

**SETTLEMENT AGREEMENT BETWEEN THE PEOPLE OF THE STATE OF CALIFORNIA
AND GRAND RIVER ENTERPRISES SIX NATIONS, LTD.**

I. RECITALS

WHEREAS, the State is a party to the Master Settlement Agreement, and has enacted the Reserve Fund Statute, the Escrow Release Statute, the Complementary Statute, and other statutes and regulations in furtherance of its obligations under that Agreement; and

WHEREAS, California and GRE have longstanding disputes regarding the applicability of the Reserve Fund Statute and Complementary Statute and are parties to an Action; and

WHEREAS, GRE desires to seek the benefits of access to the State market available to certain other Tobacco Product Manufacturers under the Complementary Statute; and

WHEREAS, California and GRE desire to enter into this settlement in order to avoid the further expense, delay, inconvenience, burden, and uncertainty of continued disputes with respect to the Action;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration for the promised settlement payments, escrow deposits, and escrow releases provided for in this Settlement Agreement, and for such other consideration as described in this Settlement Agreement, the sufficiency of which is hereby acknowledged, the Signatory Parties, acting by and through their authorized representatives, agree as follows:

II. DEFINITIONS

II.A. “Action” means *People of the State of California v. Grand River Enterprises Six Nations Ltd.*, Case No. 34-2017-00215131-CU-BT-GDS (Cal. Super. Ct. Sacramento Cnty. filed July 7, 2017).

II.B. “California” means the People of the State of California, by and through Xavier Becerra, Attorney General of the State of California.

II.C. “Claims” means all claims, demands, suits, causes of action, damages, liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses, and attorneys’ fees, brought by California in the Action or that could be asserted under the Reserve Fund Statute,

Complementary Statute, or any other cause of action predicated on violation of those statutes at any time prior to the Subsection III.C Date.

II.D. “Complementary Statute” means the law codified as section 30165.1 of the California Revenue and Taxation Code and its implementing regulations, as may be amended or re-chaptered from time to time.

II.E. “Effective Date” means the execution date of this Agreement.

II.F. “Escrow Agreement” means an agreement satisfying the requirements of title 11, sections 999.12 and 999.13 of the California Code of Regulations, as may be amended or re-chaptered from time to time.

II.G. “Escrow Release Statute” means the law codified as section 104557.1 of the California Health and Safety Code and its implementing regulations, as may be amended or re-chaptered from time to time.

II.H. “Future Claims” means all claims, demands, suits, causes of action, damages, liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses, and attorneys’ fees, brought by California and arising under the Reserve Fund Statute, Complementary Statute, or any other cause of action predicated on violation of those statutes at any time on or after the Subsection III.C Date and within one year of the termination of this Agreement, if any, in accordance with subsection V.H.

II.I. “GRE” means Grand River Enterprises Six Nations, Ltd., and its successors and assigns.

II.J. “GRE Cigarettes” means Cigarettes and Tobacco Products manufactured by or for GRE, including those with Brand Names “Seneca,” “Opal,” and “Couture.”

II.K. “GRE Distributor” means any Dealer or Distributor engaged in the Distribution of GRE Cigarettes in the State.

II.L. “GRE Importer” means any Importer of any GRE Cigarettes for Sale or Distribution in the United States.

II.M. “Quarter” means each three-month deposit period as described in title 11, section 999.20(a) of the California Code of Regulations.

II.N. “Reported Cigarettes” means GRE Cigarettes disclosed to the California Department of Tax and Fee Administration (“CDTFA”) or the Attorney General in a timely report made under applicable federal or State law by GRE, a GRE Importer, or a GRE Distributor that are Units Sold in the State. Examples include GRE Cigarettes disclosed on a federal PACT Act report submitted to CDTFA under section 376(a)(2) of title 15 of the United States Code, a distributor report submitted to CDTFA under section 30182 of the California Revenue and Taxation Code and its implementing regulations, or a brand family schedule accompanying a Certificate of Compliance submitted to the Attorney General under title 11, section 999.11(b) of the California Code of Regulations.

II.O. “Reserve Fund Statute” means the law codified as sections 104555 to 104558 of the California Health and Safety Code and its implementing regulations, as may be amended or re-chaptered from time to time.

II.P. “Signatory Parties” means California and GRE.

II.Q. “State” means the State of California and, when used in a geographic sense, includes all “Indian country,” as that term is defined in section 1151 of title 18 of the United States Code, and all territory otherwise owned by or ceded to the United States of America within its territorial limits.

