

**Cooperation Agreement between**

**British-American Tobacco (Holdings) Limited**

**and**

**The European Union as represented  
by the European Commission**

**and**

**The Signatory Member States  
of the European Union**

This Agreement is made on the 15<sup>th</sup> day of July 2010 (the "Execution Date")

## BETWEEN

1. British-American Tobacco (Holdings) Limited ("BAT");  
and
2. The European Union (the "EU") represented by the European Commission;  
and
3. The Member States who sign this Agreement (hereinafter referred to as "Participating Member State" or "Participating Member States").

## RECITALS

Whereas:

1. recognising that the production of Counterfeits and the smuggling of Cigarettes into and within the EU causes economic loss to the Parties;
2. recognising that OLAF's mission is to protect the financial interests of the EU and to combat illegal activities which have financial consequences for the budget of the EU and that OLAF has established a dedicated group to combat the international trade in Counterfeit and smuggled Cigarettes;
3. recognising that it is the intention of the EU and the Member States, each within their respective competencies and subject to budgetary constraints, to continue and expand their efforts to fight the production of Counterfeits and the smuggling of Cigarettes;
4. acknowledging the need for the Parties to take effective and efficient measures to eliminate Counterfeits and reduce and prevent Cigarette smuggling, including but not limited to: effective and focused policing of borders, protection of markets from excessive over supply and the introduction of improved identification of genuine BAT Cigarettes;
5. recognising that the fight against the illicit trade in Cigarettes calls for binding co-operation between the tobacco industry, the Member States and the EU;
6. acknowledging that the Parties' joint intention is to establish ongoing means of cooperation through the mechanics of this Agreement to combat the production of Counterfeits and the smuggling of Cigarettes within, through or into the markets or countries covered by this Agreement;
7. acknowledging that it is the Parties' intention to improve awareness of, and continue to provide training on, measures designed to prevent the illicit trade in Cigarettes among relevant BAT Company employees and appropriate EU and Participating Member States' personnel,

the Parties have agreed to and are hereby legally bound by the following:

Definitions:

In this Agreement the following terms shall have the meanings set out below:

**"Agreement"** shall mean this agreement and the appendices hereto as it or they may be validly varied or modified from time to time.

**"BAT Cigarettes"** shall mean Cigarettes which bear a BAT Company trademark and which have been manufactured by a BAT Company or any entity engaged by a BAT Company by means of a contract manufacture or trademark license agreement.

**"BAT Company"** shall mean any company in the BAT Group which is involved, at any time over the course of the Agreement, in the manufacture, sale, distribution, warehousing, shipping or transportation of BAT Cigarettes within, through or into the markets or countries covered by this Agreement.

**"BAT Group"** shall mean the group of companies comprising British American Tobacco p.l.c. and its direct and indirect subsidiaries (for the avoidance of doubt being those companies in which British American Tobacco p.l.c. or its direct or indirect subsidiaries individually or together own shares representing more than 50% of the issued share capital).

**"Carton"** shall mean a package containing 10 packs of Cigarettes (being approximately 200 Cigarettes in total).

**"Cigarette"** shall mean any product that contains tobacco and is intended to be burned or heated under ordinary conditions of use and includes, without limitation, any "roll your own" tobacco which, because of its appearance, type, packaging or labelling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making Cigarettes. For the purpose of this Agreement, 0.0325 ounces of "roll-your-own" tobacco shall be considered the equivalent of one individual Cigarette.

**"Contractor"** shall mean a First Purchaser or any other person or entity engaged by contract by a BAT Company to manufacture, sell, distribute and/or store BAT Cigarettes in volumes in excess of 25,000,000 Cigarettes per year within, through or into the markets or countries covered by this Agreement.

**"commercially reasonable,"** as used in describing an act required herein, requires the obligated Party to make reasonable business efforts in good faith, to accomplish the relevant activity including incurring expenditure, assigning staff and/or allocating resources as appropriate to comply with the relevant activity.

**"Cooperating Company"** shall mean a company that has entered into a binding agreement with the EU and some or all of the Member States which covers cooperation in the fight against Counterfeit and smuggled Cigarettes and which includes obligations in relation to know-your-customer, track and trace and monetary payments.

**"Counterfeit"** shall mean Cigarettes bearing a trademark of a Cigarette manufacturer that are manufactured by a third party without the consent of that Cigarette manufacturer, authentic Cigarettes which have been repackaged into unauthorised packaging without the knowledge or consent of the manufacturer or unauthorised

Cigarettes which were packed into authentic packaging without the knowledge or consent of the manufacturer, but shall in no event include: (i) Cigarettes manufactured by the trademark holder or any affiliate thereof, regardless of the actual or intended market of distribution; (ii) Cigarettes bearing a trademark of a Cigarette manufacturer using tobacco either produced by or sold by that Cigarette manufacturer; or (iii) Cigarettes bearing a trademark of a Cigarette manufacturer that are packaged in genuine packaging of that Cigarette manufacturer, including genuine Cartons and Packs of that Cigarette manufacturer.

**"Documentary or Other Substantive Evidence"** shall mean (i) a criminal conviction in any official EU court or tribunal for any offence relating to the manufacture, sale, distribution and/or storage of Counterfeit product or contraband Cigarettes or any other related illegal activity; or (ii) a finding by any official EU court or tribunal in any civil case of involvement in the manufacture, sale, distribution and/or storage of Counterfeit product or contraband Cigarettes, or any other related illegal activity; or (iii) a criminal conviction or a civil finding, as outlined in (i) and (ii) above, in an official court or tribunal of any other jurisdiction which has comparable procedural safeguards and requires a comparable standard of proof to those applicable in the EU.

**"First Purchaser"** shall mean any person or entity, other than a BAT Company, which directly purchases BAT Cigarettes from a BAT Company in an amount greater than 25,000,000 Cigarettes annually for sale, distribution or consumption within, through or into the countries covered by this Agreement.

**"Intended Market of Retail Sale"** shall mean the market which the BAT Company intends as the market of either domestic duty paid retail sale or duty-free retail sale for BAT Cigarettes when a BAT Company sells such Cigarettes.

**"Master Case"** shall mean the packaging for a case containing approximately 10,000 Cigarettes.

**"Member State"** shall mean the member states of the EU.

**"OLAF"** shall mean the Anti-Fraud Office of the European Commission or any successor thereof.

**"Pack"** shall mean packaging for approximately 20 Cigarettes.

**"Party" or "Parties"** shall mean a Party or those Parties who have signed this Agreement.

**"seizure"** shall mean a seizure from a single individual or entity (or in certain specific instances, multiple individuals or entities if such individuals are reasonably demonstrated to be acting in concert with one another), in a single location (or in certain specific instances, multiple locations in close proximity if such locations are reasonably demonstrated to be part of the same scheme), at a single point in time, (or in certain specific instances, multiple points in time in close proximity if such instances are reasonably demonstrated to be part of the same scheme).

## 1. **POLICIES AND PROCEDURES**

- 1.1 BAT Companies have in place policies and procedures in relation to the manufacture, sale, distribution and/or storage of BAT Cigarettes in the markets or countries covered by this Agreement. BAT will ensure that these policies and procedures are consistent with the policies and procedures set out in this Agreement, including the appendices and related arrangements hereto (the "**Policies and Procedures**") and that the Policies and Procedures are made known to BAT Company employees and are available to them electronically on their internal website along with related materials and reference to the whistle-blowing procedure specified under paragraph 21 of Appendix A.
- 1.2 BAT shall ensure that each BAT Company (for the avoidance of doubt including any BAT Company incorporated after the Execution Date hereof or which becomes a BAT Company because it has initiated operations after the date hereof, to carry out the manufacture, sale, distribution, warehousing, shipping or transportation of BAT Cigarettes within, through or into the markets or countries covered by this Agreement), complies with the term of this Agreement, and undertakes that no BAT Group company shall take any action to avoid or diminish the obligations and commitments contained in this Agreement and related arrangements.

## 2. **MARKET AND PRODUCT INFORMATION**

- 2.1 BAT Companies will use commercially reasonable efforts to carry out production and other procedures so that the packaging for BAT Cigarettes bears the markings, codes and other indicators set out in Appendix B in relation to identifying the markets for BAT Cigarettes and the sales by BAT Companies of BAT Cigarettes to their customers.

## 3. **SEIZURES**

- 3.1 (a) If there is a seizure by the authorities of any Participating Member State of 50,000 or more Cigarettes bearing a BAT Company trademark and which the authorities reasonably believe to be BAT Cigarettes, the seizing Participating Member State may notify OLAF of such seizure.
- (b) Upon receipt by OLAF of specific notice of such a seizure from the Participating Member State, OLAF may notify BAT of the seizure of the presumed BAT Cigarettes.
- (c) BAT shall then consult with the relevant authority of the Participating Member State that made the seizure in order to arrange for inspection of the seized Cigarettes and the taking of samples by or on behalf of BAT within 30 days of receipt of the seizure notification from OLAF in order to determine the origin and source of the BAT Cigarettes, and whether they are Counterfeit or genuine. The seizing authority may also select samples that BAT must examine.
- (d) The notice of seizure from OLAF shall specify:

- (1) the brand or brands of Cigarettes;
- (2) the quantity of Cigarettes;
- (3) the date, time and place of the seizure;
- (4) the indicated market of retail sale of the brands if evident from the packaging;
- (5) any indication of the market where it appears the Cigarettes were instead intended to be sold or consumed; and
- (6) any markings from the Master Cases indicating information on the customer or shipping of the Cigarettes.

