

**REPEAL**

**APPROVED TOBACCO ESCROW AGREEMENT**

This Escrow Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (the "Company") and \_\_\_\_\_ (the "Escrow Agent") and supersedes all prior escrow agreements, if any, that the Company and the Escrow Agent were operating under for each Beneficiary State listed in Attachment A and those other Master Settlement Agreement ("MSA") States that the Company and the Escrow Agent subsequently agree to include as Beneficiary States under this Escrow Agreement.

**WITNESSETH:**

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

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

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

**SECTION 1: Appointment of Escrow Agent**

The Company hereby appoints \_\_\_\_\_ to serve as Escrow Agent under this Escrow Agreement on the terms and conditions set forth herein. The Escrow Agent warrants that it is a federally or state-chartered financial institution organized and existing under the laws of the State of \_\_\_\_\_, having assets of at least one billion dollars (\$1,000,000,000), and is not an Affiliate of any Tobacco Product Manufacturer as defined in the NPM Statute. By its execution hereof, the Escrow Agent hereby accepts such appointment and agrees to perform its duties and obligations set forth herein.

## SECTION 2: Definitions

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

B. **"Beneficiary State"** means an MSA State for whose benefit funds are being escrowed pursuant to the NPM Statute. For purposes of this Escrow Agreement, the Beneficiary States are those listed in Attachment A hereto, which is attached and hereby incorporated by reference, and those other MSA States that the Company and the Escrow Agent may hereafter agree to include as Beneficiary States.

The Escrow Agent is authorized to include other Beneficiary States under this Escrow Agreement by written notice from the Company and is further authorized to revise Attachment A to reflect additional Beneficiary States as instructed by the Company. Whenever Attachment A is updated, the Escrow Agent shall: (i) obtain signatures on Attachment A from authorized representatives of both the Company and Escrow Agent; and (ii) provide an updated copy of Attachment A to all the Beneficiary States listed on Attachment A.

C. **"Company"** means the signatory NPM bound by the terms and conditions of this Escrow Agreement and includes all of the Company's subsidiaries and affiliates.

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

E. **"Deposit Date"** means the date QEF Principal was deposited into a QEF Sub-Account.

F. **"Escrow Assignment Statute"** means a state statute that permits the owner of a Qualified Escrow Fund to make a permanent and irrevocable assignment of funds held in a Company's QEF Sub-Account to the Beneficiary State designated for the Sub-Account, such as section 104557.1 of the California Health and Safety Code. Exercise of an Escrow Assignment Statute does not relieve a manufacturer from any past, current, or future liability, obligation, or duty imposed by a Beneficiary State's NPM Statute. The assignment of escrow pursuant to this

section is not a Released Claim as defined in the MSA. Under this Escrow Agreement, the term Escrow Assignment Statute shall apply only to the assignment of funds to a Beneficiary State and shall not be construed nor used to assign any funds to an individual, organization, other government entity, or other sovereign.

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

H. **“Interest”** means the interest and other appreciation earned by the Company on its Permitted Investments of QEF Principal, provided that the funds at issue are not: (i) QEF Principal; or (ii) required to be retained in the QEF Sub-Account and counted as QEF Principal under subdivision (D)(ii) of Section 4 this Escrow Agreement.

I. **“Ledger”** means a spreadsheet or other writing that clearly reflects for each Beneficiary State listed in Attachment A:

- i. the dates and amounts of all deposits and withdrawals of QEF Principal and Returns from each Beneficiary State’s QEF Sub-Account;
- ii. the Sales Year and Deposit Date for each deposit or withdrawal of QEF Principal from each Beneficiary State’s QEF Sub-Account; and
- iii. the Minimum QEF Principal On-Deposit for each Beneficiary State’s QEF Sub-Account.

J. **“Master Settlement Agreement”** or **“MSA”** means the settlement agreement entered into in 1998 by the four largest United States’ tobacco manufacturing companies (the “Original Participating Manufacturers” or “OPMs”) and 46 states of the United States (excluding Texas, Florida, Minnesota, and Mississippi), the District of Columbia, Guam, Northern Mariana Islands, the U.S. Virgin Islands, Puerto Rico, and American Samoa to settle certain claims against the OPMs arising out of the sale, advertising, and consumption of certain tobacco products, including Cigarettes, a copy of which has been provided to the Escrow Agent by the Company and is available electronically at [www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf](http://www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf).

K. **“Minimum QEF Principal On-Deposit”** means (i) the total of all QEF Principal deposited into a Beneficiary State’s QEF Sub-Account(s); less (ii) the total of all QEF Principal withdrawn from the Beneficiary State’s QEF Sub-Account(s) under subdivision (B) of Section 5 of this Escrow Agreement.

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

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

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

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

P. **“Qualified Escrow Fund”** means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any Tobacco Product Manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of Releasing Parties (as defined in the MSA) and prohibits everyone, including but not limited to the Tobacco Product Manufacturer, Company, and all successors, from using, accessing or directing the use of the funds’ principal except as consistent with the applicable NPM Statute and this Escrow Agreement.

Q. **“Qualified Escrow Fund Account”** or **“QEF Account”** means an escrow account consisting of segregated Sub-Accounts for each Beneficiary State established by the Company

and maintained by the Escrow Agent until the QEF Principal deposited is eligible for a withdrawal governed by subdivision (B) of Section 5 of this Escrow Agreement.

R. **“Qualified Escrow Fund Principal”** or **“QEF Principal”** means all funds deposited into a QEF Sub-Account. QEF Principal does not include: (i) Interest in the QEF Sub-Account, unless the Interest must be retained in the QEF Sub-Account and counted as QEF Principal under subdivision (D)(ii) of Section 4 of this Escrow Agreement; or (ii) any sums transferred in or out of QEF Sub-Account under the terms and conditions of a Return.