II.R. “Subsection III.C Date” means January 1, 2019.

II.S. A disclosure is “timely” under this Agreement if, when related to the Sale or Distribution of GRE Cigarettes into the United States prior to the Subsection III.C Date, that disclosure is made in writing within 60 days of the Subsection III.C Date. An action is timely under this Agreement if, where a particular number of days following the Effective Date is given and subject to subsection V.F, the action is completed as of that date. Any other disclosure or action is timely under this Agreement if it is made in writing (or completed) within 60 days of the due date set forth in this Agreement or applicable federal or State law.

II.T. “Tobacco Directory” means the directory developed and published by the Attorney General pursuant to section 30165.1(c) of the Complementary Statute. On the Effective Date, the Tobacco Directory may be found at <https://oag.ca.gov/tobacco/directory>.

II.U. The term “Unit Sold” shall have the same meaning as given the term “Units sold” in section 104556(j) of the version of the Reserve Fund Statute as of the Effective Date, without regard to future amendment. For the purposes of this Agreement, any Reported Cigarette that is not included in a claim for exemption in accordance with section 30110 of the California Revenue and Taxation Code and any Unreported Cigarette shall be a “Unit Sold” in the State. Notwithstanding the preceding sentence, a Reported or Unreported Cigarette shall not be a “Unit Sold” if, by operation of an automatic stay or subsequent order in a federal bankruptcy proceeding or by final order of a federal or State court of competent jurisdiction under federal law (regardless of whether that order is predicated on federal constitutional, statutory, or common law), the State is barred from (a) collecting State tax from any person for the distribution of such Cigarette in the State, or (b) requiring escrow deposit from any Manufacturer or Importer for the distribution of such Cigarette in the State.

II.V. “Unreported Cigarettes” means GRE Cigarettes distributed in the State that are Units Sold but not disclosed to the CDTFA or the Attorney General in a timely report under applicable federal or State law by GRE, a GRE Importer, or a GRE Distributor. With respect to any GRE Cigarettes distributed in the State after the Subsection III.C Date, any Unreported Cigarettes known by the Attorney General to have been distributed in the State on or before December 31 of a sales year but not disclosed to GRE or verified using the methodology detailed in subsection IV.H.4.b prior to April 15 of the year following that sales year shall be treated as a “Reported Cigarette” with respect to section III of this Agreement.

II.W. Other terms. The terms “Affiliate,” “Cigarette,” “Master Settlement Agreement,” and “Qualified Escrow Fund” shall have the same meaning as given those terms in the Reserve Fund Statute. The terms “Brand Name,” “Non-Participating Manufacturer,” “Participating Manufacturer,” “Released Claims,” “Settling State,” “Subsequent Participating Manufacturer,” “Tobacco Product Manufacturer,” and “Tobacco Products” shall have the same meaning as given those terms in the Master Settlement Agreement. All capitalized terms not expressly defined herein shall have the meaning given them under

chapter 1 of the California Cigarette and Tobacco Products Tax Law, sections 30002 to 30019 of the California Revenue and Taxation Code.

III. PAYMENTS

III.A. Execution of Escrow Agreement. Within 10 days of the Effective Date, GRE shall establish and maintain a Qualified Escrow Fund for the benefit of the State under an Escrow Agreement. Such Qualified Escrow Fund, as maintained, shall be referred to in this Agreement as the “California QEF.”

III.B. Settlement Payments for Prior Sales Years.

1. Within 20 days of the Effective Date, GRE shall make an initial settlement payment of \$1,500,000.00 to the Attorney General. The Signatory Parties agree that this amount represents the total attorneys’ fees and expenses reasonably incurred as of the Effective Date by the Attorney General in connection with Claims addressed by this Agreement.

2. The Signatory Parties agree that the number of Reported Cigarettes for the 2016 sales year shall equal 176,844,000, the Reported Cigarettes for the 2017 sales year shall equal 256,140,000, and the Reported Cigarettes for the 2018 sales year shall equal 215,856,000. The Signatory Parties further agree that GRE may amend or correct the number of Reported Cigarettes for the 2005 through 2018 sales years by timely report submitted consistent with subsection II.S.