3.2 If the products are genuine BAT Cigarettes:

- (a) BAT shall provide OLAF with the following information concerning the seized BAT Cigarettes, if reasonably available:
  - (1) the place of manufacture of the seized BAT Cigarettes;
  - (2) the date of manufacture of the seized BAT Cigarettes;
  - (3) the Intended Market of Retail Sale of the seized BAT Cigarettes;
  - (4) any intervening warehousing and shipping;
  - (5) the identity of the First Purchaser of the seized BAT Cigarettes;
  - (6) identification of the invoices to the First Purchaser in respect of the seized BAT Cigarettes;
  - (7) payment records from the First Purchaser covering the seized BAT Cigarettes; and
  - (8) if known, the identity of any subsequent customer.
- (b) BAT, upon request, shall promptly advise OLAF (as soon as the information is available and, if possible, by the end of the next Business Day) of previous shipments to the First Purchaser in the 3 months prior to the date of shipment of the seized BAT Cigarettes to the First Purchaser, any current orders for BAT Cigarettes, the volumes forecast and the volumes sold for the 12 months prior to the seizure, and the volumes forecast for the following 12 months for the brands of seized BAT Cigarettes for that market and that First Purchaser. Upon request, BAT shall also provide copies of the invoices covering the seized BAT Cigarettes sold by a BAT Company to the First Purchaser thereof, as well as any payment records relating to payment received for the seized BAT Cigarettes.

- 3.3 (a) If BAT determines that the seized products are Counterfeit or that they are genuine Cigarettes but not BAT Cigarettes, BAT shall advise OLAF of this, the reasons for such a determination, including any appropriate documentation and examination results, and shall provide information that any BAT Company may have about the source of the products and the persons or entities involved in the manufacture or distribution of the seized products.
- (b) The determination of whether Cigarettes are Counterfeit or are not BAT Cigarettes shall involve consideration of the following factors, which may be amended by agreement between the Parties as new technologies and techniques are developed:
- (1) the look, shape, colour and size of the packaging;
  - (2) the materials used in the packaging;
  - (3) the size, font, colour, language and content of the text appearing on the packaging;
  - (4) the markings, codes, and stamps appearing on the packaging;
  - (5) the look, shape, colour, and size of the Cigarettes;
  - (6) the markings on the Cigarettes;
  - (7) the materials used in the cigarette paper and filter;
  - (8) the nature, blend and quality of the tobacco; and
  - (9) all the ingredients of the Cigarettes.
- (c) (1) If OLAF or the Participating Member State which seized the BAT Cigarettes contests the determination that the seized Cigarettes are Counterfeit or that they are genuine but not BAT Cigarettes, OLAF shall so notify BAT.
- (2) The matter will then be referred to a duly designated OLAF representative and a duly designated BAT representative, who shall meet and confer in good faith on the matter within 30 days of the date of such notice in order to resolve the matter.
- (3) If the matter remains unresolved within 45 days of such meeting, the matter will be referred to an independent laboratory designated by mutual agreement of the Parties by the Execution Date. The determination of the independent laboratory shall be final and shall take into account the factors listed in 3.3 (b) and any other physical factors it considers relevant. Any costs associated with the decision by the independent laboratory shall be paid for by the non-prevailing Party.

- 3.4 (a) BAT will provide the information pursuant to Sections 3.2(a) and 3.3 (a), above, within 30 days of the date of inspection by BAT, or 60 days of the date of notice under section 3.1 (b), whichever is earlier.
- (b) BAT will provide the information pursuant to 3.2(b) above promptly (as soon as the information is available, and, if possible, by the end of the next Business Day).
- 3.5 Subject to Sections 3.7, 3.8 and 12, at the same time that BAT provides the information pursuant to section 3.2 (a) above, BAT will make a payment to such bank account nominated by the European Commission in Brussels as follows:
- (a) a payment equal to 100% of the taxes and duties that would have been paid on the same or equivalent product in the Participating Member State of seizure at the time of seizure, or, if the same brand is not sold in the Participating Member State of seizure, the taxes and duties that would have been paid on similar legal product in the Participating Member State of seizure at the time of seizure;
- (b) if the seized BAT Cigarettes, when added to the number of contraband BAT Cigarettes in the same calendar year seized in the EU upon which payments are or have been due under Section 3.5(a) above, results in a total that exceeds 150,000,000 BAT Cigarettes, a second payment shall be made, equal to 400% of the taxes and duties that would have been paid on the same or equivalent legal product; or, if the same brand or brands is not sold in the Participating Member State of seizure, 400% of the taxes and duties that would have been paid on similar legal product in the Participating Member State of seizure at the time of seizure.
- 3.6 Payments under Section 3.5 shall be to compensate the EU and the seizing Participating Member State for lost taxes, duties and other costs, and may, in the case of payments under Section 3.5 (b), provide the EU and Participating Member States with a source of additional funding for tobacco related anti-smuggling and anti-Counterfeit efforts.
- 3.7 No payment shall be due under Section 3.5 above, and the seized Cigarettes shall not be included in the calculation of total seizures under section 3.5(b), when:
- (a) the seized product was manufactured before the Execution Date;
- (b) the seized product is determined to be Counterfeit, or not to have been manufactured or sold by a BAT Company;
- (c) the seized product bears valid EU Member State tax stamps;
- (d) the seized product was stolen and BAT can reasonably demonstrate such circumstance;



- (e) the seized product has been seized on a previous occasion by a Participating Member State;
- (f) the seized product was seized outside the territory of the Participating Member States and it has not been reasonably demonstrated that it was destined for the EU;
- (g) information provided by or on behalf of, or at the request of, a BAT Company was a substantial and specific factor that led to the seizure;
- (h) BAT has not been provided with the notice or given an opportunity to inspect, test or confirm that the seized product is Counterfeit in accordance with Section 3.1, above;
- (i) the total amount of BAT Cigarettes seized is less than 50,000 Cigarettes;
- (j) BAT can reasonably demonstrate that the seized BAT Cigarettes were sold, distributed and stored in accordance with all applicable fiscal and legal requirements of the EU and a Participating Member State or were sold at retail; or,
- (k) the seized product is shown to be either: (i) authentic BAT Cigarettes which have been repackaged into non-BAT Company packaging without the knowledge or consent of a BAT Company; or (ii) non-BAT Cigarettes which were packed into authentic BAT Company packaging without the knowledge or consent of a BAT Company.

3.8 Within 9 months of the 15 December 2009, the Parties shall agree to a definition or mathematical formula, based on available seizure data, which establishes criteria for determining whether or not seized Cigarettes are to be deemed to have been sold at retail for purposes of Section 3.7(j). The Parties agree that should the seizure information collected before the Execution Date of this Agreement be significantly different from seizure information collected after the Execution Date in regards to whether or not a particular seizure was or was not to be deemed as having been "sold at retail" for purposes of this Agreement, upon written request by any Party, the 9 month period above shall be extended for an additional 3 months. If the Parties are unable to agree the definition or formula within 9 months of the date of initialling of this Agreement, (or 12 months, if the period is extended) the matter shall be referred as a Dispute to be dealt with under Section 11. BAT shall not be required to make any payments under Section 3.5 until the 9 month period in this Section (not including any extension) shall have passed or the criteria for determining of whether or not seized Cigarettes are to be deemed to have been sold at retail for purposes of this Agreement have been established, whichever is earlier. For seizures made after the 9 month period has passed (again, not including any extension), and until the criteria for determining whether or not seized Cigarettes are to be deemed to have been sold at retail for purposes of this Agreement have been established, the payments shall accrue, and BAT shall not be required to make any such payments until such time as the criteria have been established to the satisfaction of the Parties.

- 3.9 Any amounts of BAT Cigarettes to be treated as having been “sold at retail” pursuant to Section 3.8 shall be deducted from the total seizure amount for the purposes of calculation of the payment made pursuant to Sections 3.5(a) and (b). Any amounts remaining of an otherwise qualifying seizure shall give rise to payments under Section 3.5(a) even if the remaining amount of the seizure is less than 50,000 BAT Cigarettes, but shall not count and shall be disregarded for the purposes of calculating the threshold of seized BAT Cigarettes upon which a payment would arise under Section 3.5(b).
- 3.10 If a Participating Member State or the EU accepts a payment under Sections 3.5 (a) or (b) and later collects taxes, duties and penalties with respect to the seized BAT Cigarettes, or it is later found that taxes, duties and penalties had been paid with regard to the seized BAT Cigarettes then the Participating Member State or EU shall refund to BAT an amount equivalent to the amount, if any, paid by BAT under Sections 3.5 (a) and (b).
- 3.11 (a) Following the first anniversary of the Agreement, the Parties may periodically review the method for treating BAT Cigarettes as “sold at retail” under Section 3.7(j). If any Party believes that there is or would be a serious and persisting imbalance in the Agreement arising out of the application of the calculations under Sections 3.1 through 3.10 because of factors outside the reasonable control of BAT Companies, such a Party may propose adjustments to these Sections 3.1 through 3.10 in order to eliminate or alleviate the serious imbalance (the “Proposed Adjustments”).
- (b) The Parties shall meet and confer within 30 days of notification of the Proposed Adjustments in a good faith attempt to agree on the adjustments to be made to Sections 3.1 through 3.10.
- (c) If the Parties cannot agree on the Proposed Adjustments to be made after 60 days of the notice of Proposed Adjustments any Party may apply to the arbitrator(s) in accordance with Section 11 for a final determination of whether or not the Proposed Adjustments are appropriate in light of the totality of circumstances.
- (d) The arbitrator(s) shall order the Parties to adopt the Proposed Adjustments or any adjustments to Sections 3.1 through 3.10 deemed by the arbitrator(s) to be appropriate.
- 3.12 If at any time, a Party believes that there is a serious persisting problem concerning illicit trade in Cigarettes entering into the Participating Member States, which could bring about serious imbalances in the application of the Agreement, the Parties shall meet and discuss as soon as reasonably possible any appropriate measures to ensure the continued functioning of the Agreement in a fair and equitable manner, and consistent with the reasonable expectations of the Parties including, if necessary, amendment or suspension of BAT’s obligation to make payments under Section 3.5 above.
- 3.13 If the Parties are unable to agree measures pursuant to Section 3.12 above, to ensure the continuing functioning of the Agreement in a fair and equitable manner, and in accordance with the Parties’ reasonable expectations then any

Party may refer the matter as a Dispute to be dealt with under Section 11. If the Dispute is referred to arbitration under Section 11, the arbitrator(s) may order any adjustment to Sections 3.5, 3.8 and 3.9 deemed by the arbitrator(s) to be appropriate.