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

T. **“Return”** means a transfer of funds after the Company establishes to the satisfaction of each affected Beneficiary State that a deposit was inadvertently placed into a QEF Sub-Account. A deposit will be considered to have been inadvertently made into a QEF Sub-Account only where: (i) the Company establishes to the satisfaction of each affected Beneficiary State that the full amount of a deposit was inadvertently placed into a QEF Sub-Account (i.e., the Company inadvertently deposited the same amount twice); or (ii) where the Company and all affected Beneficiary States agree and consent to a transfer of funds between QEF Sub-Accounts on the ground that the Company inadvertently placed the funds at issue into the wrong QEF Sub-Account. A Return shall never apply to a Company’s assertion that a QEF Principal deposit was more than the amount required by a Beneficiary State’s NPM Statute or any other ground for a withdrawal, which are instead governed by subdivision (B) of Section 5 of this Escrow Agreement. The Escrow Agent shall not execute a Return without the express written consent of each affected Beneficiary State.

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

V. **“Tobacco Product Manufacturer”** shall have the same meaning as subsection (uu) of Section II of the MSA.

W. **“United States Treasury Securities”** means bills, notes, and bonds issued by the United States Treasury (i) maturing no more than thirty (30) years from the date of purchase by

the Company, (ii) that are direct obligations (other than an obligation subject to variation in principal repayment) of the United States government, and (iii) backed by the full faith and credit of the United States of America; (iv) provided however, that United States Treasury Securities shall **not** include state and local government series securities of the United States Treasury.

### **SECTION 3: Qualified Escrow Fund Deposits**

A. From time to time the Company shall tender to the Escrow Agent deposits of QEF Principal. All funds received by the Escrow Agent shall be held and disbursed in accordance with the terms and conditions of this Escrow Agreement and the applicable NPM Statute, regardless of the source of the funds—whether the funds are paid by the Company or by a third-party such as a Cigarette importer or an entity sharing liability with the Company for making the required QEF Principal deposits.

B. The Escrow Agent shall record and maintain a record of the Deposit Date and Sales Year of each deposit of QEF Principal.

C. The Company shall designate to the Escrow Agent and Beneficiary States the amount to be placed in the QEF Sub-Account and Sales Year for each Beneficiary State. The Company's Sales Year designation is informational and may be contested by the affected Beneficiary State(s). The final Sales Year determination and whether QEF Principal may be withdrawn from a QEF Sub-Account based upon the amount of QEF Principal deposited for a Sales Year is governed by subdivision (B)(ii)(b) of Section 5 of this Escrow Agreement.

#### **D. Segregated QEF Sub-Accounts**

i. All funds shall be held by the Escrow Agent in QEF Sub-Accounts separate and apart from all other funds of the Escrow Agent and the Company. The Escrow Agent shall allocate all funds as designated by the Company and received by the Escrow Agent among the applicable Beneficiary States, each with its own separate, segregated QEF Sub-Account and its own QEF Sub-Account number. The Escrow Agent shall place and hold such funds in each QEF Sub-Account for the benefit of the applicable Beneficiary State or any Releasing Party located or residing in the applicable Beneficiary State.

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

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

E. The Company may appoint an authorized representative or agent, acting on its behalf, to give directions permitted of the Company under this Escrow Agreement to the Escrow Agent ("Company's Agent"). The Company shall provide the Beneficiary States with the documents and information necessary to establish an authorized appointment as well as continued compliance with the terms and conditions of the Escrow Agreement and NPM Statute. In order to effectuate this provision, the Company shall obtain and maintain for at least four (4) years of copies of all investment instructions and correspondence between the Company, Company's Agent, and/or the Escrow Agent necessary to establish compliance with the Escrow Agreement and NPM Statute. If the Company fails to retain or provide documents addressed by this subdivision, the Beneficiary States shall be entitled to a rebuttable presumption that the missing documents do not comply with the terms and conditions of the Escrow Agreement in a court or administrative proceeding.

#### **SECTION 4: Investment and Monitoring of QEF Principal**

- A. QEF Principal shall be invested only in Permitted Investments.
- B. If the Company or the Company's Agent provides instructions to the Escrow Agent regarding the investment of QEF Principal, the Escrow Agent has no duty to follow them unless they comply with the terms and conditions of this Escrow Agreement and the applicable NPM Statute. Noncompliant instructions are null

and void, have no effect, and shall not be followed by the Escrow Agent. If the Company does not provide investment instructions that comply with the terms and conditions of the Escrow Agreement and NPM Statute(s), the Escrow Agent shall maintain the QEF Principal in cash.

- C. At all times: (i) the aggregate Face Value of each QEF Sub-Account, and (ii) the aggregate Cost Basis of each QEF Sub-Account shall be equal to or greater than the Minimum QEF Principal On-Deposit for each QEF Sub-Account.
- D. Whenever the Minimum QEF Principal On-Deposit for a QEF Sub-Account is less than: (i) the aggregate Face Value of the QEF Sub-Account, or (ii) the aggregate Cost Basis of the QEF Sub-Account, the Escrow Agent shall deem the QEF Sub-Account non-compliant. So long as the QEF Sub-Account is non-compliant:
  - i. The Company cannot purchase or otherwise obtain any investment that further increases the difference between the Minimum QEF Principal On-Deposit for the noncompliant QEF Sub-Account(s) and the aggregate Face Value or Cost Basis of the noncompliant QEF Sub-Account(s); and
  - ii. The Escrow Agent shall retain the Interest earned by the noncompliant QEF Sub-Account(s) and count the funds as QEF Principal until: (a) the aggregate Face Value of each QEF Sub-Account, and (b) the aggregate Cost Basis of each QEF Sub-Account is equal to or greater than the Minimum QEF Principal On-Deposit for the QEF Sub-Account(s). The Escrow Agent shall not pay any Interest accrued by the noncompliant QEF Sub-Account(s) to the Company nor collect any Interest to pay or set-off the Escrow Agent's fees, costs, penalties, or other expenses.
- E. To the greatest extent practicable, Permitted Investments shall be administered in such a manner that QEF Principal will be available in cash for use at the times when QEF Principal is expected to be disbursed by the Escrow Agent from the QEF Sub-Account pursuant to the applicable NPM Statute.