3. In consideration for this Agreement, GRE shall deposit into the California QEF the following amounts for GRE Cigarettes distributed in the State prior to the Subsection III.C Date:

a. For each Reported Cigarette distributed in the State prior to January 1, 2016, (i) the amount calculated as due pursuant to section 104557(a)(2) of the Reserve Fund Statute per Unit Sold *times* (ii) a settlement factor of 0.

b. For each Reported Cigarette distributed in the State from January 1, 2016, and prior to the Subsection III.C Date, (i) the amount calculated as due pursuant to

section 104557(a)(2) of the Reserve Fund Statute per Unit Sold *times* (ii) a settlement factor of 1.

c. For each Unreported Cigarette distributed in the State prior to the Subsection III.C Date, (i) the amount calculated as due pursuant to section 104557(a)(2) of the Reserve Fund Statute per Unit Sold *times* (ii) a settlement factor of 3.

4. GRE shall make the deposits set forth in subsection III.B.3 on the following schedule:

a. Within 20 days of the Effective Date, GRE shall make an initial deposit of \$2,000,000.00 into the California QEF;

b. Until the amounts described in subsections III.B.3.a and b are deposited in full, each Quarter GRE shall make a deposit in the amounts specified below into the California QEF.

Calendar Year	Quarterly Deposit
2019	\$400,000
2020	\$400,000
2021	\$500,000
2022	\$500,000
2023 and thereafter	\$600,000

Under this Agreement, there shall be no penalty if GRE elects to make a deposit under this subsection III.B.4.b of more than the deposit due per Quarter; however, any such amount deposited during a Quarter shall only be recognized as a deposit of that Quarter, and shall not be treated as a prepayment of a later Quarter's deposit or as a deposit under subsection III.C.

c. For any Unreported Cigarette distributed in the State prior to the Subsection III.C Date and verified pursuant to subsection IV.H.4.b on or before

December 31 of any year, GRE shall make the deposits set forth in subsection III.B.3.c on or before April 15 of the year following such verification.

5. 50% of any amounts deposited pursuant to subsections III.B.3 and 4 of this Agreement shall be deemed irrevocably assigned to the State pursuant to section 104557.1(a) of the Escrow Release Statute at the time of their deposit and thereafter available for withdrawal in accordance with section 104557.1(b). Any such withdrawal shall be remitted to and deposited into the State General Fund. Amounts so assigned may be applied by GRE as a credit against Claims brought by California.

III.C. Escrow Deposits for Subsequent Years

1. The Signatory Parties agree that the Reserve Fund Statute will apply to the Distribution of any Reported or Unreported Cigarette in the State after the Subsection III.C Date. In consideration of this Agreement, GRE shall deposit into the California QEF the following amounts for the Distribution of GRE Cigarettes in the State on or after the Subsection III.C Date:

a. For each Reported Cigarette distributed in the State on or after the Subsection III.C Date, the amount calculated as due pursuant to section 104557(a)(2) of the Reserve Fund Statute per Unit Sold.

b. For each Unreported Cigarette distributed in the State on or after the Subsection III.C Date, (i) the amount calculated as due pursuant to section 104557(a)(2) of the Reserve Fund Statute per Unit Sold *times* (ii) a settlement factor of 3.

2. GRE shall make the deposits set forth in subsection III.C.1 on the schedule applicable to newly-qualified or elevated risk Non-Participating Manufacturers in accordance with the Reserve Fund Statute.

3. 50% of any amounts deposited pursuant to subsection III.C of this Agreement shall be deemed irrevocably assigned to the State pursuant to section 104557.1(a) of the Escrow Release Statute on April 15 of the year following the applicable sales year and thereafter available for withdrawal in accordance with section 104557.1(b). Any such withdrawal shall be

remitted to and deposited into the State General Fund. Any amount so assigned shall not be reduced in the event of a subsequent downward revision of the number of Reported or Unreported Cigarettes in the applicable sales year. Amounts so assigned may be applied by GRE as a credit against Future Claims brought by California.

III.D. Return of Non-Irrevocably Assigned Escrow Deposits. If GRE has made a timely deposit under subsection III.B or subsection III.C of this Agreement and it is subsequently determined that such deposit involved GRE Cigarettes that are not Units Sold in the State, by operation of this Agreement GRE shall be entitled to withdraw deposited amounts associated with those Cigarettes that are not Units Sold in the State and that have not been previously irrevocably assigned pursuant to subsection III.B.5 or subsection III.C.3 from the California QEF. California shall cooperate in providing any instructions to the Escrow Agent necessary to effectuate such release.

IV. ADDITIONAL SETTLEMENT CONDITIONS

IV.A. Dismissal of Action. As soon as practicable following the Effective Date, California and GRE shall jointly move the Superior Court of California, County of Sacramento for dismissal of the Action.

