the Protocol.
- (g) Consult, as requested, with the Protocol Administrator (who will already have conferred with the applicable Governments) on the Seizure of Tobacco Products bearing a brand that is under the control of the Participant as follows:
- (i) The Protocol Administrator may choose not to consult with the Participant concerning the seized Tobacco Products; in which case the Tobacco Products in question will be deemed not to be the Participant's Tobacco Products for the purpose of the Protocol.
 - (ii) The Protocol Administrator and the Participant may consult to determine whether or not the seized Tobacco Products are the Participant's Tobacco Products. The consultation process will include providing the Participant with the opportunity to examine and test the seized Tobacco Products within 180 days from the date of Seizure; otherwise such Tobacco Products will be deemed not to be the Participant's Tobacco Products for the purpose of the Protocol.
 - (A) If the Tobacco Products are determined by the Protocol Administrator to be counterfeit, the Participant shall provide commercially reasonable assistance to the Governments in their investigation of such counterfeit Tobacco Products.
 - (B) If the Tobacco Products are determined by the Participant and the Protocol Administrator to be the Participant's Tobacco Products, the Participant shall provide to the Protocol Administrator any information reasonably available to the Participant concerning:
 - (I) the place and date of manufacture of the Tobacco Products;
 - (II) the date of shipment from the place of manufacture and the intended destination(s) of the Tobacco Products;
 - (III) the means and route of transportation from the place of manufacture to the destination(s) of the Tobacco Products;
 - (IV) the date(s) of the intended and actual arrival(s) of the Tobacco Products;
 - (V) the name of the purchaser(s) of the Tobacco Products; and
 - (VI) copies of invoice(s) for the relevant transaction(s) and any related payment records of the Tobacco Products.

- (iii) Where suspected Contraband Tobacco Products are seized in less than Reasonable Quantities, the obligations in subparagraph (ii) shall apply as agreed to by the Participant and the Protocol Administrator on a case by case basis.
- (h) Make a Supplemental Payment where a Seizure of the Participant's Tobacco Products has been made and the Protocol Administrator requests the Supplemental Payment within 1 year from the date of the Seizure, subject to the following:
 - (i) The Governments and the Participant agree that the Supplemental Payment is an additional compliance measure under the terms of the Protocol.
 - (ii) Where the Protocol Administrator requests a Supplemental Payment, the Protocol Administrator shall provide the Participant with information concerning the Seizure as necessary to confirm whether a Supplemental Payment is owing and the appropriate quantum of same. The Protocol Administrator, in response to reasonable requests by the Participant, will provide additional information for purposes of the reconsideration of, or objection to, the Supplemental Payment.
 - (iii) No Supplemental Payment shall be payable where:
 - (A) the Participant suspects thefts or other Contraband activities and provides specific information which results in a Seizure;
 - (B) the Seizure is in respect of Tobacco Products that can be determined to have been a prior Tax Relieved Sale, other than to a federal, provincial or territorial government or diplomat; or
 - (C) the seized Tobacco Products had been stolen by a third party.
 - (iv) The Governments and the Participant agree that a Supplemental Payment will not include any applicable provincial Taxes in respect of a Seizure of the Participant's Tobacco Products that are products on which all of the applicable provincial Taxes have been paid in the intended provincial jurisdiction of taxable sale.
 - (v) The Participant shall make a Supplemental Payment at the direction of the Protocol Administrator. A Supplemental Payment shall be paid to each Government to which Applicable Taxes were payable but unpaid at the time of the Seizure. Where a Supplemental Payment amount is reduced under Article 4.6(h)(vi), the Supplemental Payment shall be allocated in the same proportion as the unpaid Taxes applicable to each Government.
 - (vi) The Participant may request that the Protocol Administrator reconsider and/or vary the amount of a Supplemental Payment.

- (vii) The Participant may object to and the Protocol Administrator shall cancel a Supplemental Payment when it is demonstrated that the Participant is in substantial compliance with the Protocol as it relates to the Tobacco Products seized.