#### 4. **BAT GROUP INTERNAL POLICIES AND PROCEDURES**

- 4.1 The BAT companies have already undertaken as a matter of BAT Group policy to comply with the principles set out in the periodically updated standards of business conduct (the "**Standards**"), a copy of the current version of which has been sent to OLAF.
- 4.2 A copy of the Standards shall be available in its current form on the BAT Group website. OLAF shall be informed when any material changes are made to the Standards.
- 4.3 In addition to the provisions of the Standards, within one year of the Execution Date, the BAT Group shall adopt and adhere to an internal BAT Group procedure incorporating the Policies and Procedures (the "**Common Platform**") which shall be made available to all BAT Company employees on the BAT Group's internal website. Once adopted by the BAT Companies, compliance with the Common Platform will become mandatory.
- 4.4 Each BAT Company shall confirm annually through compliance with the BAT Group internal control procedures that it communicates a clear policy, both internally and externally, in respect of its opposition to illicit trade in BAT Cigarettes and Cigarettes generally and that this is supported by appropriate and effective procedures and controls.
- 4.5 By its execution of this Agreement, BAT shall be bound by the provisions of this Agreement (including the Policies and Procedures) for the term of the Agreement.
- (a) In the event of a discrepancy between the Common Platform and the related or equivalent provisions of this Agreement and the appendices hereto, this Agreement and the appendices shall prevail. In this respect, OLAF may notify BAT of any such discrepancy.
- (b) Upon receipt of such notice, BAT and OLAF shall consult on the appropriate measures to be taken, including, if appropriate, consideration of any amendments to the Common Platform. If BAT and OLAF cannot agree on the measures to be taken within 60 days of the notice under section 4.5(a) above, OLAF or BAT may refer the matter to dispute resolution under Section 11.
- 4.6 The Parties agree and acknowledge that the fact that there are seizures of BAT Cigarettes in any Participating Member State does not suggest or imply that any BAT Company or Contractor has failed to comply with or is in breach of the Standards, Common Platform or the Policies and Procedures or the terms of this Agreement but does give rise to the need to investigate the supply chain in relation to those seizures.

## **5. TRAINING PROGRAMMES**

- 5.1 BAT Companies shall continue to conduct training programmes and workshops for those of their employees that are involved in the manufacture, sale, distribution and/or storage of BAT Cigarettes and appropriate EU and Participating Member States' personnel to enhance co-operation and understanding on the issues of illicit trade in order to promote and support better controls and action to prevent illicit trade and discourage those responsible. BAT will advise OLAF of such programmes.
- 5.2 OLAF may suggest to BAT where such programmes might be carried out and the content for such programmes.
- 5.3 BAT Companies shall conduct regular mandatory compliance programmes and workshops covering the Policies and Procedures and compliance therewith, for appropriate BAT Company employees whose activities include the manufacture, sale, distribution and/or storage of BAT Cigarettes, or the management thereof, including the implementation and establishment of company policy relating thereto. OLAF representatives may participate in these sessions at least once a year, or otherwise as agreed with BAT. Participating Member States' representatives may also participate in these sessions. The programmes may form part of the training programme and workshops under Section 5.1.
- 5.4 BAT shall provide OLAF and the Participating Member States with appropriate training and information at least once a year on how to distinguish genuine BAT Cigarettes from Counterfeits. Such training and information shall be updated as needed. These sessions may be combined with those under Section 5.1.

## **6. ANTI-ILLICIT TRADE INITIATIVES**

- 6.1 BAT and OLAF will discuss proposals and measures that can be taken to combat illicit trade, in particular, Counterfeit, smuggled and genuine illicit brands owned by third parties, and will conduct a regular review of this at least every 12 months. BAT may make proposals in this regard to OLAF at any time.
- 6.2 It is the practice of OLAF to work with the appropriate authorities to vigorously combat the illicit trade in Cigarettes and to coordinate action against such trade, where appropriate.
- 6.3 Subject to applicable law, the Parties shall share information on the nature and sources of illicit trade into and within the Participating Member States.
- 6.4 Subject to Section 12, BAT agrees to make payment of US\$ 200,000,000 to such bank account as nominated by the European Commission in Brussels. This total payment will be made via 20 yearly payments, with the first payment to be made by BAT within 5 days of the Execution Date, and each subsequent payment to be made on the 5<sup>th</sup> of January for the 19 years subsequent to the Execution Date, according to Appendix F, in each case, unless that day is not

a Business Day (as defined by Section 13.2) in which case payment will be made on the next subsequent Business Day.

- 6.5 BAT, the EU and the Participating Member States understand that these funds may be used, subject to applicable law, in the pursuit of eliminating the illicit trade in Cigarettes in line with the objectives of this Agreement and the Parties agree to discuss the possible uses of such funds, subject to applicable law.

**7. ASSESSMENT OF ACTIVITIES AND TECHNOLOGIES TO COMBAT ILLICIT TRADE**

- 7.1 BAT, OLAF and the Participating Member States may meet at any time to discuss and assess efforts being made to combat illicit trade in the Participating Member States and the performance of this Agreement and, in any event, shall meet at least once a year with a view to doing so on a regular basis, to discuss and review the efforts being made, advances in package marking technology achieved pursuant to Appendix B, as well as the functioning of this Agreement, and what further action could be taken and improvements made, and whether any changes should be made hereto.

- 7.2 (a) BAT and OLAF shall discuss and monitor the availability of technology which can be used to provide secure methods for distinguishing genuine Cigarettes from Counterfeits.

- (b) BAT Companies shall adopt policies for the use of such technology as agreed with OLAF where it is reasonable to do so and where such technology would materially assist in reducing the incidence of Counterfeit BAT Cigarettes in the Participating Member States (for example, if the inability to identify the Cigarette as Counterfeit from its packaging was preventing enforcement efforts). In this Agreement and in similar agreements with other Cooperating Companies, the EU and the Participating Member States have articulated a policy of setting standards for the use of technology in the fight against the illicit trade in Cigarettes as to the required results to be achieved by the technology, but which does not compel the adoption or purchase of a particular brand of proprietary technology.

- 7.3 OLAF may request a meeting with the AIT Compliance Officer if there are concerns about the performance of any BAT Company with respect to the controls on sales of BAT Cigarettes or otherwise in relation to the supply of BAT Cigarettes to particular Contractors or markets to the extent that a problem has been identified in relation to commercially significant volumes of BAT Cigarettes. Such a meeting shall be held within 30 days of the request being made to BAT by OLAF.

- 7.4 BAT and OLAF may communicate to each other concerns relating to any Party's activities in connection with their commitments and obligations under the Agreement.

## 8. COMPLIANCE

- 8.1 BAT shall designate and notify to OLAF an AIT Compliance Officer as the individual responsible for monitoring compliance with the Policies and Procedures and for arranging business practices needed to ensure compliance with these Policies and Procedures within BAT Companies, as well as training programmes for officers, employees and, where necessary, agents of BAT Companies.
- 8.2 It is the policy of BAT Companies to delegate substantial authority concerning the manufacture, sale, distribution and/or storage of BAT Cigarettes, and the management thereof, including the establishment and implementation of company policy relating thereto, only to those employees that the BAT Company reasonably believes after the exercise of due diligence have the ability and commitment to carry out the spirit and letter of the Policies and Procedures. BAT Companies shall review on an annual basis the performance of such employees and take effective and appropriate steps against such an employee in the event that the employee fails to comply with this Agreement, the Common Platform, and/or the Standards.
- 8.3 The AIT Compliance Officer designated under Section 8.1 above, will provide OLAF on or before each anniversary of this Agreement with written confirmation that BAT Companies have complied with the Policies and Procedures required under this Agreement or, if such be the case, information in respect of non-compliance and what measures have been taken to address the non-compliance.
- 8.4 If OLAF believes that:
- (a) the information provided by BAT pursuant to Section 8.3 is not materially correct or complete; and/or
  - (b) the measures undertaken by BAT to address any identified non-compliance with this Agreement are insufficient to resolve fully the matter, then

OLAF may give written notice of non-compliance (a “**Notice of Non-compliance**”) to BAT setting out:

- (1) the factual basis for such belief; and
- (2) the specific measures OLAF requests that BAT or other BAT Companies implement to:
  - (i) rectify any materially incorrect or incomplete information provided to OLAF; and/or
  - (ii) address and resolve fully any non-compliance with this Agreement.

OLAF may provide BAT with a Notice of Non-compliance at any time if OLAF reasonably believes that BAT or a BAT Company is significantly failing to

adhere to the Agreement or the Policies and Procedures and such failure could likely result in a significant increase in the volume of contraband BAT Cigarettes.