IV.B. Certification of GRE Cigarettes.

1. GRE acknowledges that certification of GRE Cigarettes for Distribution in the State is governed by the Complementary Statute and that this Agreement does not itself guarantee certification of any GRE Cigarettes for Distribution in the State (including through placement on the Tobacco Directory) if the conditions for such certification as set forth in the Complementary Statute have not been or cease to be satisfied.

2. In consideration of this Agreement, for three years beginning on the Effective Date, GRE shall be required to file with the Attorney General a surety bond posted by a corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars (\$50,000) or one-quarter of the amount GRE would be required to deposit as a result of the largest of its most recent five calendar year's sales in California. The bond shall be written in

favor of the State of California, shall be renewed at least quarterly, and shall be otherwise conditioned on terms comparable to those applicable to surety bonds posted by newly-qualified and elevated risk Non-Participating Manufacturers under the Complementary Statute. The bond may be drawn upon by the board or the Attorney General to cover unsatisfied escrow obligations, claims for penalties, claims for monetary damages, amounts related to any Claims, Future Claims, or any other dispute arising under this Agreement as against GRE (subject to subsection IV.G), and any other liabilities that are subject to any claim of sovereign immunity by GRE against enforcement of the laws specified above.

3. In consideration of this Agreement, the Attorney General shall consider certification of GRE Cigarettes for Distribution in the State on a comparable basis to any other newly-qualified or elevated risk Non-Participating Manufacturer, except (a) as long as GRE is current on its settlement payments under subsection III.B and its escrow deposits under subsection III.C, the Attorney General shall not deny such certification of GRE Cigarettes based on non-compliance with of the Reserve Fund Statute with respect to GRE Cigarettes distributed in the State prior to the Subsection III.C Date; and (b) for the three years beginning on the Effective Date, as long as GRE is in compliance with subsection IV.B.2 of this Agreement, the Attorney General shall not deny such certification of GRE Cigarettes due to the absence of a surety bond satisfying the requirements set forth in the Complementary Statute.

4. In contemplation of settlement, the Attorney General shall provide GRE technical assistance in the completion of the necessary materials required for GRE's initial placement on the Tobacco Directory. Within 10 days of the Effective Date, the Attorney General shall provide GRE an update on outstanding certification issues, if any, as of the Effective Date. The Attorney General agrees that GRE's initial placement on the Tobacco Directory shall occur as soon as practicable (a) following receipt of the subsection III.B.1 settlement payment and the subsection III.B.4.a initial deposit, and (b) once the conditions for such certification have been satisfied (subject to this subsection IV.B).

IV.C. Federal Returns. Within 10 days of the Effective Date of this Agreement, GRE shall submit to the United States Treasury a request or consent authorizing disclosure of federal tax returns to the Attorney General consistent with section 30165.2(b)(2) of the California Revenue and Taxation Code. The Signatory Parties agree that use of such federal tax returns is restricted to the permissible uses set forth in sections 30165.2(e) and (f) of the California Revenue and Taxation Code.

IV.D. Within 30 days of the Effective Date of this Agreement, GRE shall file with the Attorney General reports of sales to GRE Importers on the initial GRE Importer List for the period beginning January 1, 2016. Thereafter, GRE shall timely provide to the Attorney General monthly reports of sales of GRE Cigarettes to GRE Importers on the then-current GRE California Importer List. Upon written request, GRE shall also timely provide to the Attorney General monthly reports of sales of GRE Cigarettes to any GRE Importer on the then-current GRE Importer List. GRE agrees that reports of sales provided pursuant to this subsection IV.D. may be used to identify Reported and Unreported Cigarettes and for other purposes under the Reserve Fund Statute and the Complementary Statute.

IV.E. Federal PACT Act Reports. The Signatory Parties acknowledge GRE's position that it is not currently obligated to register and report its exports into the United States under the PACT Act. In the event that GRE becomes so obligated, GRE shall (a) file with the Attorney General of the United States in accordance with section 376(a)(1) of title 15 of the United States Code, and (b) provide to the CDTFA and the Attorney General reports of shipments into the State for the period January 1, 2016 to present of the type described in section 376(a)(2) of title 15 of the United States Code. Thereafter, GRE shall timely provide to the Attorney General monthly reports of shipments into the State of the type described in section 376(a)(2) of title 15 of the United State Code. The Signatory Parties agree that use of such reports of shipments is restricted to the permissible uses applicable to "delivery sales" as set forth in section 30101.7 of the California Revenue and Taxation Code and is not further limited by section 376(c) of title 15 of the United States Code. In consideration for this Agreement, GRE agrees that reports of shipments provided pursuant to this subsection IV.E or under section 376(a)(2) of title 15 of the United States Code

may be used to identify Reported Cigarettes and for other purposes under the Reserve Fund Statute and the Complementary Statute.