PART 5 – PROVISION OF INFORMATION

- 5.1 The Governments, through the Protocol Administrator, shall advise the Participant of any concerns with or deficiencies in any information provided by the Participant under the Protocol within 60 days of it being provided.
- 5.2 The Governments recognize that some or all of the information to be provided by the Participant under the Protocol is personal or confidential information of a commercial, financial, scientific or technical nature which is not publicly available. Any such personal or confidential information shall be identified as such by the Participant. The Governments acknowledge that such information is being provided to the Governments in confidence and on the understanding that such information will continue to be held in confidence by the Governments and will not be publicly disclosed, unless required by law. The Governments undertake to protect the confidentiality of such information under the *Access to Information Act*, R.S.C. 1985, c. A-1, the *Privacy Act*, R.S.C. 1985, c. P-21, and any other relevant Applicable Laws.
- 5.3 Nothing in the Protocol requires the Participant to disclose information which it is otherwise prohibited from disclosing by law or contract or which is privileged.
- 5.4 Where information that is within the scope of the Protocol is confidential information from third parties and the Protocol Administrator requests such information under the Protocol, the Participant shall take commercially reasonable steps to obtain the consent of those third parties to disclose that information to the Protocol Administrator. The Participant will notify the Protocol Administrator of the identity of any third party (other than individuals) who refuses to provide such consent. For greater certainty, the Participant shall not be required to produce information for which consent has not been obtained. The Participant will further take commercially reasonable steps to allow it to provide such information in compliance with all applicable data protection and privacy laws, including obtaining consents in accordance with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and similar provincial laws as applicable. For greater certainty, the Participant shall not be required to produce confidential information for which consent to disclose is required and has not been obtained.
- 5.5 Any and all information provided by the Participant to the Governments under the Protocol shall be solely used for the purposes underlying the Protocol.

5.6 Notwithstanding Article 5.5, the CRA may use and disclose the information provided by the Participant to the Protocol Administrator under the Protocol if the information could have been obtained by the CRA under an Act of Parliament administered by the CRA. In such case, the information may be used and disclosed only to the extent permitted by such Act of Parliament and its regulations, including disclosure to the Governments where permitted by such Act of Parliament and its regulations. Any such further disclosure shall only be used in accordance with Applicable Laws.

PART 6 – ARBITRATION

- 6.1 It is the intention of the Governments and the Participant to settle consensually, by negotiation and agreement, any dispute arising out of the Protocol. Without prejudice to the arbitration provisions, notice of a dispute shall be provided by the Participant or the Governments in writing and shall be dealt with in the first instance by the Director General, Excise and GST/HST Rulings Directorate, Legislative Policy and Regulatory Affairs Branch, Canada Revenue Agency, and the Participant's Vice President, Law, who shall discuss and attempt to resolve the dispute.
- 6.2 Subject to Article 3.2, any dispute between the Governments and the Participant arising out of or relating to the Protocol or to any breach, clarification, or enforcement of any provision of the Protocol or any conduct contemplated herein that remains unresolved 90 days after the date of written notice, may be referred to arbitration in accordance with the Agreement, except where the subject matter of a dispute is governed by the *Access to Information Act*, R.S.C. 1985, c. A-1, the *Privacy Act*, R.S.C. 1985, c. P-21, or other similar Applicable Laws.
- 6.3 Any unresolved dispute under the Protocol shall be determined in accordance with the arbitration provisions contained in the Agreement.

PART 7 – MISCELLANEOUS

- 7.1 The Protocol shall terminate upon the day of the last payment under the Agreement except for the obligation to respond to requests by the Protocol Administrator in respect of Article 2.8 of Appendix 2, *Know Your Customer*, which shall remain in force for an additional five years.
- 7.2 The Governments recognize the benefits and value of a compliance regime which includes features or measures such as those found in the Protocol. In addition, if the Governments reach an agreement with any federally licensed tobacco manufacturer providing a compliance protocol more favourable to the manufacturer than those provided herein, they agree to amend the Protocol to provide like terms to the Participant.
- 7.3 Nothing in the Protocol diminishes, limits or derogates from the Governments' powers or responsibilities under Applicable Laws. For greater certainty, Governments retain the ability to investigate, audit, inquire or otherwise obtain information in accordance with their own Applicable Laws, even if such information could be obtained pursuant to the terms of this Protocol. Similarly, the Participant retains the right to challenge all Applicable Laws.