- 8.5 BAT shall send to OLAF a written response to the Notice of Non-compliance and BAT and OLAF shall meet and confer within 30 days of a Notice of Non-compliance in an attempt to agree in good faith:
- (a) whether the factual basis of the Notice of Non-compliance is correct; and,
  - (b) what, if any, measures shall be implemented by BAT or BAT Companies to:
    - (1) rectify any materially incorrect or incomplete information provided to OLAF by BAT under Section 8.3; and
    - (2) address and resolve fully any non-compliance with this Agreement.
- 8.6 If within 60 days of receipt of the Notice of Non-compliance, the issue has not been resolved to the satisfaction of the parties, then any party may refer the matter as a Dispute to be dealt with in accordance with Section 11.
- 8.7 In any arbitration arising out of Section 11, the arbitrator(s) may issue orders that:
- (a) BAT Companies make available for inspection by OLAF specified categories of business records or other information within a BAT Company's possession which OLAF reasonably believes will assist in its anti-contraband and anti-counterfeit efforts and which are directly relevant to the issues in dispute, with the exception of those documents subject to legal professional privilege or which the BAT Company is prevented from disclosing by law; and/or,
  - (b) BAT make commercially reasonable efforts to resolve the problems identified.

## 9. **DESIGNATED PARTY REPRESENTATIVES**

- 9.1 The EU and Participating Member States hereby appoint the Director of OLAF as their designated representative for all purposes relating to this Agreement.
- 9.2 The AIT Compliance Officer as expressly authorised by BAT, shall act as the designated representative and contact point for BAT Group companies with the EU and the Participating Member States for all purposes relating to this Agreement.

## 10. INFORMATION

- 10.1 Any information provided to the EU, OLAF or any Participating Member State pursuant to this Agreement shall be used only for the purposes of promoting the Parties' joint objective of combating Cigarette smuggling, Counterfeits and any related money laundering. The BAT Companies waive no rights in relation to any of their commercially sensitive or business secret information and OLAF, the EU and the Participating Member States undertake not to release any such information to third parties and specifically not to any competitor without the prior written consent of BAT (which consent shall not be unreasonably withheld), unless the Party is compelled to disclose such information by judicial or administrative process or by other requirements of law (in which case such Party shall notify BAT as soon as is practicable).
- 10.2 In the event that the EU, Participating Member States or OLAF need to make public information obtained from the tracking and tracing databases as part of a criminal proceeding, or are otherwise legally required to disclose such information, the EU, Participating Member States or OLAF will notify BAT prior to such disclosure to the extent permitted by law and make a good faith attempt to provide the relevant BAT Company with an opportunity to seek a protective order or other appropriate remedy.
- 10.3 Nothing in this Agreement shall require BAT Companies to disclose information which they are otherwise prohibited from disclosing by law or contract existing on the Execution Date, or which is legally privileged.

## 11. DISPUTE RESOLUTION AND ARBITRATION

- 11.1 The EU and BAT shall meet and confer and endeavour to resolve amicably and in good faith any dispute as to how a matter has been or should be dealt with arising out of or in connection with the performance of this Agreement and the obligations, commitments and expectations hereunder (a "**Dispute**").
- 11.2 If a Dispute arises, and so that the parties are able to meet and confer in compliance with Section 11.1, the Dispute shall be notified to the other parties in writing in sufficient detail for the nature of the Dispute to be understood. In the first instance, the Dispute shall be referred to the AIT Compliance Office (on the part of BAT) and the Head of Legal Affairs of OLAF, (on the part of the EU and on behalf of any Participating Member State(s) party to the Dispute) and they shall discuss and attempt to resolve the Dispute in good faith.
- 11.3 If such good faith discussions fail to resolve the Dispute within 30 days of the written notification provided pursuant to Section 11.2, the Dispute shall be escalated to the Global Head of Anti-illicit Trade (on the part of BAT) and the Director General of OLAF (on the part of the EU and on behalf of any Participating Member State(s) party to the Dispute), who shall discuss and attempt to resolve the Dispute in good faith.
- 11.4 The Parties undertake that if any Dispute remains unresolved 60 days after the date of the written notification provided pursuant to Section 11.2, any party may by written notification to the other seek to have the Dispute resolved amicably by use of mediation. The parties shall appoint by agreement a



neutral third person to act as a mediator (the "**Mediator**") within 7 days of the written notification of mediation (in default of such agreement, either party may request the Centre for Effective Dispute Resolution ("**CEDR**") to appoint the Mediator. The parties shall, with the assistance of the Mediator, seek to agree the mediation procedure in writing (in default of such agreement, the Mediator shall act in accordance with the procedures of CEDR). If the Dispute has not been resolved to the satisfaction of either party within 30 days of written notification of mediation or if either party fails or refuses to participate in or withdraws from participating in the mediation then either party may refer the Dispute to arbitration pursuant to Section 11.6. Each Party shall bear its own costs in relation to mediation under this Section, and the non-Party specific mediation costs shall be borne equally between the EU and BAT.

- 11.5 Nothing communicated in any discussions, negotiations or offers of settlement made, during or arising from, the Dispute escalation process and/or mediation process pursuant to sub-Sections 11.2, 11.3 or 11.4 above shall be admissible in any way in any litigation or arbitration among the Parties.
- 11.6 Any Dispute which remains unresolved 90 days after the date of the written notice provided pursuant to Section 11.2 shall be referred by any party to arbitration by providing notice in writing to the other parties to be finally resolved by the arbitrator who is at the top of the List of Arbitrators set out in Appendix D (the "**arbitrator**") as sole arbitrator, under the UNCITRAL Arbitration Rules as at present in force, which rules (as amended by this Section 11) are deemed to be incorporated by reference into this section.
- 11.7 If the arbitrator is unable to hear the parties' Dispute within 60 days of reference, upon demand by any party to the Dispute, the next-highest-listed-arbitrator on the List of Arbitrators shall be deemed to be the sole arbitrator for the purposes of that Dispute.
- 11.8 If the arbitrator selected pursuant to Section 11.7 is unable to hear the parties' Dispute, the next-highest-listed arbitrator on the List of Arbitrators shall be deemed to be the arbitrator for the purposes of the Agreement.
- 11.9 If none of the arbitrators on the List of Arbitrators is available to hear a Dispute within 60 days of reference, an arbitrator shall be appointed by agreement of the parties, or if the parties are unable to agree within 15 further days, an arbitrator may be appointed by any of the arbitrators on the List of Arbitrators, in the same order as above in Sections 11.6 and 11.7 (i.e. starting with the arbitrator at the top of the List of Arbitrators).
- 11.10 Notwithstanding the foregoing, any party shall, upon request within 15 days of the notice of arbitration provided pursuant to Section 11.6, have the right to have the Dispute settled by a three-person arbitration panel with the highest available listed arbitrator from the List of Arbitrators acting as chairperson and one additional arbitrator to be selected by BAT and one additional arbitrator to be selected by the EU and/or the Participating Member State(s) party or parties to the Dispute.
- 11.11 If one party has appointed an arbitrator under Section 11.10 but the other party has not done so, the party who has failed to make its appointment

foregoes its right to do so and an arbitrator will be appointed on its behalf by the arbitrator appointed by the party in compliance with Section 11.10.

- 11.12 Where none of the arbitrators on the List of the Arbitrators are available, the arbitrators selected by the parties shall agree on the nomination of the chairperson (in default of which, the UNCITRAL rules shall apply).
- 11.13 The designated representatives of the Parties shall add to, remove from, or reorder the List of Arbitrators at any time by mutual agreement in writing.
- 11.14 Where there are multiple parties to the arbitration, whether as claimant or respondent, the multiple claimants, jointly and the multiple respondents, jointly, shall appoint an arbitrator pursuant to Sections 11.5-11.12.
- 11.15 The seat of the arbitration shall be Geneva, Switzerland. The arbitration tribunal may ask for the parties to meet and to hold hearing in a place other than Geneva. If this occurs, the Parties agree that this will not alter or have an effect on Geneva being the seat of the arbitration.
- 11.16 The language to be used in the arbitral proceedings shall be English, unless otherwise agreed by the parties to the Dispute. Documents which are not translated into English will not be translated into English unless the parties so agree or the arbitration tribunal so orders.
- 11.17 The governing law of this Agreement shall be English law.
- 11.18 The arbitrator(s) shall have power to issue final or provisional orders or take other interim or conservatory measures it deems appropriate.
- 11.19 No amicus curiae or "friend of the court" briefs may be filed in the arbitration.
- 11.20 Subject to any disclosure obligations of the parties under any applicable law, or the rules of any securities exchange on which British American Tobacco p.l.c.'s securities are listed, the arbitration proceedings and the award shall be confidential, and the parties shall not disclose the nature or scope of the proceedings or any information obtained in or arising out of the proceedings. Documents from the arbitration including the award itself may be published if a party is required to do so by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- 11.21 Without prejudice to the UNCITRAL rules, the arbitrator(s) shall establish the procedure to be followed in the arbitration.
- 11.22 By agreeing to refer matters to arbitration as set out above, to the extent permitted by law, the parties irrevocably waive their right to any form of appeal, review or recourse to any court of a Participating Member State or any other country or judicial authority, save that the final decision by the arbitrator(s) shall be exclusively appealable to the Federal Supreme Court of Switzerland.