IV.F. GRE Importers.

1. Within 10 days of the Effective Date of this Agreement, GRE shall compile a list of all known GRE Importers and second list of all GRE Importers known by GRE to be selling or shipping GRE Cigarettes in or into the State and provide these lists to the Attorney General.

These lists, as maintained pursuant to this subsection IV.F, shall be referred to in this Agreement as the “GRE Importer List” and the “GRE California Importer List,” respectively.

2. The GRE Importer List. At any time more than 40 days after the Effective Date, no GRE Importer shall be included on the GRE Importer List unless it (a) is in possession of a current permit from the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury (TTB) as set out in part 41, subpart K of title 27 of the Code of Federal Regulations; (b) is certified to import GRE Cigarettes under section 1681a of title 19 of the United States Code; and (c) has not had any Unreported Cigarettes verified pursuant to subsection IV.H.4 in the previous 3 years. Beginning 40 days after the Effective Date, and continuing thereafter, the Attorney General may notify GRE in writing of any GRE Importer not in compliance with this subsection IV.F.2. Within 10 days of such notice, GRE shall either provide written confirmation and documents sufficient to establish that GRE or such GRE Importer have remedied the issues identified by the Attorney General, or remove such GRE Importer from the GRE Importer List and distribute a revised GRE Importer List to the Attorney General.

3. The GRE California Importer List. At any time more than 40 days after the Effective Date, no GRE Importer shall be included on the GRE California Importer List unless (a) it is on the GRE Importer List, and has (b)(1) delivered to the Attorney General executed copies of all forms required of Importers under the Complementary Act; (2) submitted to the United States Treasury a request or consent authorizing disclosure of federal tax returns to the Attorney General consistent with section 30165.2(b)(2) of the California Revenue and Taxation Code; (3)

filed with the Attorney General of the United States in accordance with section 376(a)(1) of title 15 of the United States Code, and (4) provided to CDTFA and the Attorney General reports of shipments into the State for the period beginning January 1, 2016, of the type described in section 376(a)(2) of title 15 of the United States Code. Beginning 40 days after the Effective Date, and continuing thereafter, the Attorney General may notify GRE in writing of any GRE Importer not in compliance with this subsection IV.F.3. Within 10 days of such notice, GRE shall either provide written confirmation and documents sufficient to establish that GRE or such GRE Importer has remedied the issues identified by the Attorney General, or remove such GRE California Importer from the GRE California Importer List and distribute a revised GRE California Importer List to the Attorney General.

4. Treatment of Tribally-Affiliated Importers. In consideration of this Agreement, and notwithstanding subsection IV.F.3, California agrees that Big Sandy Importing, IRA (“BSRI”), or any other GRE Importer on the GRE Importer List and chartered under the laws of a federally recognized Indian Tribe or Nation (collectively, “Tribally-Affiliated Importers”) shall not be removed from the GRE California Importer List within 2 years of the Effective Date so long as such Tribally-Affiliated Importer (a) remains on the GRE Importer List; (b) has provided to the Attorney General (1) a corporate charter, articles of incorporation, or other document(s) that establish the existence of the Tribally-Affiliated Importer under applicable federal, State, or tribal law; and (2) a tribal ordinance, declaration, license, provision of tribal code or law, or otherwise that establishes that the Tribally-Affiliated Importer is authorized to engage in the importation or distribution of Cigarettes by its governing Tribe or Nation; and (c) such Tribally-Affiliated Importer (1) does not import GRE Cigarettes into the United States through any customs entry point within the State; and (2) provides to CDTFA and the Attorney General timely reports of shipments into the State as required by section 376(a)(2) of title 15 of the United States Code. This subsection is not intended to be and shall not in any event be construed or deemed to be, or represented to be, satisfactory evidence that a Tribally-Affiliated Importer is authorized to

make Sales or Distribution of GRE Cigarettes in the State, or to conduct any business in the State, except in full accordance with applicable federal, State, and tribal law.