APPENDIX 1 – EXISTING TOBACCO CONTROL INITIATIVES

1.1 Packages, Cartons & Cases of Tobacco Products

(a) Intended Market of Retail Sale

- (i) The Participant is making commercially reasonable efforts to place identifiers on packages, cartons and/or cases of the Participant's Tobacco Products that permit a determination of the Intended Market of Retail Sale.
- (ii) Within 90 days of the execution date of the Agreement, the Participant shall provide the Protocol Administrator with the information required to allow the Governments to understand the identifiers referred to in Article 1.1(a)(i) of this Appendix, for all the Participant's Tobacco Products. The Participant shall update such information as needed.
- (iii) The Participant may change the identifiers on the packages, cartons and/or cases at any time so long as the new identifiers would permit a determination of the Intended Market of Retail Sale of such packages, cartons and/or cases. The Participant shall provide notice of such new identifiers to the Protocol Administrator prior to the introduction of any of the Participant's Tobacco Products bearing such new identifiers into the Intended Market of Retail Sale or immediately upon the Participant becoming aware that any of the Participant's Tobacco Products bearing such new identifiers are otherwise no longer under the control of the Participant.

(b) Manufacturing Information

The Participant is making commercially reasonable efforts to place identifiers on packages, cartons and/or cases of the Participant's Tobacco Products, as applicable to that product, which permit a complete identification of:

- (i) the date of manufacture of the product,
- (ii) the Facility at which the product was manufactured,
- (iii) the machine of manufacture, and
- (iv) the production shift or time of day during which the product was packaged.

For the purposes of Article 1.1(b), commercially reasonable efforts shall be determined taking into consideration, among other things, the place where the Tobacco Products have been manufactured and the nature and volume of the Tobacco Products being manufactured.

(c) Master Cases of Cigarettes

In addition to the Articles 1.1(a) and (b), the Participant will use commercially reasonable efforts to implement as soon as practicable after the execution of the Agreement the following:

- (i) that Master Cases of the Participant's cigarettes have unique, machine-scannable barcode identifiers affixed to the Master Cases with "non-peelable" adhesive prior to selling those Master Cases to the First Purchaser.
- (ii) that the machine-scannable barcode identifiers on Master Cases of the Participant's cigarettes permit a determination of the manufacturing information:
 - (A) the date of manufacture of the product,
 - (B) the Facility at which the product was manufactured,
 - (C) the machine of manufacture, and
 - (D) the production shift or time of day during which the product was packaged.
- (iii) that labels on the Master Cases permit the identification of the First Purchaser using a human readable label or a barcode accompanied by a human readable translation.

- 1.2 In the event that the Participant acquires a new facility, be it a Facility or a Foreign Facility, the Participant shall make commercially reasonable efforts to implement the requirements of this Appendix no later than 12 months after the acquisition.
- 1.3 The Participant is making commercially reasonable due diligence efforts in connection with the Participant's business and requires all purchasers of the Participant's Tobacco Products from the Participant to provide information regarding their identity and financial circumstances. The Participant shall not be required to provide such information under the Protocol unless otherwise obliged by the Protocol.
- 1.4 Nothing in this Appendix will derogate from the obligations of the Participant under Applicable Laws.