## 12. TERMINATION

- 12.1 This Agreement shall terminate on the 20th anniversary of the Execution Date. If BAT wishes to terminate the monetary payment provisions of this Agreement or suspend or postpone any future expenditure for the implementation of the product identification requirements set out in Appendix B before the termination date, BAT shall notify the European Commission of its intention to do so in writing (a "**Termination Notice**"). Within 30 days of receipt of such Termination Notice, the EU and the Participating Member States that wish to do so, shall meet and confer in good faith and attempt to resolve the matter. If the matter has not been resolved by agreement of those Parties within 60 days of such notice of intention to terminate, such request for termination may be referred as a Dispute to be resolved under Section 11.
- 12.2 In the event of arbitration proceedings being commenced, the arbitrators shall have the power only to terminate or reduce the obligations of BAT under this Agreement to make monetary payments to the EU or any Participating Member State (under Sections 3.5 and 6.4) or to suspend or postpone any future expenditure for the implementation of the product identification requirements set out in Appendix B.
- 12.3 The arbitrators may terminate or reduce the monetary obligations of BAT under this Agreement or suspend or postpone any future expenditure for the implementation of the product identification requirements set out in Appendix B only if they determine that the EU or a Participating Member State is in material breach of this Agreement or there are sustained and material failures of the reasonable expectations of BAT as to the benefits of this Agreement to BAT and/or other BAT Companies, save that termination will not be available if the non-fulfilment of reasonable expectations has been substantially remedied through subsequent action of the Parties or could be addressed adequately through an order of the arbitrator(s) and that order is complied with.
- 12.4 The reasonable expectations of BAT and/or BAT Companies are to be assessed by reference to the terms of this Agreement and all other related documents and correspondence between the Parties and/or their legal counsel provided and/or executed on or immediately prior to the Execution Date.
- 12.5 The other obligations undertaken by BAT Companies via this Agreement shall remain in force for the duration of the Agreement, even in the event that one or more monetary obligations under Sections 3.5 and 6.4 are terminated or reduced or any future expenditure for the implementation of the production identification requirements set out in Appendix B are suspended or postponed.
- 12.6 Starting no later than two years before the termination date, the Parties shall meet and confer in an attempt to extend the duration of this Agreement.
- 12.7 If the arbitrator(s) determine that there is a basis for the termination or reduction of the payments to be made under Sections 3.5 and/or 6.4 or any future expenditure for the implementation of the product identification

requirements set out in Appendix B are suspended or postponed, this Agreement shall be deemed to have been varied in accordance with this Section, save that where the precipitating cause of the termination or the reduction of the payments to be made under Sections 3.5 and/or 6.4 is clearly confined in its application to a particular Participating Member State or States, in which case the arbitrator(s) shall determine termination or reduction with regard to any such particular Participating Member State. In such circumstances:

- (a) all amounts payable by BAT under this Agreement will be reduced by the amounts that would have otherwise been due to any and all Participating Member States in respect of which the payment provisions have been terminated; and
- (b) after partial termination of the payment provisions of the Agreement with respect to any particular Participating Member State(s), such Participating Member State(s) shall not be entitled to receive from BAT any of the non-pecuniary benefits of this Agreement.

12.8 With regard to termination of the BAT payment obligations under the Agreement, if a Termination Notice is filed by BAT:

- (a) the relevant funds due thereafter from BAT shall be held in escrow, on the terms set out in Appendix E, until the issue of termination is resolved and/or the arbitrator(s) order(s) the release of said funds to the appropriate Party or Parties;
- (b) all other obligations of the Parties in this Agreement will remain in effect;
- (c) unless the Parties agree to the termination within one month of the delivery of a Termination Notice, the claim for termination made in the Termination Notice shall be deemed to be a matter to be resolved as a Dispute in accordance with Section 11;
- (d) should the Dispute proceed to arbitration and the arbitrator(s) determine that BAT did have a right to terminate the payments under Sections 3.5 and 6.4, such termination will have effect from the date ordered by the arbitrator(s), and (i) no financial sums shall be due from BAT which fell due after the date the Termination Notice was delivered to the Parties; and (ii) any payments held in escrow as per Section 12.8 (a) above shall be released to BAT;
- (e) Should the Dispute proceed to arbitration and the arbitrators determine that BAT did not have the right to terminate the provisions relating to payments under Sections 3.5 and 6.4, the Agreement shall continue in full force and effect and any payments held in escrow shall immediately be released and paid to the EU; and
- (f) Should the Dispute proceed to arbitration and the arbitrator(s) determine that BAT has a right to terminate the provisions relating to payments made under Sections 3.5 and 6.4 and such termination was

only with regard to a particular Participating Member State or States, the Agreement shall continue in full force and effect as to the remaining Parties and any payments held in escrow as per Section 12.8(a) above shall be immediately released and paid to the EU after appropriate reduction, if any, in accordance with the terms of Section 12.7 (a) above. Any remaining escrowed amounts shall be released and paid to BAT.

### 13. NOTICES

13.1 Any notice or other communication given under this Agreement shall be in writing and shall be served by delivery to, in the case of the EU, the Director of OLAF, and in the case of BAT, the AIT Compliance Officer designated under Section 8.1. Any notice to any Participating Member State will be validly served for the purpose of this Agreement if it is served on the Director of OLAF in accordance with the terms of this Section. Any notice or communication given under this Agreement relating to any Dispute arising hereunder shall also be provided to the Director-General of the Legal Service of the European Commission.

13.2 Any such notice or communication shall be served by sending it to the representative set out below by delivery by hand, prepaid recorded delivery/special delivery or by fax, in each case marked for the attention of the relevant representative specified below (as otherwise notified from time to time). Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission, which shall be confirmed as evidence of the same; or
- (c) in the case of prepaid recorded delivery/special delivery at 10am on the second Business Day following the date of posting,

providing that in each case where delivery by hand or by fax occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this Section are to local time in the country of the addressee. References to "Business Day" in this Agreement shall mean a day other than Saturday or Sunday when the banks are open for business in Brussels (other references to "days" shall refer to calendar days).

13.3 The relevant contact details are:

- (a) On the part of the EU/Participating Member States: The Director of OLAF, or his or her designee, at 30 Rue Joseph II, 1000 Brussels, Belgium (fax number: +32-2-296.08.53), with a copy of any notice of a Dispute provided under this Agreement to be sent simultaneously to the Director-General of the Legal Service of the European Commission, at Rue de la Loi 200, Berlaymont 1/21, B-1049 Brussels, Belgium;

- (b) On the part of BAT: AIT Compliance Officer, at Globe House, 4 Temple Place, London WC2R 2PG, United Kingdom (Contact Details: AITComplianceOfficer@bat.com).

**14. WAIVER AND AMENDMENT**

- 14.1 No provision of this Agreement or the appendices hereto may be waived unless such waiver is in writing and signed by the Party against whom the waiver is to be effective.
- 14.2 No amendment of this Agreement or the Appendices hereto shall be valid unless it is in writing and signed by or on behalf of the designated representatives of the Parties.

**15. SUCCESSION AND ASSIGNMENT**

- 15.1 The provisions of this Agreement shall be binding upon and inure for the benefit of the Parties hereto and their respective successors and assigns.

**16. RIGHTS OF THIRD PARTIES**

- 16.1 No term of this Agreement shall confer any rights upon or be enforceable by a third party.

**17. ENTIRE AGREEMENT**

- 17.1 This Agreement, including the appendices hereto, constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement. Notwithstanding the foregoing, each of the Parties may rely upon express representations made in any letter from another Party or their legal counsel provided on or immediately prior to the Execution Date.

**18. SEVERABILITY**

- 18.1 If any provision of this Agreement shall be found by any court, arbitral tribunal or administrative body of competent jurisdiction to be invalid or unenforceable in any jurisdiction, such finding shall not affect the legality, validity and enforceability of such provision or any other provision in this Agreement in any other jurisdiction, or of any other provision of this Agreement in the jurisdiction where the finding was made.

**19. COUNTERPARTS**

- 19.1 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

**20. CAPTIONS**

20.1 The captions herein are included for convenience only and shall be ignored in the construction or interpretation of this Agreement.

**21. EXPENSES**

21.1 Unless otherwise agreed upon by all of the Parties, any expenses incurred by any Party in relation to this Agreement shall be borne by the Party incurring such expense.

**22. LEGALITY**

22.1 The Parties agree that to the extent that the performance of any obligation of any Party under this Agreement would violate (i) any EU law or (ii) the national law of any Participating Member State or (iii) in the case of the BAT Companies breach a contractual obligation existing at the date of this Agreement, such Party shall be excused from performing such obligation only to the extent that performance would violate such law or contractual obligation existing on the Execution Date, and shall not incur any liability as a result of such non-performance.

22.2 Subject to Section 22.1 and to the application of English law in accordance with Section 11.17, the Parties acknowledge that in performing the obligations set out in this Agreement (including, for the avoidance of doubt, the Appendices) each Party shall comply with EU law and the national laws (including, without limitation, laws concerning data protection and secrecy) of the Participating Member State or States to which such performance relates.

**23. ADDITIONAL MEMBER STATES**

23.1 Any Member State may become a Participating Member State under this Agreement by executing a copy of this Agreement in the appropriate form and delivering a counterpart copy thereof to the EU and BAT.

**24. THIRD-PARTY MANUFACTURERS OF BAT CIGARETTES**

24.1 BAT Companies shall require any Contractor currently or subsequently engaged in the manufacture of BAT Cigarettes to comply with the relevant requirements of this Agreement within 18 months of the Execution Date (save where existing contractual commitments with such Contractors do not so permit, then such requirements shall be incorporated on any renewal of such contracts). Any Contractor that commences the manufacture of BAT Cigarettes after the 18-month period above shall be required to comply with the relevant requirements of this Agreement as of the date of commencement of manufacture of BAT Cigarettes.

24.2 Should BAT Companies reasonably require additional time for the implementation of the requirements of this Agreement pursuant to Section 24.1, BAT Companies may make a reasoned request to OLAF for an

extension. The EU and Participating Member States agree that consent to a reasoned request for a reasonable extension under this sub-Section shall not be unreasonably withheld.