5. Additions to the GRE Importer List or GRE California Importer List. Beginning 40 days after the Effective Date, GRE may add any person to the GRE Importer List that satisfies the requirements of subsection IV.F.2 after providing notice to the Attorney General. Adding any person to the GRE Importer List who does not at that time satisfy the requirements of IV.F.2 constitutes a violation of this Agreement for purposes of subsection IV.G.3. Beginning 40 days after the Effective Date, GRE may add a new GRE Importer to the GRE California Importer List that satisfies the requirements of subsection IV.F.3 following confirmation by the Attorney General. The Attorney General shall confirm any new GRE Importer for purposes of this subsection IV.F.5 upon a finding that such new GRE Importer has satisfied the requirements of subsections IV.F.2 and IV.F.3. A new GRE Importer shall be deemed confirmed if the Attorney General fails to act within 10 days of a written request from GRE (such GRE Importer confirmed in accordance with this subsection may be subsequently removed in accordance with subsection IV.F.2 or IV.F.3). Confirmation of a new GRE Importer under this subsection is not intended to be and shall not in any event be construed or deemed to be, or represented to be, satisfactory evidence that the GRE Importer is authorized to make Sales or Distribution of GRE Cigarettes in the State, or to conduct any business in the State, except in full accordance with applicable federal and State law.

6. Restrictions on Future Sales and Distributions. At any time more than 40 days after the Effective Date, GRE shall not sell, transfer, or ship any GRE Cigarettes to any person in the United States that is not listed on the most recently revised GRE Importer List. Any such sale, transfer, or shipment by GRE shall constitute a violation of subsection IV.G.3, regardless of whether such GRE Cigarettes are intended for Sale or Distribution into the State. Any time more than 40 days after the Effective Date, GRE shall not sell, transfer, or ship any GRE Cigarettes to any person in the United States that it knows or should know intends to sell GRE Cigarettes in or

into the State and that is not listed on the most recently revised GRE California Importer List. For the purposes of this Agreement, GRE shall be deemed to know a person intends to sell GRE Cigarettes in or into the State if the person (a) actually sells, transfers, ships, or distributes more than 12,000,000 GRE Cigarettes into the State; or (b) actually sells, transfers, ships, or distributes more than 1,200,000 GRE Cigarettes into the State and has previously been removed from the California GRE Importer List pursuant to subsection IV.F.3. Any such sale, transfer, or shipment by GRE shall constitute a violation of subsection IV.G.3.

IV.G. Default.

1. In the event that GRE fails to make each required deposit in accordance with the schedule set forth in subsection III.B.3, the settlement factor for Reported Cigarettes under subsection III.B.3.a shall be permanently increased from 0 to 1. In the event that GRE fails to make any two consecutive deposits in accordance with the schedule set forth in subsection III.B.4. subsection IV.B.2-3 and subsection IV.H.4.a shall be rendered inoperative, (and, for the avoidance of doubt, the releases set forth in subsections IV.H.1 through IV.H.3 shall remain operative), and the Attorney General may, in his discretion, seek to enforce any Claims.

2. In the event that GRE fails to timely make each required deposit in accordance with the schedule set forth in subsection III.C, the assignment percentage applied to escrow deposits under subsection III.C.3 shall be permanently increased by five percentage points per occurrence, up to a maximum of 100%, retroactive to the Subsection III.C Date. The Attorney General may also, in his discretion, seek to enforce any Future Claims, including, but not limited to, bringing a suit against GRE, a GRE Importer, or a GRE Distributor, or removing GRE Cigarettes from the California Tobacco Directory consistent with the procedures outlined in the Complementary Act.

3. In the event that GRE fails to comply with the requirements of the Complementary Statute or the additional settlement conditions set forth in subsection III.A or subsections IV.B through IV.F of this Agreement, subsection IV.H.4.a shall be rendered

inoperative, (and, for the avoidance of doubt, the releases set forth in subsections IV.H.1 through IV.H.3 shall remain operative), and the Attorney General may, in his discretion, seek to enforce any Claims or Future Claims, including, but not limited to, bringing a suit against GRE, a GRE Importer, or a GRE Distributor, or removing GRE Cigarettes from the California Tobacco Directory consistent with the procedures in the Complementary Act.

IV.H. Releases

1. Timing. The Signatory Parties agree that any limitations period that would otherwise attach to any Claims is waived and shall not constitute a valid defense to California's assertion of any Claims against GRE.

2. Jurisdiction. GRE consents to personal jurisdiction in California with respect to any dispute arising under this Agreement. The Signatory Parties acknowledge that GRE's consent to jurisdiction is contractual and that any waiver of defenses that may be otherwise available absent this Agreement should be narrowly construed.