APPENDIX 2 - KNOW YOUR CUSTOMER

2.1 Anti-Money Laundering

- (a) The Participant will not submit any invoice to any Entity that does not reflect the actual price at which the Tobacco Products were sold to that Entity.
- (b) The Participant will only accept the following forms of payment for its Tobacco Products:
 - (i) cheque, wire transfer or other form of electronic transfer, which must indicate that the payor is the purchasing Entity or its Affiliate;
 - (ii) cashier's cheque or bank draft issued by a financial institution in the country in which the Entity is located or in Canada; or
 - (iii) cash, but only where the nature and scale of an Entity's business are such that it is not commercially feasible for an Entity to use the forms of payment specified in Articles 2.1(b) (i) and (ii).

Exceptions to the above requirements may be made on a case-by-case basis where approved in writing by the Participant's Chief Financial Officer and where the reasons for granting any exception shall be documented. Such exceptions shall be reported to the Protocol Administrator.

- (c) The Participant will report receipt of all cash payments in a single transaction of \$10,000 CDN or more for the Participant's Tobacco Products to the Protocol Administrator.

2.2 Conducting Business with Approved Contractors

- (a) Effective 30 days after the execution date of the Agreement in respect of any new Entity and, as soon as reasonably practicable but no later than two years after the execution date of the Agreement in respect of Entities with whom the Participant has an existing business relationship, if the Participant's dealing with such Entity (an "Applicant") involves:
 - (i) a volume of the Participant's Tobacco Products stored, shipped, distributed, imported, exported or purchased by such Applicant which is expected to be a Designated Volume; or
 - (ii) a Designated Volume of the Participant's Tobacco Products which was stored, shipped, distributed, imported, exported or purchased by such Applicant in the preceding year or in the current calendar year,

then such Applicant must be qualified as an Approved Contractor in accordance with this Appendix.

- (b) Where the Participant conducts business with an Approved Contractor who is a First Purchaser, it shall use commercially reasonable efforts to sell its Tobacco Products to that First Purchaser in amounts that are reasonably commensurate with Retail Demand in the First Purchaser's intended market of retail sale, as determined by the Participant based on information it obtains in the ordinary course of business regarding historic sales and any relevant changes in circumstances. The Participant will refuse to sell its Tobacco Products to a First Purchaser in volumes materially exceeding this amount.

2.3 Due Diligence for Approved Contractors

- (a) Prior to approving an Applicant as an Approved Contractor (including, for avoidance of doubt, a First Purchaser), the Participant shall undertake Due Diligence with respect to that Applicant, in order to satisfy itself that the Applicant is able and committed to honour the objectives and practices set forth in the Protocol to the extent applicable to that Approved Contractor.
- (b) As its Due Diligence, the Participant shall:
 - (i) meet with the Applicant;
 - (ii) visit the Applicant's principal place of operations;
 - (iii) obtain Due Diligence Information from the Applicant (including inquiring of the Applicant whether it is or has been a Blocked Contractor under the Protocol or a similar agreement), and at the Participant's discretion, obtain Due Diligence Information from other lawful sources;
 - (iv) assess the Applicant's ability and commitment to comply with the objectives and procedures of the Protocol to the extent applicable to it;
 - (v) assess the Applicant's ability and commitment to implement its own programs consistent with this Appendix and for the Applicant to require the same of its wholesale Tobacco Products customers, if any; and
 - (vi) create a report documenting the result of the Due Diligence as contemplated by Article 2.3(d).
- (c) "Due Diligence Information" means the following information to the extent that it is reasonably available:
 - (i) Where the Applicant is an individual, information regarding his or her identity, as follows, full legal name, date of birth, trade name, business addresses, business registration number (if any), and applicable tax registration numbers.
 - (ii) Where the Applicant is an Entity other than an individual, information regarding its identity, as follows, full legal name, trade name, business