- F. All calculations, requirements, and restrictions in Section 4 above shall apply at all times, including but not limited to, whenever any QEF Principal is withdrawn under subdivision (B) of Section 5 of the Escrow Agreement or the Company buys or sells any investment.

**SECTION 5: Withdrawals of Funds from the Qualified Escrow Fund**

Except for executing a Return pursuant to subdivision (T) of Section 2 of the Escrow Agreement, no QEF Principal, Interest, or other funds shall be released, withdrawn, or otherwise removed from any QEF Sub-Account unless the terms and conditions below have been fully satisfied.

**A. Withdrawals of Interest from the Qualified Escrow Fund**

- i. Unless all Interest must be retained in a QEF Sub-Account under subdivision (D)(ii) of Section 4 of this Escrow Agreement and counted as QEF Principal, the Company is generally eligible to receive Interest as earned.
- ii. But, unless all Interest must be retained in a QEF Sub-Account under subdivision (D)(ii) of Section 4 of this Escrow Agreement and counted as QEF Principal, the Escrow Agent may collect the amount(s) necessary to satisfy any outstanding fees, penalties, costs or other expenses incurred by the Company before paying any Interest to the Company.

**B. Withdrawals of Escrow Principal Generally Prohibited**

1. The NPM Statute and state law(s) and regulation(s) of each Beneficiary State govern the release of QEF Principal from the applicable Beneficiary State's QEF Sub-Account. This includes, but is not limited to, prohibiting the Escrow Agent and the Company from: (a) accessing or allowing the Company to access any QEF Principal without establishing compliance with both the terms and conditions of the Escrow Agreement and the NPM Statute of each Beneficiary State; (b) exercising set-off, recoupment, or any other claim or right against any of

the QEF Principal escrowed pursuant to this Escrow Agreement; or (c) transferring or removing any QEF Principal from the QEF Sub-Account of any Beneficiary State Principal to the QEF Sub-Account of another Beneficiary State without the written consent of the Company and the Attorneys General of all Beneficiary States involved in the request for transfer of funds.

ii. **Permissible Withdrawals of Escrow Principal**

In compliance with the NPM Statute and state law(s) of the Beneficiary States, the Escrow Agent shall release QEF Principal to the Company from the applicable Beneficiary State's QEF Sub-Account(s) only in the limited circumstances identified below when the listed conditions have been fully satisfied:

a. Released Claim

- I. QEF Principal may be used to pay a judgment or settlement on any Released Claim brought against the Company by the applicable Beneficiary State or by any Releasing Party located or residing in the applicable Beneficiary State.
- II. Promptly after receiving a written request for release of funds under this subsection and prior to any such release, the Escrow Agent shall provide written notice to the Company, the Releasing Party, and the Attorney General or Attorney General's designee of the applicable Beneficiary State as set forth and defined in Section 6 herein. The notice shall specify in reasonable detail the amount of the funds to be released, the payee and the basis for the requested release (which shall be provided to the Escrow Agent by the person requesting payment). The Company and the Attorney General or Attorney

General's designee of the applicable Beneficiary State whose QEF Sub-Account would be reduced by the requested release of funds shall provide a written response to the Escrow Agent with copies to each other, within forty-five (45) calendar days from the date of receipt of this notice.

III. Should the Company or the applicable Beneficiary State timely object in writing to a requested release of funds under this subsection, the Escrow Agent shall not authorize the requested release of funds until such objection has been finally resolved.

IV. If no objection is received, the Escrow Agent shall pay the Released Claim after the expiration of the forty-five (45) calendar day period pursuant to payment instructions provided by the applicable Beneficiary State.

V. The amount of funds shall be released from the QEF Sub-Account of the applicable Beneficiary State under this subsection (aa) in the order in which they were placed into escrow and (bb) only to the extent and at the time necessary to make payments required under such judgment or settlement.

VI. Escrow Agent shall not be authorized to make distributions of QEF Principal in payment of Released Claims owed to any Beneficiary State (or the Releasing Party located or residing in such Beneficiary State) other than from the QEF Principal deposited in the QEF Sub-Account held for such Beneficiary State.

b. Excess Amount

- I. If the Tobacco Product Manufacturer establishes that the amount required to be placed into escrow in a particular Sales Year for the applicable Beneficiary State was, depending on the law of such Beneficiary State, greater than either: (aa) that State's allocable share of the total payments that the Tobacco Product Manufacturer would have been required to make in that year had it been a Participating Manufacturer under the MSA (as determined pursuant to section IX(i)(2) of the MSA, and before any adjustments or offsets described in Section IX(i)(3) of that Agreement other than the Inflation Adjustment); or (bb) the MSA payments, as determined pursuant to Section IX(i)(1) of that Agreement including after final determination of all adjustments, that the Tobacco Product Manufacturer would have been required to make on account of such Units Sold in the Beneficiary State had it been a Participating Manufacturer under the MSA (in either case the difference being referred to herein as the "Excess Amount"), such Excess Amount shall be released and revert back to the Tobacco Product Manufacturer. This withdrawal is calculated based upon Sales Year, not Deposit Date.
- II. To the extent established, the Escrow Agent shall pay the Excess Amount to the Tobacco Product Manufacturer upon the joint written instruction of the Tobacco Product Manufacturer and the Attorney General or the Attorney General's Designee of the applicable Beneficiary State as set forth in Section 6 or upon entry of a final binding,

non-appealable order of a court of competent jurisdiction handling such matter after any appeal or any right of appeal has been exhausted.