3. Immunity. GRE waives any claim or defense that its status, or the status of any Affiliate, limits or prevents California from exercising its rights with respect to any Claims, Future Claims, or any other dispute arising under this Agreement based on tribal sovereign immunity, governmental sovereign immunity, or any treaty right or privilege associated with the transacting of business in the State. Any such claim or defense shall not constitute a valid defense to California's assertion of any Claims, Future Claims, or any other dispute arising under this Agreement as against GRE.

4. California Release of Claims.

a. Beginning on the Effective Date, and continuing during the period during which GRE is making settlement payments in accordance with subsection III.B.3, California agrees that it shall not re-institute the Action or bring another suit against GRE asserting any Claims addressed by this Agreement. Following deposit and assignment of all settlement payments as of the completion of payments set forth in subsection III.B.3,

California releases GRE from any and all potential liability with respect to all Claims arising out of such Reported and Unreported Cigarettes.

b. Beginning on the Subsection III.C Date, and continuing for 4 years following the Subsection III.C Date, California may identify Unreported Cigarettes distributed in the State before the Subsection III.C Date. Unreported Cigarettes so identified by California shall be deemed “verified” if (a) California provides GRE documentation detailing the shipment of said Cigarettes into the State by a GRE Importer or GRE Distributor; and (b) GRE does not within 30 days (1)(i) Remove the offending GRE Importer or GRE Distributor from the GRE Importer List and the GRE California Importer List; (ii) Provide written notice to all GRE Importers that GRE Cigarettes may not be sold to the offending GRE Importer or GRE Distributor; and (iii) provide a report confirming and reporting the cigarettes as Reported Cigarettes; or (2)(i) identify a timely filed reporting including such GRE Cigarettes; or (ii) provide a timely filed report from the recipient of the shipment establishing that the GRE Cigarettes so received were shipped out of the State. Following deposit and assignment of all settlement payments for Unreported Cigarettes identified within 4 years following the Subsection III.C Date and verified consistent with this subsection, California releases GRE from any and all potential liability with respect to all Claims arising out of such Unreported Cigarettes.

c. Beginning on the Subsection III.C Date, California may identify Unreported Cigarettes distributed in the State on or after the Subsection III.C Date. Unreported Cigarettes so identified may be verified using the methodology detailed in subsection IV.H.4.b. California releases GRE from any and all liability with respect to any payment obligation arising under this Agreement in connection with any Unreported Cigarette not identified within 4 years of its shipment into the State or its Distribution within the State (whichever is later) and verified consistent with subsection IV.H.4.b. The failure of GRE to deposit escrow on any Unreported Cigarette not identified within 4

years of its shipment into the State or its Distribution within the State (whichever is later) shall not constitute a default under subsection IV.G.2.

IV.I. Reserved Issues. The Signatory Parties acknowledge that this Agreement does not address or resolve disputes that may exist or arise related to any Released Claims or to any claims, demands, suits, causes of action, damages, liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses, and attorneys' fees, relating to the collection or remittance of any California tax by GRE, any GRE Importer, or any GRE Distributor. The Signatory Parties reserve all rights with respect to such disputes. The Signatory Parties acknowledge continuing disputes between California and GRE, GRE Importers, and GRE Distributors regarding the applicability of state regulatory authority in Indian country. Except as specifically released or waived under this Agreement, the Signatory Parties reserve their rights with respect to such disputes.

IV.J. MSA Joinder. If, after executing this Agreement, GRE becomes a Subsequent Participating Manufacturer to the Master Settlement Agreement, the Signatory Parties agree to negotiate in good faith any amendments necessary to comport this Agreement with the joinder requirements set forth in section II(jj)(2) of the Master Settlement Agreement.

IV.K. Limited Most-Favored Nation Provision.

1. If, within 1 year of the Effective Date of this Agreement, any Non-Participating Manufacturer enters into a settlement agreement with California resolving disputes regarding the applicability of the Reserve Fund Statute and Complementary Statute to Distribution of its Cigarettes in the State on financial terms more favorable to the manufacturer than the terms of this Agreement, the financial terms of this Agreement shall be revised to conform to the terms of that settlement agreement.

2. If, within 1 year of the Effective Date of this Agreement, GRE enters into a settlement agreement with any Settling State resolving disputes regarding the applicability of state laws to Distribution of its Cigarettes in that Settling State on financial terms more favorable

to that Settling State than the financial terms of this Agreement, the financial terms of this Agreement shall be revised to conform to the terms of that settlement agreement.