- addresses, business registration number, applicable tax registration numbers, date and place of incorporation, copies of its Articles of incorporation or equivalent documents, the names of its officers and directors, date of birth of its officers and directors, and the name of any authorized representatives, date of birth of any authorized representatives, and any Affiliates.
- (iii) The number of persons employed by the Applicant at the date of the application.
 - (iv) Any criminal convictions or legal charges related to Tobacco Products against the Applicant and, if applicable, its directors or officers.
 - (v) Where the Applicant is seeking to be a First Purchaser, description of the First Purchaser's intended market of retail sale of the Tobacco Products to be purchased from the Participant, and where the Applicant declares its intention to sell to a Subsequent Purchaser, the identity of the intended Subsequent Purchaser.
 - (vi) Identification of the accounts through which the payments for the Tobacco Products sold to the Applicant shall be made, including but not limited to the name and address of the financial institution, the name and address of the account holder, and the account number and branch, as applicable. In addition to the foregoing information, if the account to be used to pay the Participant belongs to an Affiliate of the Applicant, full disclosure of the precise relationship between such Affiliate and the Applicant is required.
 - (vii) The report created under Article 2.3(b)(vi).
- (d) Following its Due Diligence, the Participant:
- (i) if not satisfied that the Applicant is able and committed to honour the objectives and practices set forth in the Protocol to the extent applicable to it, shall deny the Approved Contractor status; and
 - (ii) if satisfied that the Applicant is able and committed to honour the objectives and practices set forth in the Protocol to the extent applicable to it, shall record that fact and may grant the Applicant Approved Contractor status.
- (e) The Participant shall provide to the Protocol Administrator, every year, a list of all its Approved Contractors. The list will include the full legal name, trade name, business address and business registration number (if any).
- (f) All Approved Contractors who are First Purchasers must be licensed or otherwise authorized to sell the Participant's Tobacco Products as required by Applicable Laws.

- (g) Approved Contractors shall be advised to forthwith communicate to the Participant any material change in the Due Diligence Information provided to the Participant. In addition, annually, the Participant shall review and update information provided by a First Purchaser and shall consider whether, in light of the information, the First Purchaser continues to meet the requirements for being an Approved Contractor.

2.4 Due Diligence for Tax-Relieved Sale

- (a) This Article shall come into force 180 days after the execution of the Agreement.
- (b) Article 2.3 of this Appendix will be applied without reference to Designated Volume to any Entity seeking to purchase Tobacco Products under a Tax-Relieved Sale, other than to a federal, provincial or territorial government or diplomat, from the Participant.
- (c) The Participant will keep a record of all its Tax-Relieved Sales, other than to a federal, provincial or territorial government or diplomat, and will submit a summary of such sales to the Protocol Administrator every six months.

2.5 Approved Contractor Records

The Participant shall maintain records of Approved Contractors for seven years after creation. Subject to all Applicable Laws, these records, whether in hard copy or electronic form, include the following to the extent applicable:

- (a) all commercial documents relating to the Approved Contractor of a material nature to the Protocol, including for example:
 - (i) invoices,
 - (ii) correspondence of a material nature to and from said Approved Contractor,
 - (iii) contracts,
 - (iv) credit analysis,
 - (v) cargo manifests,
 - (vi) declaration to any relevant authorities,
 - (vii) transport documents, and
 - (viii) other shipping documents;
- (b) any and all reports and documents obtained as part of the Due Diligence processes outlined in Articles 2.3 and 2.4 of this Appendix, as applicable;

- (c) all requests by and responses to Governments regarding the Approved Contractor; and
- (d) all records of payments made by First Purchasers for the Participant's Tobacco Products.

2.6 Relations with Approved Contractors

The Participant undertakes to make commercially reasonable efforts, subject to all Applicable Laws and existing contracts, so that its contracts and its trading terms and conditions with Approved Contractors provide for the following, as applicable:

- (a) **Delivery Terms:** That the delivery terms applicable to sales of the Participant's Tobacco Products to a First Purchaser will be specified on the invoice in accordance with the Participant's terms of sale. These shall stipulate that under no circumstances may the First Purchaser take any action directly or indirectly to interfere with the transportation of the Participant's Tobacco Products to the delivery point specified in the invoice without the specific prior approval of the Participant.
- (b) **Packaging:** That the Approved Contractors will take no action directly or indirectly to alter, remove, or deface any aspects of the Participant's Tobacco Products packaging.
- (c) **Legal Compliance:** That the Approved Contractors will store, transport and/or resell the Participant's Tobacco Products in full compliance with all Applicable Laws, including without limitation:
 - (i) any Applicable Laws governing the shipment of the Participant's Tobacco Products;
 - (ii) any Applicable Laws governing the importation, exportation and resale of the Participant's Tobacco Products; and
 - (iii) any Applicable Laws designed to combat Money Laundering.