III. The Tobacco Product Manufacturer shall submit in writing to the Attorney General for the applicable Beneficiary State the Tobacco Product Manufacturer's calculation establishing the Excess Amount. If the applicable Beneficiary State and the Tobacco Product Manufacturer cannot agree on the existence of an Excess Amount or the calculation of the Excess Amount, the dispute shall be resolved in a court of competent jurisdiction located in the applicable Beneficiary State, or if the laws of any Beneficiary State so require, then under the applicable Administrative Procedures Act of that Beneficiary State.

c. Assignment to Beneficiary State

The Company may permanently and irrevocably assign the funds in a Beneficiary State's QEF Sub-Account to that Beneficiary State pursuant to that state's Escrow Assignment Statute.

d. Duration of Deposit

I. To the extent not released from escrow under subparts (a), (b), or (c) of subdivision (B)(ii) of Section 5 of this Escrow Agreement (Grounds for a Withdrawal of Escrow Principal) above, the funds shall be released from escrow and revert back to the Company twenty-five (25) years after the Deposit Date. This withdrawal is calculated based upon the Deposit Date, not Sales Year.

II. The amount of QEF Principal that a Company may receive as a “Duration of Deposit” release under subdivision (B)(ii)(d) of Section 5 of this Escrow Agreement is the difference between the amount of QEF Principal deposited on a Deposit Date and the sum(s) already released as an “Excess Amount” release under subdivision (B)(ii)(b) of Section 5 of this Escrow Agreement or a “Release Claim” under subdivision (B)(ii)(a) of Section 5 of this Escrow Agreement.

III. At least forty-five (45) days before the proposed date of release of such funds, the Escrow Agent shall notify the applicable Beneficiary State in writing of the amount of QEF Principal proposed to be released from its QEF Sub-Account and, if available, provide bank records showing the Deposit Date of the funds sought to be released under this provision.

IV. Consolidated Duration of Deposit Releases. The Company agrees that the Escrow Agent may reduce the costs and burdens of these accounts by making one (1) “Duration of Deposit” release, under subdivision (B)(ii)(d) of Section 5 of this Escrow Agreement, for each Beneficiary State during each calendar year. Under this subdivision, for each Beneficiary State, the consolidated release may occur twenty-five years after the last Deposit Date by the Company for each calendar year. For example, if the Company made deposits into a California subaccount on June 1, 2018 and November 1, 2018, the Escrow Agent may retain funds eligible for release on June 1, 2043, until November 1, 2043. This

subdivision shall never be interpreted or construed to permit any "Duration of Deposit" releases under subdivision (B)(ii)(d) of Section 5 of this Escrow Agreement before twenty-five years have passed since the Deposit Date. The Escrow Agent may exercise this subdivision by providing written notice to the Company and Beneficiary State(s) pursuant to Section 6.

**SECTION 6: Notices**

A. Written notice required by this Escrow Agreement shall be deemed sufficient and adequate if sent to the address(es) of the Company, Escrow Agent, or the applicable Beneficiary State(s) below in the manner provided under this section. All notices required by this Escrow Agreement shall be in writing and shall be deemed to have been received (i) immediately if sent by electronic mail transmission (with a confirming copy sent the same business day by registered or certified mail) or by hand delivery (with signed return receipt); (ii) the next business day if sent by a nationally recognized overnight courier; or (iii) five (5) business days after sent by U.S. Mail:

i. To the Company:

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ii. To the Escrow Agent:

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- iii. To the Beneficiary State(s), to the Attorney General Offices of all Beneficiary States as shown on Attachment A to the Escrow Agreement and incorporated herein by reference.
- B. If the Company, Escrow Agent, or a Beneficiary State changes its address for notices required by this Escrow Agreement, that entity shall immediately notify the other undersigned parties and the Beneficiary States of that change and promptly amend this Escrow Agreement to effectuate the change.
- C. The Company and Escrow Agent consent and agree that all notices and other writings shall be sufficient if written in the English language. No one shall be required to translate any writing into another language under this Escrow Agreement.

**SECTION 7: Change of Escrow Agent**

- A. Notice. Unless the Beneficiary State(s) provide(s) affirmative written consent to shorten time, the change in Escrow Agent cannot occur until after a ninety (90) day notice period has expired.
  - i. The Escrow Agent may resign by giving the Company and all of the Beneficiary States covered by this Escrow Agreement ninety (90) days prior written notice of such intention to the addresses in Section 6 of this Escrow Agreement.
  - ii. The Company may remove the Escrow Agent by giving the Escrow Agent and all Beneficiary States covered by this Escrow Agreement ninety (90) days prior written notice of such removal to the addresses in Section 6 of this Escrow Agreement.
- B. During the ninety (90) day notice period, the Escrow Agent shall: (i) update the Ledger required by subdivision (C) of Section of 8 this Escrow Agreement to reflect all deposits, withdrawals, and Returns while the Company had QEF Principal on deposit with the Escrow Agent; and (ii) provide an updated copy of the Ledger to all Beneficiary States and the Company.



C. During the ninety (90) day notice period, the Company must execute a new escrow agreement approved by the Beneficiary States with a successor escrow agent and ensure that the Minimum QEF Principal On-Deposit remains in a QEF Account.

D. When Company Timely Appoints a New Escrow Agent

i. After subdivisions (A), (B), and (C) of this section have been satisfied, the Escrow Agent shall deliver:

a. To the successor escrow agent, all funds on deposit by the Company and an updated copy of the Ledger required by subdivision (C) of Section 8 of this Escrow Agreement;

b. To the Beneficiary States covered by this Escrow Agreement, written notice that the funds were delivered to the successor escrow agent and an updated copy of the Ledger required by subdivision (C) of Section 8 of this Escrow Agreement.

ii. Within thirty (30) days of receiving the escrow funds, the successor escrow agent shall provide to each Beneficiary State all of the reports required by subdivisions (A) and (B) of Section 8 of this Escrow Agreement;

E. When Company Fails to Timely Appoint a New Escrow Agent

i. If the Company does not execute a new escrow agreement approved by the Beneficiary States with a successor escrow agent during the ninety (90) day notice period, the Escrow Agent may resign and tender the escrowed funds after fully satisfying terms and conditions of either subdivision (E)(ii) (Tender to Court) or subdivision (E)(iii) (Irrevocable Assignment to States Listed on Attachment C) below.