## **25. EQUAL TREATMENT PROVISION**

25.1 If any time during the operation of this Agreement, the EU enters into an agreement or amends an existing agreement with another Cooperating Company relating to the same subject matter as this Agreement on terms (after due consideration of relevant differences in volume of Cigarettes or other appropriate factors) more favourable to such Cooperating Company than the terms of this Agreement, then BAT may request of the EU and the Participating Member States that it receive treatment under this Agreement at least as relatively favourable as the overall terms provided to the other Cooperating Company. The EU and the Participating Member States will act in good faith to consider any such request and may grant such a request if it is consistent with the intent of this Agreement.

## **26. ACQUISITIONS**

26.1 In the event that a BAT Company acquires new manufacturing facilities after the date of signing this Agreement that would have been subject to this Agreement if they had been owned by a BAT Company on the date of signing of this Agreement and which would, subject to this Section, be subject to the terms of this Agreement, the Parties agree that BAT shall make commercially reasonable efforts to implement within 12 months of such acquisition, the requirements of this Agreement in those new manufacturing facilities and after the expiry of that 12 month period, those new facilities shall become subject to the terms of this Agreement. Should a BAT Company reasonably require additional time for the implementation of the requirements of this Agreement in any such new manufacturing facilities, that BAT Company or BAT on its behalf may make a reasoned request to OLAF for such a reasonable extension. The EU and the Participating Member States agree that consent to such a request shall not be unreasonably withheld.

26.2 In the event that a company or group of companies engaged in the manufacture, sale, distribution and/or storage of Cigarettes carrying non-BAT Group trademarks within, through or into the countries covered by this Agreement is acquired by or merged into the BAT Group subsequent to the Execution Date or any BAT Company otherwise obtains directly or indirectly ownership of such a company or group of companies with the ability to exercise direct management control over it, BAT and the EU shall, as soon as reasonably practicable, meet to discuss the extent to and the time frame within which, the provisions of this Agreement might reasonably be applied, by agreement with the acquired company or group of companies.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties hereto with effect from the Execution Date.



BAT  
British-American Tobacco (Holdings) Limited  
By:

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Patrick Michael Heneghan  
Global Head of Anti Illicit Trade  
British American Tobacco

## EUROPEAN UNION

The European Commission hereby executes this Agreement on behalf of the European Union and has the full right and authority to do so. The execution and performance of this Agreement by the European Commission is within its powers and has been duly authorised by all necessary action on its part. This Agreement constitutes a valid and binding agreement of the European Union and is enforceable in accordance with its terms.

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Luis Romero Requena  
Director General  
Legal Service  
European Commission

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Nicholas Ilett  
Acting Director General  
European Anti-Fraud Office  
European Commission

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

## APPENDIX A

### Commitment of BAT Companies

1. BAT agrees that:
  1. (a) BAT Companies are committed to employ the Policies and Procedures to ensure compliance with all applicable laws, including those of the EU and the Participating Member States, relating to the proper payment of duties and taxes, handling of payments, currency reporting requirements, and trade restrictions, with the objective that BAT Cigarettes be manufactured, sold, distributed and/or stored in accordance with all applicable tax and duty laws in the Intended Market of Retail Sale.
  - (b) Any conduct by any BAT Company or employee in violation of the Policies and Procedures or any applicable law shall not be condoned and, if appropriate, disciplinary action will be taken, including, if necessary, termination of employment.
  - (c) If any BAT Company becomes aware of a violation of the Policies and Procedures, such BAT Company shall take all reasonable steps to prevent and/or penalise any further similar conduct.
  - (d) BAT Companies shall use the Policies and Procedures with all of their Contractors for BAT Cigarettes in accordance with this Agreement, regardless of the fact that in some areas there may be some competitors who seemingly engage in illegal activity without penalty.
  - (e) BAT Companies shall within one year of the Execution Date of the signing of this Agreement for new Contractors, or in the case of existing Contractors, if and when their current contracts are renewed, ensure that their terms of trade with Contractors reflect the Policies and Procedures. The Parties acknowledge that the implementation of the Policies and Procedures for Contractors who are manufacturers of BAT Cigarettes is dealt with in Section 24.1 of the Agreement.

### Due Diligence

2. BAT Companies currently apply due diligence worldwide in respect of their current and prospective Contractors, and will continue to do so for the duration of this Agreement. Furthermore, BAT Companies shall conduct due diligence in respect of current and prospective Contractors in respect of BAT Cigarettes to be manufactured, sold, distributed and/or stored by them. Information gathered during this process shall be kept up to date as needed. These due diligence requirements shall apply to Contractors who manufacture, sell, distribute, and/or store BAT Cigarettes in volumes in excess of 25,000,000 Cigarettes per year within, through or into the countries covered by this Agreement.

3.
  - (a) As part of this due diligence BAT Companies shall satisfy themselves that their Contractors are suitable in terms of financial soundness, reputation, and their ability and willingness to comply with the Policies and Procedures and to exercise appropriate controls over the manufacture, sale, distribution and/or storage of BAT Cigarettes.
  - (b) As applicable, Contractors shall be required to ensure that any BAT Cigarettes manufactured, sold, distributed, and/or stored by them are delivered by them or shipped by them or under their supervision or instruction to the Intended Market of Retail Sale and to comply with all applicable laws.
4. As part of this due diligence process, BAT Companies shall meet the Contractor, visit the Contractor's principal place of business, and make commercially reasonable efforts to obtain the following:
  - (a) for individuals, information identifying the Contractor, including tax and other relevant registration numbers, biographical information and a copy of government-issued identification for the individual;
  - (b) for corporations, information identifying the legal entity, including tax and other relevant registration numbers, corporate biographical information, copies of articles of incorporation or the equivalent, a complete listing of related companies under common control with, or controlled by the Contractor with which the Contractor will be conducting business relevant to this Agreement; the names and identification of the officers and directors of the Contractor, including biographical information and copies of each such person's government-issued identification;
  - (c) information regarding the number of persons employed by the Contractor at the date of the request for information; and
  - (d) information and documentation regarding any criminal offences, or any charges filed by governmental agencies against the Contractor or any of its managers, directors, and/or legal representatives (if any).
5.
  - (a) BAT Companies shall require any First Purchaser of BAT Cigarettes from that BAT Company to have a sales plan that specifies the markets for distribution of any BAT Cigarettes purchased and shall require the sales plan to be updated as needed.
  - (b) The sales plan shall include an affirmation by the First Purchaser that the products will be manufactured, sold, distributed, and/or stored in accordance with all applicable laws and, where practical, the identification of the intended or prospective customers of the First Purchaser for the BAT Cigarettes. The sales plan shall also include a designation of the account(s) from which payments will be made to the BAT Company for the BAT Cigarettes.
6. BAT Companies will not do business with a Contractor that fails to satisfy fully these due diligence requirements or that subsequently fails a due diligence

review save in circumstances where the Contractor has been able to remedy any discrepancy within a reasonable period of time that the Parties agree should not normally exceed 6 months.

7. BAT Companies shall undertake follow-up due diligence at least every three years and/or upon receiving information that there has been a material change in the ownership or a change in the control of the Contractor and/or on the renewal of existing contracts with a Contractor. Such follow-up due diligence shall include, but not be limited to:
  - (a) a visit to the Contractor's principal place(s) of business and operation(s), including visits to any places of manufacture of BAT Cigarettes, by a representative of the relevant BAT Company in order to assess the Contractor's ability and commitment to maintain its status through compliance with the components of the Policies and Procedures applicable to it;
  - (b) maintaining periodic written correspondence with the Contractor to ensure that the information and documentation collected during the due diligence process is up to date and that any changes have been duly reported to and updated by the relevant BAT Company;
  - (c) making commercially reasonable efforts to carry out ongoing monitoring of the Contractor's purchases and sales of BAT Cigarettes to ensure that the quantities of such purchases and sales are commensurate with the legitimate demand in that country, which shall comprise local consumption and legitimate cross-border trade.
  - (d) making commercially reasonable efforts to review the know-your-customer programme of each Contractor to:
    - (1) reiterate the requirements of the Policies and Procedures;
    - (2) communicate the commitment of BAT to cooperate with OLAF and the Participating Member States on these matters;
    - (3) create an occasion and an opportunity to answer any questions regarding the Policies and Procedures, and the requirements thereunder; and,
    - (4) provide the Contractor with information on any updates or changes to the Common Platform or the Policies and Procedures relevant to the Contractor.
8. Once a prospective Contractor has completed the due diligence process satisfactorily, BAT Companies shall create a report outlining the details of the due diligence process, and may approve the Contractor for business. BAT Companies shall maintain lists of all approved Contractors, to be updated as changes occur, and upon request BAT, subject to applicable law, shall provide or ensure the provision of this information to OLAF and, in the case of Contractor who manufactures, sells distributes and/or stores BAT Cigarettes in

a Participating Member State or for which a Participating Member State is the Intended Market of Retail Sale, also to that Participating Member State.

9. BAT Companies shall require their Contractors to keep all necessary and relevant records in relation to BAT Cigarettes manufactured, sold, distributed, and/or stored by them and to make these available to BAT Companies and provide copies of the records in response to a reasoned and specific written request from OLAF or a Participating Member State in which they operate in, into or through.
10. BAT Companies shall also keep records of all material documents, records and correspondence relating to its Contractors and its business with them, including estimates of annual retail demand for any market, all material documents obtained during the due diligence process and any follow ups, payment records and responses to governmental inquiries, and in general all material documents and records created or maintained in accordance with this Agreement for 5 years after their creation. If OLAF or a Participating Member State suspects that a Contractor is involved in criminal activity or is otherwise involved in illicit trade in BAT Cigarettes or other tobacco products, BAT, subject to applicable law, shall make commercially reasonable efforts to provide or ensure the provision of copies to OLAF or any Participating Member State within 45 days of a request.