3. For the purposes of this subsection IV.K, the amount or timing of an initial settlement payment or deposit shall not be considered a more favorable financial term. For the purposes of this subsection IV.K, a more favorable financial term includes, but is not limited to, (a) duration of the deposit repayment period; (b) the settlement factor applied to any group of Reported or Unreported Cigarettes; (c) the assignment percentage applied to settlement payments or escrow deposits; or (d) the inclusion of express terms for penalties or fees other than attorneys' fees and expenses incurred.

4. This subsection IV.K shall not apply to any settlement agreement unless that settlement agreement resolves disputes with respect to the Distribution or Sale of at least 30,000,000 total Cigarettes in a Settling State across any number of sales years.

IV.L. Notice. GRE shall give notice of this Agreement to each of its current Affiliates and any current GRE Importer within 10 days after the Effective Date, and shall have a continuing obligation to provide timely notice to each of its future Affiliates and any future GRE Importer. Copies of GRE's notice to such Affiliates and GRE Importers shall be provided to the Attorney General no later than 20 days after they are made.

V. MISCELLANEOUS

V.A. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard to the conflict of law rules of the State.

V.B. Effect of Current or Future Law. If any current or future law includes obligations or prohibitions applying to Non-Participating Manufacturers related to any of the provisions of this Agreement, GRE shall comply with this Agreement unless compliance with this Agreement would violate such law. If the source of the additional obligation or prohibition is State law, the subsections related to modification of payment obligations following default set forth in subsection IV.G.1 and the first sentence of subsection IV.G.2 of this Agreement shall be rendered inoperative as to any deposits made

subsequent to that modification. In the event any term of this Agreement cannot be complied with under applicable law, the Signatory Parties agree to cooperate in good faith on potential amendments to this Agreement consistent with the purposes of this Agreement as identified in the Recitals.

V.C. No Admission. This Agreement is not intended to be and shall not in any event be construed or deemed to be, or represented to be, an admission or concession or evidence of any liability or any wrongdoing on the part of GRE; or as a basis for personal jurisdiction or a waiver of immunity by any third party or any individual officer or director of GRE other than as provided in subsections IV.H.2 and 3.

V.D. Integrated Agreement. The settlement negotiations resulting in this Agreement have been undertaken by the Signatory Parties in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose.

V.E. Entire Agreement. This Agreement embodies the entire agreement and understanding between and among the Signatory Parties relating to the subject matter hereof and supersedes (a) all prior agreements and understandings relating to such subject matter, whether written or oral; and (b) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.

V.F. Business Day. Any obligation hereunder that, under the terms of this Agreement, is to be performed on a day that is not a business day in the State shall be performed on the first business day thereafter.

V.G. Duly Authorized. The Signatory Parties hereby represent that this Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in California courts in accordance with its terms. GRE further expressly acknowledges and warrants that it has the authority under contract with each current and future GRE Importer to compel their respective compliance with the terms of this Agreement or terminate their Importer relationship, and therefore accepts that violations of this Agreement by any current and future GRE Importer shall be attributable to GRE for purposes of determining compliance with this Agreement.

V.H. Amendment and Waiver. This Agreement may be amended or terminated by written instrument executed by all Signatory Parties. The amendment, termination, or waiver of any rights conferred hereunder, including with respect to the timing of filing or payments, shall be effective only if made by written instrument executed by all Signatory Parties. Prior amendment or waiver addressing a breach of this Agreement shall not be deemed to be or construed as an amendment or waiver with respect to any other breach of this Agreement, and no pattern or practice of amendment, waiver, or non-enforcement with respect to any other breach shall constitute a justification, defense, or excuse for a breach.

V.I. Counterparts. This Agreement may be executed in separate counterparts, and by facsimile or other electronic signature, each of which shall be deemed to be an original, and said counterparts shall together constitute one and the same Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to the original or same counterpart. This Agreement is not and shall not be effective, however, unless and until each signatory Party executes and delivers the original or counterpart.

IN WITNESS THEREOF, each Signatory Party, through its authorized representative, has agreed to this Settlement Agreement on the respective date indicated below.

**PEOPLE OF THE STATE OF CALIFORNIA, BY AND THROUGH
XAVIER BECERRA**

By:



James V. Hart
Deputy Attorney General
for Xavier Becerra
Attorney General of the State of California

Date: NOVEMBER 27, 2018

GRAND RIVER ENTERPRISES SIX NATIONS, LTD.

By: 

Paul Cowen
Vice President, Finance

Date: NOVEMBER 6, 2018