ii. Tender to Court

a. The Escrow Agent may tender the escrowed funds to a court or administrative forum of competent jurisdiction for the applicable Beneficiary State after:

- I. The Escrow Agent sent the Company a notice of resignation or the Company provided the Escrow Agent with a notice to remove under subdivision (A) of Section 7 of this Escrow Agreement;
- II. the ninety (90) day notice period expired;
- III. the Company did not execute a new escrow agreement approved by the Beneficiary State(s) with a successor Escrow Agent during the ninety (90) day notice period;
- IV. the Escrow Agent provides all applicable Beneficiary States with a copy of the most recent Escrow Agreement, including all Attachments, and a copy the resignation notice(s) the Escrow Agent sent to the Company, and an affidavit that sufficiently describes:
- (aa) The amount of funds being tendered to the court or administrative forum;
  - (bb) The last known address of the Company;
  - (cc) The last known date the Company contacted the Escrow Agent;
  - (dd) Whether the Company owes any unpaid fees, penalties, or other expenses to the Escrow Agent and the total amount owed; and
- V. the applicable Beneficiary States have designated a court or administrative forum to the Escrow Agent, which they shall do within forty-five (45) days after the conditions of subparts (I) through (IV) of subdivision (E)(ii)(a) above have been satisfied.
- b. After the Escrow Agent tenders the escrowed funds to the court or administrative forum designed by the Beneficiary State(s), the Escrow Agent shall have no duties or liabilities arising from the previously escrowed funds, including but not limited to, the outcome in the court or administrative proceeding.

c. The court or administrative forum to which funds in the QEF Sub-Account have been tendered may order such funds held by the State Treasurer of the underlying Beneficiary State if consented to by that Beneficiary State.

d. If the Escrow Agent tenders the funds to a court or administrative forum under subdivision (E)(ii)(a) of Section 7 of the Escrow Agreement, the Company hereby agrees and stipulates that:

I. The Company waives personal service of process. The Company agrees and consents that it received adequate notice and service of process in a manner that complies with all Beneficiary States' applicable laws and requirements for a complaint, summons, or other document, where: (aa) the Company agrees to maintain a registered agent for service in each Beneficiary State as well as the state where the Escrow Agent is incorporated as long as the Company has QEF Principal on deposit with the Escrow Agent under this Escrow Agreement; (bb) service of process is effectuated pursuant to the applicable Beneficiary State's laws; or (cc) service of process by certified or registered mail, return receipt requested, to the address set forth by the Company in Section 6.

II. The Company consents to the personal jurisdiction, forum, and venue of the court or administrative forum designated under subdivision (D)(ii)(a)(V) of Section 7 of the Escrow Agreement;

III. The complaint, all filings, and other writings submitted in the court or administrative forum are sufficient and provide adequate notice if written in the English language. The Beneficiary State shall not be required to translate any complaint, filing, or other writing into any other language; and

IV. The Company waives any right to seek any relief in the court or administrative forum that would permit them to obtain,

receive, control, or otherwise access any QEF Principal unless the conditions for a withdrawal under subdivision B of Section 5 of this Escrow Agreement have been satisfied. This includes, but is not limited to, the Company receiving QEF Principal before twenty-five (25) years have passed since the Deposit Date.

iii. Irrevocable Assignment to States Listed on Attachment C

a. The Company consents that the Escrow Agent may tender the funds held for the benefit of a Beneficiary State to that Beneficiary State to effectuate an irrevocable assignment pursuant to an Escrow Assignment Statute, if the following conditions are fully satisfied:

- I. The Escrow Agent sent the Company a notice of resignation or the Company provided the Escrow Agent with a notice to remove under subdivision (A) of Section 7 of this Escrow Agreement;
- II. the ninety (90) day notice period expired;
- III. the Company did not execute a new escrow agreement approved by the Beneficiary States with a successor Escrow Agent during the ninety (90) day notice period;
- IV. the Beneficiary State is listed on Attachment C;
- V. the Company has not paid all of its fees, charges, penalties, or costs to the Escrow Agent during past six (6) months; and
- VI. after the ninety (90) day notice period expired, the Escrow Agent sent the Company a letter to the address identified by the Company in Section 6 of this Escrow Agreement giving prior written notice of Escrow Agent's intent to effectuate an Irrevocable Assignment to Beneficiary States under subdivision (E)(iii) of Section 7 of the Escrow Agreement within forty-five (45) days; and the Company did not execute a new escrow agreement approved by the Beneficiary States with a successor Escrow Agent during the additional forty-five (45) days.

- b. After the Escrow Agent tenders the funds to Beneficiary States pursuant to (E)(iii)(a) of Section 7 of the Escrow Agreement, the Escrow Agent shall have no duties or liabilities arising from the previously escrowed funds.

## **SECTION 8: Reporting to Beneficiary States**

### **A. Initial Report**

After the first deposit is made into a Beneficiary State's QEF Sub-Account, the Escrow Agent shall provide the Beneficiary State with written notice that the QEF Sub-Account has been established and provide to the Beneficiary State a copy of this Escrow Agreement and the amount of the deposit made for the Beneficiary State.

### **B. Statements**

At least quarterly, the Escrow Agent shall provide each Beneficiary State a bank statement that clearly reflects:

- i. the amounts of deposits and withdrawals, including QEF Principal, Interest, and Returns, made by the Company, including the identity of the payor(s) or payee(s), the date(s), transaction description, and dollar amount(s) of those deposits or withdrawals;
- ii. the manner in which all QEF Principal in the QEF Sub-Account is invested, including the Face Value, Cost Basis, and market value of each investment, a description of each investment including the CUSIP number, its date of purchase by the Company, and its maturity date, if applicable.