### **Controls on Sales**

11. BAT Companies shall ensure that BAT Cigarettes are sold by BAT Companies or their First Purchasers in quantities that are commensurate with legitimate demand in that country, which shall comprise local consumption and legitimate cross-border trade.
12. Subject to applicable law, BAT shall supply relevant information to OLAF on reasonable request about Contractors of BAT Companies and the Intended Market of Retail Sale for the BAT Cigarettes manufactured, sold, distributed and/or stored by those Contractors.
13. Subject to paragraph 14, BAT Companies shall take all reasonable steps available to them to reduce, amend or limit the volumes and/or brand mix of or cease the supply of BAT Cigarettes to a Contractor or the manufacture, sale, distribution or storage of BAT Cigarettes by any Contractor which in BAT's opinion is not exercising sufficient control over its manufacture, sale, distribution and/or storage of BAT Cigarettes or is purchasing brands and/or volumes of BAT Cigarettes inconsistent with those which the BAT Company deems reasonable for the Contractor and market(s) in question and is thereby unreasonably failing to minimise the risk of the BAT Cigarettes being subsequently diverted into and resold to illicit trade channels and which cannot remedy BAT's concerns within a reasonable time frame which shall not exceed 6 months.

### **Cessation of Supply**

14. BAT Companies shall cease supply to or use of any Contractor for which a BAT Company has Documentary or other Substantive Evidence to show is

knowingly or recklessly engaged in the unlawful manufacture, sale, distribution and/or storage of contraband Cigarettes manufactured or sold by a BAT Company or affiliate and/or related money laundering.

15.
  - (a) OLAF or a Participating Member State may request that a BAT Company terminate its business relationships with a Contractor provided that such request is made in writing and sets out in reasonable detail why such termination is requested and provides credible evidence to support the view that the Contractor has knowingly or recklessly engaged in the unlawful manufacture, sale, distribution and/or storage of contraband Cigarettes manufactured or sold by a BAT Company and/or related money laundering.
  - (b) If BAT agrees with the request, BAT shall notify OLAF of the decision within 60 days of the request and the BAT Company shall terminate its business relationship with the Contractor within these same 60 days, to the extent permitted by law and in accordance with its contractual or common law rights.
  - (c) If BAT does not agree with the request, OLAF may refer the matter as a Dispute to be resolved under Section 11 of the Agreement. If the matter is referred to arbitration, OLAF may request an order that the BAT Company terminate its business relationship with the Contractor.
  - (d) The arbitrator shall issue the termination order only if there is credible evidence that the Contractor knowingly or recklessly engaged in the unlawful manufacture, sale, distribution and/or storage of BAT Cigarettes and/or related money laundering, or has failed to make commercially reasonable efforts to control its manufacture, sale, distribution and/or storage of BAT Cigarettes in order to minimise the risk of them being subsequently directed into and sold to illicit trade channels.
16.
  - (a) In the event that OLAF provides BAT Companies with, or the BAT Companies otherwise come into possession of Documentary or Other Substantive Evidence that a Contractor's own customer is knowingly or recklessly engaged in the unlawful manufacture, sale, distribution and/or storage of Cigarettes to or for illicit trade channels, the BAT Companies shall make commercially reasonable efforts, including the termination of the business relationship, if appropriate, to require the Contractor to cease supplying the BAT Cigarettes to the Contractor's customer.
  - (b) BAT Companies shall require their Contractors to terminate their commercial relationship with subsequent customers within 90 days of receipt of a written, reasoned request based on credible evidence to do so from OLAF or a Participating Member State, to the extent permitted by law (for the avoidance of doubt, such request shall be shared with the Contractor), and to maintain a list of all subsequent customers terminated according to this subsection. BAT Companies shall terminate business relationships with any of their Contractors that fail to cooperate in this regard.

17. BAT Companies shall inform OLAF as soon as possible upon becoming aware of any Contractor or Contractor's customer to whom the supply of the BAT Cigarettes is terminated because of the manufacture, sale, distribution and/or storage of Cigarettes in or for illicit trade channels.
18. Each BAT Company shall maintain a list of any Contractor with whom it has terminated its business relationship pursuant to paragraphs 13, 14, 15 and 16 above.
19. BAT Companies shall not conduct business with any person or entity or affiliate thereof which has previously ceased to be or has been de-listed as a Contractor by any BAT Company pursuant to paragraphs 14, 15 or 16 for at least 5 years.
20. In cases where a BAT Company, OLAF or a Participating Member State has reason to suspect that products sold to a Contractor, without fault by the Contractor, have subsequently been diverted for sale into a Participating Member State which was not the Intended Market of Retail Sale, or that a market is being over-supplied with the result that product is being re-purchased from distribution outlets after the initial sale by the Contractor for distribution to the market and collected on a commercial scale in order to move the product into a Participating Member State with the intention of evading the taxes and duties that would properly be payable on the release for consumption of those products in that Participating Member State, BAT and OLAF and, if appropriate, the Participating Member State or States concerned, shall notify OLAF and/or BAT as the case may be, and consult on the action to be taken. If agreement on the action to be taken cannot be reached within 60 days of the notice above to BAT or OLAF, as the case may be, then any Party may refer the matter as a Dispute to be dealt with under Section 11 of the Agreement.

### **Suspected wrongdoing and whistle-blowing**

21. (a) BAT Companies shall make commercially reasonable efforts to ensure that their employees report to their employer non-compliance with the Policies and Procedures, the Common Platform, the Standards or the breach of any legal obligation relating to the illicit trade in Cigarettes.
- (b) Any BAT Company permanent or temporary employee, who suspects or becomes aware of:
  - (1) any breach of the Common Platform;
  - (2) the manufacture, sale, distribution and/or storage of illicit BAT Cigarettes, and any related illegal activity;
  - (3) transactions that do not correspond to ordinary business transactions;
  - (4) violations of the Policies and Procedures;



- (5) violation of any relevant legal obligation relating to the illicit trade in Cigarettes; or
- (6) any suspicious cash or cash equivalent transaction made or attempted in an amount equal to or greater than US\$ 10,000,

shall be permitted to raise their concerns through an internal whistle-blowing procedure whereby the concerns raised will be investigated and, to the extent permitted by law, the identity of the person raising the concern will be kept confidential if so requested by the employee. The whistle-blowing procedure where permitted by applicable law, shall also provide means for concerns to be raised anonymously.

- (c) Any BAT Company employee raising a concern in the genuine belief that wrongdoing has occurred, is occurring or may be about to occur will not be penalised or suffer any form of victimisation even if, after full investigation, it is shown that the person was mistaken. Any form of reprisal against anyone who in good faith has raised a concern is forbidden and will itself be regarded as a serious matter.
- (d) Each BAT Company may operate its own whistle-blowing procedure but the BAT Group's whistle-blowing procedure shall be operated on behalf of the Audit Committee of the board of British American Tobacco plc, independent of management.
- (e) BAT Companies shall investigate any whistle-blowing report that is not spurious and shall provide OLAF with a report if, on investigation, there are reasonable grounds for believing that there has been a violation of the Common Platform, or any legal obligation in each case relating to the illicit trade in Cigarettes.

### **Co-operation with Law Enforcement**

- 22 (a) BAT Companies shall co-operate with OLAF and the Participating Member States in any investigation or enforcement action regarding BAT Cigarettes and shall require their Contractors to co-operate, including, where appropriate, by the supply of relevant information. Information for this purpose may include payment details, sales data, customer details, and details of shipments and of stock in warehouses which is in transit and on which duty is suspended under customs rules and procedures, and any document or other record required to be kept under this Agreement.
- 22 (b) BAT Companies shall encourage their employees and, to the extent possible, their former employees to co-operate with OLAF and the Participating Member States in any investigation or enforcement action regarding BAT Cigarettes.

### **Payment Procedures and Terms of Trade**

- 23. BAT Companies shall ensure that their terms of trade with their Contractors provide for the lawful manufacture, sale, distribution, and storage of BAT Cigarettes. The Policies and Procedures in relation to payments from their Contractors for BAT Cigarettes are intended to ensure that all transactions are

accurately and completely recorded; that BAT Companies do not engage in any transaction which they know or suspect involves the proceeds of criminal activity; that they do not act in contravention of any lawful trade embargo, sanction or other export control or trade restriction applicable to them; that they pursue practices directed towards ensuring that their activities do not inadvertently contravene any relevant money laundering or proceeds of crime legislation; that they adopt and maintain procedures designed to detect and prevent any dishonest involvement in money laundering and support employees in identifying the circumstances which ought to give rise to a suspicion of money laundering or other related illegal activity; that they do not knowingly assist in the financing of, or otherwise provide support for, terrorist activity and that they pursue practices to ensure that their activities do not otherwise inadvertently contravene any relevant anti-terrorism measures.