That the First Purchasers will not take any action to promote or facilitate the resale of the Participant's Tobacco Products by a Subsequent Purchaser in violation of any Applicable Laws.

- (d) **Contractual Terms:** That in any new contract entered into with an Approved Contractor after the execution of the Agreement, the Participant shall use commercially reasonable efforts to include provisions that, subject to all Applicable Laws:
 - (i) enable the Participant to provide information to the Protocol Administrator in accordance with the Protocol; and

- (ii) entitle the Participant to terminate business relations with the Approved Contractor in accordance with the Protocol.
- (e) Cooperation with Governments: That the Participant will request that the Approved Contractor acknowledge and accept in writing that the Participant intends to cooperate with Governments enquiries into any illegal storage, shipment, distribution, importation, exportation, purchase or sale of the Participant's Tobacco Products. Towards this end, the Participant shall make commercially reasonable efforts to ensure the availability of information and documents to the Protocol Administrator as provided for under the Protocol, including such information and documentation that is confidential or in the possession of Approved Contractors.

That the Participant, subject to Part 5 of the Protocol, will notify the Protocol Administrator of any contract or similar type document with an Approved Contractor (with Entities other than individuals) containing confidentiality provisions where the Participant would be required to seek the consent of a third party for purposes of disclosing information or documents in accordance with the Protocol.

- (f) Governments' Investigations: That the Participant will strongly encourage Approved Contractors to cooperate with a Designated Government Official and other relevant investigative and administrative bodies for the purposes of investigating Contraband Tobacco Products and/or Money Laundering of proceeds arising out of the sale of Contraband Tobacco Products.

2.7 Termination of Business Relationships with Approved Contractors

- (a) Subject to all Applicable Laws and its contractual obligations, the Participant shall terminate business relations involving Tobacco Products with any Approved Contractor upon the Protocol Administrator providing the Participant with, or the Participant otherwise coming into possession of sufficient evidence that such Approved Contractor has unlawfully or knowingly engaged in the storage, shipment, distribution, importation, exportation, purchase or sale of Contraband Tobacco Products or any related Money Laundering. Thereafter, such Approved Contractor shall be a Blocked Contractor for purposes of the Protocol.
- (b) For the purposes of this Appendix, "sufficient evidence" means:
 - (i) a criminal conviction, in any court of record or tribunal in Canada, for any offence relating to the storage, shipment, distribution, importation, exportation, purchase or sale of Contraband Tobacco Products, or any related Money Laundering activity;
 - (ii) a finding of responsibility, by any court of record or tribunal in Canada in any civil case, for the storage, shipment, distribution, importation, exportation, purchase or sale of Contraband Tobacco Products, or any related Money Laundering activity; or