### **C. Ledgers**

On or before April 1 of each year, the Escrow Agent shall provide each Beneficiary State and the Company with:

- i. a Ledger prepared by the Escrow Agent ("Escrow Agent Initiated Ledger") reflecting all deposits, withdrawals, and Returns tracked by Deposit Date and Sales Year that have occurred since, at least, the date of the Company's first QEF Principal deposit with the Escrow Agent tracked by Deposit Date and Sales year.

The Ledger shall also reflect the Minimum QEF Principal On-Deposit for the Beneficiary State's QEF Sub-Account; or

- ii. written notice that the Escrow Agent intends to exercise its right to reasonably rely upon a Ledger initiated by a Beneficiary State ("Beneficiary State Initiated Ledger"). A Beneficiary State Initiated Ledger applies where:
  - a. A Beneficiary State sends the Company an accurate Ledger and provides notice pursuant to Section 6 of this Escrow Agreement; and
  - b. Either: (I) the Company confirms the Beneficiary State Initiated Ledger is correct in writing; or (II) thirty (30) days passes without a response from the Company; and
  - c. the Beneficiary State sends the Escrow Agent a copy of the cover letter and Beneficiary State Initiated Ledger sent to Company in subdivision (a) above and either: (I) the writing by the Company confirming the accuracy of the Beneficiary State Initiated Ledger; or (II) written confirmation by the Beneficiary State that it did not receive any response from the Company; or
- iii. written notice that the Escrow Agent considers the deposit history to be disputed and/or incomplete. Over a reasonable period of time, the Company, Beneficiary State, and Escrow Agent shall work collaboratively to create an accurate Ledger, if possible. To the extent available, the Escrow Agent will provide the Company and Beneficiary State with the records necessary to create an accurate Ledger over a reasonable period of time.

D. Investment Instructions

If a dispute arises regarding compliance with the terms and conditions of this Escrow Agreement or the NPM Statute, the Company and Escrow Agent shall provide the Beneficiary States with all investment instructions in their possession, custody, or control necessary to identify and resolve the dispute upon written request. The reporting under this section includes instructions provided by the Company, the Company's Agent, or anyone else acting on behalf of Company.

The paragraph above shall not limit or other otherwise impair a Beneficiary State's ability to obtain investment instructions from the Company or Escrow Agent under the NPM Statute, other state laws or regulations, or federal laws or regulations.

#### **SECTION 9: Escrow Agent Fees and Expenses**

A. The Company shall pay the Escrow Agent its reasonable fees and expenses, including all reasonable expenses, charges, penalties, counsel fees ("Fees") incurred by it or by its attorneys, agents and employees in the performance of its duties and obligations under this Escrow Agreement.

B. No QEF Principal in any QEF Sub-Account shall ever be charged, used as an offset, or otherwise encumbered by the Escrow Agent or the Company.

C. Subdivision (A) of Section 5 of the Escrow Agreement controls whether the Escrow Agent may withdraw Interest to satisfy outstanding Fees accrued by the Company.

#### **SECTION 10: Resolution of Disputes**

In the event of any disagreement resulting in adverse claims or demands being made in connection with the subject matter of this Escrow Agreement, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues. In any such event, the Escrow Agent shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (A) the rights of all parties have been fully and finally adjudicated by a court or administrative forum of competent jurisdiction; or (B) all differences shall have been resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. In addition to the foregoing remedies, the Escrow Agent is hereby authorized in the event of any such disagreement, to petition any state court or administrative forum of competent jurisdiction located in the capitol city of the applicable Beneficiary State, or such other city as may be agreed to in writing by the applicable Beneficiary State, for instructions or to interplead the funds or assets so held into such court or administrative forum. The undersigned parties agree to the jurisdiction of said courts or administrative forum over their persons, waive personal service of process, and agree that service of process by certified or registered mail,

return receipt requested, to the address set forth in Section 6 shall constitute adequate service. The Company agrees that upon final adjudication on such petition or interpleader action, the Escrow Agent, its servants, agents, directors, employees, and officers will be relieved of further liability.

**SECTION 11: Failure of Escrow Agent to Receive Instructions**

Except as to responses or objections to a notice requesting payment on any Released Claim, which shall be governed by subsection (B)(ii)(a) of Section 5 above, in the event that the Escrow Agent fails to receive any written instructions contemplated by this Escrow Agreement, the Escrow Agent shall refrain from taking any action required to be taken under any section of this Escrow Agreement pursuant to written instructions until such written instructions are received by the Escrow Agent. In so refraining, the Escrow Agent shall be fully protected from any liability arising out of its inaction.

**SECTION 12: Duties and Liabilities of the Escrow Agent**

The Escrow Agent shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time by the provisions of this Escrow Agreement, and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct or unlawful acts or omissions. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, fire, communication line failures, computer viruses, attacks or intrusions, power failures, and earthquakes or other disasters.

The only duties and responsibilities of the Escrow Agent shall be the duties and obligations specifically set forth in this Escrow Agreement. The Escrow Agent has no fiduciary or discretionary duties. The Escrow Agent has no duty to perform any calculations with respect to the proper amount to be deposited by the Company in any given year or to ensure that the Company deposits the proper amount in or for any given year. The Escrow Agent makes no representation as to the sufficiency of this Escrow Agreement for the purposes in which it is intended.



This Escrow Agreement contemplates that disputes between the parties may be resolved by a court or other administrative forum of competent jurisdiction, including but not limited to Sections 5, 7, and 10 above. The Beneficiary States and Company agree that, after the Escrow Agent provides the Company and all applicable Beneficiary States with a copy and reasonable notice of the order, writ, judgment, or decree at issue to the addresses identified in Section 6 above, the Escrow Agent is authorized to comply with final orders, writs, judgments, and decrees issued by any court or administrative forum with respect to the fund held hereunder. The Escrow Agent may further rely upon the accuracy and completeness of documentation reasonably believed by it to be genuine and to have been signed or presented by the proper parties.

**SECTION 13: Indemnification of Escrow Agent**

The Company shall indemnify, hold harmless and defend the Escrow Agent from and against any and all losses, claims, liabilities, and reasonable expenses, including the reasonable fees of its counsel, specifically including in-house counsel fees, which it may suffer or incur in connection with the performance of its duties and obligations under this Escrow Agreement, including any action taken under Section 10 hereof, except for those losses, claims, liabilities and expenses resulting solely and directly from its own gross negligence, willful misconduct, or unlawful act or omission. The Escrow Agent may seek the advice of counsel at any time, and such reasonable attorney fees shall be in addition to the administrative fees charged by the Escrow Agent for serving as Escrow Agent. Subject to subdivision (D)(ii) of Section 4 of this Escrow Agreement which may prohibit the Escrow Agent from accessing any Interest, the Escrow Agent may charge such costs against the Interest accrued on the QEF Principal. But, QEF Principal in any or all of the QEF Sub-Accounts shall never be charged, used as an offset, or otherwise encumbered by the Escrow Agent or the Company. In no event shall the Escrow Agent be liable to the Company for any incidental, indirect, consequential, or punitive damages or penalties of any kind, including but not limited to lost profits, even if the Escrow Agent has been advised of the likelihood of such.

**SECTION 14: Intended Beneficiaries; Successors**

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

Beneficiary States, the Releasing Parties, the Company and the Escrow Agent shall be entitled to enforce the terms of this Escrow Agreement. The provisions of this Escrow Agreement shall be binding upon and inure to the benefit of the undersigned parties hereto and their respective successors.

**SECTION 15: Transfer of Rights**

If the Company intends to sell, assign, convey, gift, or transfer in any manner any of the Company's rights to the funds in the QEF Account or the earnings thereon (including without limitation, the right to Interest on QEF Principal, or the right to receive QEF Principal as permitted under the NPM Statute) to any person or entity, the Company shall send notification, including the name and complete address to whom such sale, assignment, conveyance, gift, or transfer is to be made, in writing to the Escrow Agent and all Beneficiary States with QEF Sub-Accounts no less than forty-five (45) days in advance of such transaction. The Company acknowledges that a change in ownership and control over any of its rights or interests under this Escrow Agreement cannot be completed or acknowledged by the Escrow Agent until after the Escrow Agent has received all necessary USA PATRIOT Act compliance information and completed a satisfactory regulatory compliance review. Any sale or assignment of its rights and obligations hereunder shall first satisfy all legal obligations of the Company under this Escrow Agreement and any applicable federal or state laws or regulations. The recipient of any of the Company's rights to the funds in the QEF Account or the earnings thereon is a successor of the Company under Section 14 as to those rights and their attendant obligations under this Escrow Agreement and the applicable NPM Statute, rendering both the Company and transferee jointly obligated to comply with the relevant portions of this Escrow Agreement and the applicable NPM Statute.

**SECTION 16: Governing Law**

This Escrow Agreement shall be construed in accordance with and governed by the laws of the state where the Escrow Agent is incorporated ( \_\_\_\_\_ ), except that the applicable Beneficiary State's NPM Statute shall be construed in accordance with and governed by the laws and regulations of the applicable Beneficiary State.

**SECTION 17: Jurisdiction and Venue**

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

**SECTION 18: Amendments**

Except for listing Beneficiary States on Attachment A or adding new QEF Sub-Accounts for Beneficiary States already listed on Attachment A, the Escrow Agreement shall not be amended, modified, supplemented, or otherwise changed (“Amendment” or “Amended”) unless by a writing executed by each Attorney General or the Attorney General’s designee of the Beneficiary States covered by this Escrow Agreement and the Company and Escrow Agent. The Company must provide a copy of each proposed Amendment to each Attorney General or the Attorney General’s designee of the Beneficiary States covered by this Escrow Agreement at least forty-five (45) days before requesting their approval for an Amendment to the Escrow Agreement.

**SECTION 19: Waiver**

The waiver by any party of any breach of this Escrow Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Escrow Agreement, nor shall such waiver be deemed to be or construed as a waiver by any other party.

**SECTION 20: Severability**

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

## **SECTION 21: Counterparts**

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

## **SECTION 22: Captions and Headings**

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

## **SECTION 23: Conditions to Effectiveness**

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

## **SECTION 24: Form W-9; Qualified Settlement Fund**

The Company shall provide the Escrow Agent with a correct taxpayer identification number on the most recently published Form W-9 (or W-8 for a foreign entity) as authorized by the U.S. Internal Revenue Service ("IRS"). The Escrow Agent shall comply with all applicable tax filing, payment and reporting requirements, including, without limitation, those imposed under 26 CFR 1.468B, and if requested to do so shall join in the making of the relation-back election under such regulation.

## **SECTION 25: Identifying Information**

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent requires documentation to verify its formation and existence as a legal entity. The Escrow Agent may require financial statements, licenses or identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Company agrees to provide all information requested by the Escrow Agent in connection with any legislation or regulation to which the Escrow Agent is subject, in a timely manner.

**SECTION 26: Grandfather Agreement**

If the Company purchased one or more investments that: (a) were permitted under a prior escrow agreement; and (b) are not Permitted Investments under this Escrow Agreement, the Company may execute a Grandfather Agreement, which must be approved by the Beneficiary States.

The Escrow Agreement has a Grandfather Agreement, which is attached as Attachment B and hereby incorporated herein by reference; or

The Escrow Agreement does not have a Grandfather Agreement.

**SECTION 27: All Attachments Must Be Disclosed and Approved**

Adding or removing an attachment to the Escrow Agreement is an Amendment and must comply with all of the terms and conditions in Section 18.

Whenever an attachment is updated, the Escrow Agent shall: (A) obtain signatures on the attachment from authorized representatives of both the Company and Escrow Agent; and (B) provide an updated copy of the attachment to all Beneficiary States listed on the Attachment.