- (iii) the laying of criminal charges in Canada and other clear and compelling evidence relating to the storage, shipment, distribution, importation, exportation, purchase or sale of Contraband Tobacco Products, or related Money Laundering charges, where such charges or evidence raise serious concerns regarding an Approved Contractor's ability and commitment to honouring the objectives and practices set forth in the Protocol.
- (c) Should the Protocol Administrator provide the Participant with, or the Participant otherwise come into possession of sufficient evidence that a Subsequent Purchaser has engaged in the storage, shipment, distribution, importation, exportation, purchase or sale of Contraband Tobacco Products, the Participant will request, subject to all Applicable Laws and its contractual obligations, that the First Purchaser cease, subject to all Applicable Laws and its contractual obligations, supplying the Participant's Tobacco Products to such Subsequent Purchaser, until such time as such Subsequent Purchaser has taken reasonable steps to ensure future compliance with the obligations under the Protocol. In the event that the First Purchaser refuses to honour such request other than by reason of Applicable Laws or its contractual obligations then, subject to all Applicable Laws and its contractual obligations, the Participant will cease supplying its Tobacco Products to such First Purchaser who will thereafter be a Blocked Contractor for purposes of the Protocol.
- (d) The Participant shall maintain a list of Blocked Contractors. A Blocked Contractor shall remain so designated for 5 years after the termination of the Participant's business relationship with such Blocked Contractor or until such earlier time as the Blocked Contractor has taken reasonable steps to ensure future compliance with the terms of the Protocol. No Blocked Contractor will be permitted to conduct business with the Participant, directly or indirectly, relating to the storage, shipment, distribution, importation, exportation, purchase or sale of the Participant's Tobacco Products during the period it is a Blocked Contractor. After the expiration of the 5-year period, or at such earlier time as the Blocked Contractor has taken reasonable steps to ensure future compliance with the terms of the Protocol, a Blocked Contractor may re-apply to become an Approved Contractor and, at that time, will be subject to the applicable Due Diligence requirements under this Appendix.
- (e) Every year, the Participant shall provide the Protocol Administrator with a list of all its Blocked Contractors. The list will include the full legal name, trade name, business address and business registration number (if any).

2.8 Responding to Requests

- (a) Within 45 days of a written request by the Protocol Administrator, the Participant shall provide the Protocol Administrator with the following:

- (i) a list of Approved Contractors and Blocked Contractors for any time period beginning 180 days or more after the execution date of the Agreement up until the termination of the Protocol;
- (ii) sales volumes to First Purchasers for any time period beginning 180 days or more after the execution date of the Agreement up until the termination of the Protocol; and
- (iii) Approved Contractor records and Due Diligence Information for any time period beginning 180 days or more after the execution date of the Agreement up until the termination of the Protocol.

(b) Fast Track Provision of Information

In the event of a Seizure of the Participant's Tobacco Products, where the Protocol Administrator requests information regarding other Tobacco Products that may be in transit, the Participant agrees to make commercially reasonable efforts to promptly (if possible, during the next business day) provide the Protocol Administrator with identifiers outlined in Appendix 1, *Existing Tobacco Control Initiatives*, to the extent available, for all shipments of the Participant's Tobacco Products to the First Purchaser associated with the Seizure for a period up to three months prior to and three months subsequent to the date of the Seizure.

APPENDIX 3 – DIRECTOR OF COMPLIANCE

- 3.1 The Participant confirms that it is its corporate policy that its officers and its employees will not knowingly engage in illegal trade of the Participant's Tobacco Products and that its business practices are directed at supporting only the legitimate trade.
- 3.2 This policy shall be included or incorporated by reference in the Participant's Code of Business Conduct which all officers and employees are expected to know, understand and follow.
- 3.3 The Participant will ensure that it has in place, and will actively enforce, clearly defined controls and procedures for the storage, shipment, distribution, importation, exportation and sale by the Participant of its Tobacco Products to minimize the risk of the Tobacco Products being diverted into illicit trade channels. It will make commercially reasonable efforts to ensure compliance by its officers and employees with its Code of Business Conduct and with the Protocol.
- 3.4 The Participant's controls, procedures and Code of Business Conduct are periodically updated and revised with a view to improving them and taking account of changing circumstances. The Participant undertakes that any future modifications, taken together, will provide a degree of compliance with the Protocol that is, at least, materially the same or greater than at the execution date of the Agreement.
- 3.5 The Participant shall designate a person responsible for overseeing compliance with the Protocol. The person shall be known as the Director of Compliance.
- 3.6 The Director of Compliance shall oversee the review and updating of the Participant's controls, procedures and Code of Business Conduct within a reasonable time to ensure that they incorporate and are consistent with the requirements of the Protocol, such revised and updated controls, procedures and Code of Business Conduct being referred to herein as the "Compliance Program".
- 3.7 The Compliance Program shall include training programs for its employees involved in the storage, shipment, distribution, importation, exportation and sale of the Participant's Tobacco Products and in the establishment of the policies and business practices relating to these activities.
- 3.8 The Compliance Program will require that any employee of the Participant who learns of, or has reasonable grounds to suspect, a breach of the Compliance Program shall report it to the Director of Compliance or to the Participant's in-house legal counsel.
- 3.9 The Director of Compliance will establish a system allowing the Participant's employees to report breaches or suspected breaches of the Compliance Program anonymously, by e-mail, telephone or regular mail. To the extent permitted by law, if the reporting employee so requests, the identity of that employee shall be kept confidential at all times by the Director of Compliance and by the Participant's in-house legal counsel.