In addition to Attachment A and a Grandfather Agreement (which is addressed by Section 26 and must be marked as Attachment B), the Company and Escrow Agent hereby disclose and affirm that:

There are no additional attachments to the Escrow Agreement; or

All of the additional attachments to the Escrow Agreement are listed below, attached, and hereby incorporated by reference:

Attachment C (Permanent and Irrevocable Assignment of Escrow to Beneficiary States Based Upon the Failure to Appoint a Successor Agent)

Others (list and identify each attachment below)

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**SECTION 28: Modifications to Approved Tobacco Escrow Agreement**

Except for filling blank spaces or checking boxes above, neither the Company nor Escrow Agent made any Amendments the Approved Tobacco Escrow Agreement revised on May 24, 2019.

The Company and/or Escrow Agent Amended terms of the Approved Tobacco Escrow Agreement, as identified and disclosed below, pursuant to Section 18 of the Escrow Agreement.

APPROVED

ESCROW AGENT:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

COMPANY:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED

Date: \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_

**ATTACHMENT A –BENEFICIARY STATES**

The attached Escrow Agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which is hereby incorporated by reference, applies to all of the Beneficiary States listed below. Whenever Attachment A is updated, the Escrow Agent shall: (i) obtain signatures from authorized representatives of both the Company and Escrow Agent on the last page of Attachment A; and (ii) provide the updated copy of Attachment A to all Beneficiary States.

Moreover, pursuant to Section 6 of the Escrow Agreement, the Escrow Agent and Company shall provide all written notices required by the Escrow Agreement to the Beneficiary States to the addresses below.

**Beneficiary States:**

California  
California Office of the Attorney General  
Tobacco Litigation and Enforcement Section  
P. O. Box 944255  
Sacramento, CA 94244-2550

APPROVED

\_\_\_\_\_  
Name of Escrow Agent's Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Company's Authorized Representative

\_\_\_\_\_  
Signature



## ATTACHMENT B – GRANDFATHER AGREEMENT

A. The attached Escrow Agreement, which is hereby incorporated by reference, was made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Execution Date”).

B. Grandfather Date shall mean the first date that the Company signed an Escrow Agreement containing the same or substantially similar terms as Section 4 of the Escrow Agreement, the definition of Permitted Investments, and the definition of United States Treasury Securities (as modified only by the Beneficiary States listed on Attachment D [if any, please see Section 27 to confirm] which is incorporated by reference) in the attached Escrow Agreement, which is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“**Grandfather Date**”). Executing a new escrow agreement after the Grandfather Date shall have no impact on the Company’s Grandfather Date.

C. If the Company purchased one or more investments before the **Grandfather Date** that: (a) are not Permitted Investments under the attached Escrow Agreement; and (b) were permitted under the prior escrow agreement(s), subject to the following conditions and limitations below, the Company may continue to own the investments until they mature or are sold.

1. The Grandfather Agreement shall not apply to any investments that cause the total Face Value of the QEF Principal in a Beneficiary State’s Sub-Account to fall below the Minimum QEF Principal On-Deposit for that Beneficiary State; and
2. The Grandfather Agreement shall apply only to the specific investments disclosed and identified by the Company below. The Company must identify each investment using an Excel spreadsheet that provides each: (a) purchase date; (b) investment type (such as United States Treasury Security); (c) CUSIP number, (d) Face Value; (e) maturity date; and (f) Beneficiary State. A printed copy of the spreadsheet shall be dated, marked as Exhibit 1 to Attachment B, attached to Attachment B, and hereby incorporated by

reference. The Company shall provide the Escrow Agent and Beneficiary States with an Excel copy of Exhibit 1 to Attachment B. To facilitate the transfer of an Excel copy, the Beneficiary State(s) may provide the Company and/or Escrow Agent with an email address; however, unless the email address is listed on Attachment A, the email address shall not be used to provide notice under the Escrow Agreement or supersede the notice provisions in Section 6 of the Escrow Agreement. Any investment not identified and described by the Company on Exhibit 1 to Attachment B shall not be grandfathered.

3. On or before April 1 of each year, the Company shall update Exhibit 1 to Attachment B to remove all investments that have matured or were sold and provide Escrow Agent and Beneficiary States with an updated copy. The Company's failure to update Exhibit 1 to Attachment B to permit the Beneficiary States and Escrow Agent to effectively and efficiently monitor which investments are grandfathered constitutes a ground for revoking this Grandfather Agreement.
4. Upon receiving the updated Exhibit 1 to Attachment B from the Company, the Escrow Agent shall: (a) remove the old Exhibit 1 to Attachment B and attach the updated Exhibit 1 to Attachment B; and (b) provide the updated copy of Attachment B, with Exhibit 1 attached, to all Beneficiary States.

COMPANY:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ESCROW AGENT:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED

Date: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

**ATTACHMENT C – IRREVOCABLE ASSIGNMENT**  
**FOLLOWING THE FAILURE TO APPOINT A SUCCESSOR**  
**ESCROW AGENT**

The States listed below are Beneficiary States that: (A) have an Escrow Assignment Statute as defined by subdivision (F) of Section (2) of the Escrow Agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which is attached and hereby incorporated by reference; and (B) will accept funds tendered by the Company under subdivision (E)(iii) of Section 7 of the Escrow Agreement.

Whenever Attachment C is updated, the Escrow Agent shall: (i) obtain signatures from authorized representatives of both the Company and Escrow Agent on the last page of Attachment C; and (ii) provide the updated copy of Attachment C to all Beneficiary States.

Removing or adding a State to Attachment C is an Amendment to the Escrow Agreement. As such, Beneficiary States must affirmatively consent in writing to be added or removed from Attachment C. The Company must provide a copy of the proposed amendment to Attachment C to the Beneficiary State(s) to be added or removed at least forty-five (45) days before requesting their approval for an amendment to the Escrow Agreement.

**Beneficiary States for Attachment C:**

1. California

\_\_\_\_\_  
 Name of Escrow Agent's Authorized Representative

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name of Company's Authorized Representative

\_\_\_\_\_  
 Signature