- 3.10 No employee of the Participant shall face sanction by the Participant for making a report pursuant to Articles 3.8 or 3.9 of this Appendix.
- 3.11 The Director of Compliance shall be responsible for:
- (a) overseeing a review of the Participant's practices relating to the manufacture, sale, distribution, transportation and storage of the Participant's Tobacco Products, including its standard terms of trade with its customers, and recommending to the Participant's Management Committee any modifications that might be required to ensure they are consistent with the Protocol;
 - (b) developing and reviewing the curriculum and implementation of the training programs for the Participant's employees required under the Protocol;
 - (c) overseeing and investigating compliance by the Participant with the Protocol; and
 - (d) taking appropriate measures to follow-up on and investigate all reports of behaviour inconsistent with the Protocol and the Compliance Program, given the nature of the report and information provided, unless there are reasonable grounds for believing that a report is spurious.
 - (e) providing information to the Protocol Administrator under the Protocol.
- 3.12 At least once every two years, the Participant's internal auditor shall conduct a formal audit of the Compliance Program to ensure that it complies with the Protocol. The results of the audit shall be submitted in writing to the Participant's Management Committee and a copy of the report shall be submitted to the Protocol Administrator.

APPENDIX 4 – FOREIGN FACILITY

- 4.1 Subject to all applicable laws, local and foreign, the Participant will permit and facilitate the presence of one Designated Government Official per visit, designated by the Protocol Administrator for such visit, at any Foreign Facility owned and operated by the Participant and manufacturing the Participant's Tobacco Products, for the purpose of conducting audits or inspections that would be permitted had the Facility been located in Canada.
- 4.2 The Participant shall advise the Protocol Administrator of any contract between itself and a third party manufacturer for the manufacture at a Foreign Facility of the Participant's Tobacco Products. The Participant will make best efforts to conclude with the third party manufacturer appropriate agreements permitting audit and inspection by one Designated Government Official, designated by the Protocol Administrator, taking into account the Governments' legitimate interest in such audits and inspections and taking into account the character of the particular manufacturing arrangements involved and other relevant factors such as the nature and volume of the Tobacco Products being manufactured.
- 4.3 Subject to all applicable laws, local and foreign, the Participant will reimburse the Designated Government Official reasonable travel and living costs incurred for the purpose of conducting such audits or inspections at a Foreign Facility. Such costs shall also be reasonable in terms of the number of visits. The Participant and the Protocol Administrator will jointly agree on the number of Designated Government Officials who will be attending the visits if it is deemed by the Protocol Administrator that more than one Designated Government Official should attend. The Designated Government Official and the Protocol Administrator undertake to make reasonable efforts to organize and schedule visits in a manner that avoids undue or unnecessary travel and living expenses.
- 4.4 The Participant shall advise the Protocol Administrator of any new Foreign Facility manufacturing the Participant's Tobacco Products.

Schedule B

GOVERNMENT PAYMENT ALLOCATIONS

Government Payment Allocations

	%
Alberta	1.545
British Columbia	4.2
Manitoba	1.055
New Brunswick	2.0
Newfoundland & Labrador	2.05
Nova Scotia	2.5
Ontario	14.267
Prince Edward Island	0.261
Quebec	19.134
Saskatchewan	0.727
Canada	52.261
TOTAL	100

Schedule B