24. BAT Companies shall not enter into any transaction whereby the parties to whom (a) title is to pass, (b) the invoice is to be submitted and/or (c) the goods are to be shipped are different unless they are satisfied that:
  - (1) any such parties are associated or affiliated entities (in which case satisfactory evidence of the relationship will be obtained); and
  - (2) each party has been and continues to be subject to the Contractor approval and due diligence procedure.
25. BAT Companies shall, within one year of the Execution Date for new Contractors or in the case of existing Contractors if and when their current contracts are renewed, ensure that their terms of trade with Contractors, including invoicing arrangements, arrangements for shipment and storage, and manner of payment, are consistent with the Policies and Procedures, and provide, where relevant, for the shipment of the BAT Cigarettes to the Intended Market of Retail Sale. BAT Companies shall require that their Contractors do not take any action, directly or indirectly, to interfere with the shipping of the BAT Cigarettes to the Intended Market of Retail Sale. BAT Companies shall, when appropriate, make commercially reasonable efforts to ensure that appropriate provisions substantially equivalent to the Policies and Procedures are inserted progressively on the first practicable occasion into the contracts entered into by First Purchasers with their non-final subsequent purchasers, and into the contracts entered into by such non-final subsequent purchasers with their respective non-final subsequent purchasers.
26. BAT Companies shall not accept any payments for the sale of BAT Cigarettes unless these payments are:
  - (a) wires or cheques, from a previously designated bank account in the name of the Contractor;
  - (b) cashier's cheques or bank drafts from a bank in which the Contractor has a previously designated account; or
  - (c) cash, but only in those instances where payment forms (a) and (b) above are not available to the Contractor.

Exceptions to the 3 payment methods set forth above may be made on a case-by-case basis. Such exceptions must be approved by the country manager, and the reasons for granting any such exception shall be documented.

All payments received by BAT Companies shall be in the same currency and in substantially the same amount as those indicated on the invoice. Payments for a single invoice or group of invoices shall be made by a single instrument unless another form of payment has been approved by the country manager.

### **Pre-shipment Notice and Product in Warehouses**

27. BAT shall, upon receiving a reasonable request from OLAF or any Participating Member State, inform OLAF and/or the requesting Participating Member State, if any, of quantities of BAT Cigarettes kept in stock as of the date of the request in tax and customs warehouses in the possession, custody or control of BAT Companies in such Participating Member State under the regime of transit or duty suspension. In particular, such a request may ask for the following information:
- (a) the date of the shipment from the last point of BAT's physical custody of the BAT Cigarettes;
  - (b) details concerning the BAT Cigarettes shipped (brand, amount, warehouse);
  - (c) the intended shipping destination;
  - (d) the identity of the person to whom the BAT Cigarettes are being shipped;
  - (e) the mode of transportation, including the identity of the transporter;
  - (f) the expected date of arrival of the shipment at the intended shipping destination; and
  - (g) the Intended Market of Retail Sale.

## **APPENDIX B**

### **MARKET AND PRODUCT MARKINGS AND INFORMATION**

#### **Scope and Purpose**

1. BAT Companies are committed to a continuous process of research, development, dialogue and cooperation with the EU and Participating Member States concerning product marking and information procedures to combat the illegal trade in tobacco products.

#### **Identification of Intended Market of Retail Sale**

2. Packs and Cartons for BAT Cigarettes will bear markings which enable the Intended Market or Markets of Retail Sale for those products to be identified.
3. (a) BAT shall advise OLAF:
  - (1) of the markets for which the markings on the Packs and Cartons for BAT Cigarettes, such as the health warning, language, brand, name or variant, indicate the Intended Market of Retail Sale and what the markings are;
  - (2) of the Intended Markets of Retail Sale for BAT Cigarettes which share the same markings on the Pack and/or Carton as other markets and what those markings are; and
  - (3) of any changes in these markings no later than 30 days after any product bearing such new markings leaves the possession of the relevant BAT Company.
- (b) BAT shall provide OLAF on the Execution Date with 30 copies of a manual to show the Pack and Carton markings of the BAT Cigarettes for the respective Intended Markets of Retail Sale for those Cigarettes.
4. BAT Companies shall mark Packs and Cartons for BAT Cigarettes with codes or other markings which, when decoded, identify:
  - (a) the date of manufacture of the product;
  - (b) the factory of manufacture;
  - (c) the machine of manufacture; and
  - (d) the production shift of manufacture.

#### **Master Case Labelling**

5. BAT Companies shall place non-removable (to the extent that removal would noticeably damage the underlying package), machine and human readable

markings on the Master Cases and Cartons used for BAT Cigarettes sold to a First Purchaser made in or for sale within, through or into the countries covered by this Agreement, to enable the following information to be identified and recorded when scanned or otherwise recorded:

- (a) the First Purchaser's name and invoice or order number;
  - (b) shipment date;
  - (c) destination of shipment;
  - (d) point of departure from the BAT Company's custody;
  - (e) consignee;
  - (f) Intended Market of Retail Sale;
  - (g) the date of manufacture of the product;
  - (h) the factory of manufacture;
  - (i) the machine of manufacture; and
  - (j) the production shift of manufacture.
6. The schedule for implementation of the Master Case and Carton markings shall be as agreed between the Parties.
7. BAT Companies shall require their Contractors to take no action, directly or indirectly, to alter, remove or deface any markings placed by BAT Companies or on behalf of BAT Companies on BAT Cigarettes or on the packaging of BAT Cigarettes or their Master Cases or Cartons (unless such action is in relation to applying replacement markings on Master Cases that have been broken down for onward sale and/or distribution which comply with paragraph 5 above).

### **Scanning of Master Cases**

8. BAT Companies shall create and maintain a database through the scanning of Master Cases and Cartons and the linking of individual Master Cases and Cartons with the information listed in paragraphs 4 and 5 above according to the timetable agreed between the Parties.
9. The database shall include scanned and linked information from all Intended Markets of Retail Sale for which scanning has been implemented.
10. Upon notification to BAT of seizures in the Participating Member States of significant amounts of BAT Cigarettes intended for a market other than those covered by this Agreement, OLAF may consult with BAT in respect of adding such a market to Appendix C, and the Parties shall agree whether or not it is appropriate to add such market to Appendix C. If the Parties cannot agree on whether or not to add the market to Appendix C within 90 days of any notice

provided under this paragraph, the matter shall be considered a Dispute to be dealt with in accordance with Section 11 of the Agreement. If any market is added to Appendix C, the Parties shall agree on a reasonable timeframe for implementation of Master Case and Carton marking and scanning for any such market.

11. Master Case and Carton markings and the scanning of these for the database shall not be required for those markets where there is a single First Purchaser of the BAT Cigarettes for that market, and if so agreed with OLAF, in all or some markets where the BAT Company for that market or markets operates a direct store sales distribution system.

### **Purchaser and Distribution Information**

12. (a) BAT shall inform OLAF of the markets in the Participating Member States for which
  - (1) the local BAT Company operates a direct store sales distribution system for BAT Cigarettes;
  - (2) a single First Purchaser has been appointed by the BAT Company for BAT Cigarettes in that market; and
  - (3) more than one distributor has been appointed.
- (b) BAT shall, as soon as reasonably practicable, but in any event, within 30 days, advise OLAF of any change in any of these distribution arrangements.
13. BAT Companies will maintain records to show the details of the volumes, brands and shipments of BAT Cigarettes to their Contractors for each market in which the Contractor manufactures, sells, distributes and/or stores BAT Cigarettes.

### **Database**

14. BAT shall grant OLAF and the Participating Member States electronic access to the database created pursuant to paragraphs 8 and 9 above, in a reasonable format, within 3 months of the first date of implementation of scanning pursuant to paragraph 8. OLAF recognises that, from time to time, in respect of the database there will need to be periods of maintenance when access may be restricted and access may be limited by events beyond the control of BAT (e.g. system failure etc).

### **Additional Customer Tracking**

15. BAT shall develop an "Additional Customer Tracking Programme" to provide assistance to any Contractor, or, where appropriate, an indirect customer that wishes to participate in a tracking programme consistent with the BAT marking and scanning programme. Such "Additional Customer Tracking Programme" shall, as appropriate, include, training, technical assistance, hardware designations appropriate to the scale of the customer's operation, and

software consistent with the collection of scanned and linked information in a database similar to and compatible with the BAT database established pursuant to paragraphs 8 and 9 above. Participation in the “Additional Customer Tracking Programme” shall require that the Contractor make commercially reasonable efforts to provide BAT or the relevant BAT Company in an agreed format, any databases created using the assistance provided. Reasonable access to the information in these databases in turn shall be provided by BAT to OLAF and the Participating Member States in accordance with paragraph 14 above, via the same portal as used in paragraph 14 above.

16. Upon request, BAT shall inform OLAF and/or the Participating Member States of the status of the “Additional Customer Tracking Programme”, including lists of participants and information and discussion on any significant issues that may have arisen.
17. BAT Companies shall make commercially reasonable efforts to require that a customer deploy Additional Customer Tracking as soon as reasonably practicable following OLAF making a written reasoned request to BAT to do so.

### **New Product Marking Technologies**

18. BAT shall make commercially reasonable efforts to maintain an ongoing research programme into new and/or enhanced Master Case, Carton, and Pack marking technologies with the goal of developing and permanently enhancing a system to mark Packs so as to allow for the determination of the individual Master Case and/or Carton in which they were shipped or packed which would be linked into the Master Case and Carton scanning database established pursuant to paragraph 8 above. This research programme shall also seek to enhance Master Case and Carton marking technology. BAT shall provide a report on new Master Case, Carton or Pack marking technologies, if any, in its annual compliance report provided to OLAF under Section 8.3 of the Agreement.
19. Once the research programme described above allows for the reasonable and industrially feasible implementation of the Pack marking system, such system shall include the information described in paragraphs 4 and 5 above, and shall be implemented according to a reasonable timetable to be agreed between OLAF and BAT.
20. As marking technologies continue to develop and new or enhanced systems become reasonable and industrially feasible, they shall be implemented by BAT according to a reasonable timetable to be agreed between OLAF and BAT.

**\* MATERIAL OMITTED DUE TO A REQUEST FOR CONFIDENTIAL TREATMENT**

## **Appendix C**

### **List of Countries**

The countries covered by this Agreement are as follows:

1. The Member States of the European Union;
2. Additional Countries:

\*

In addition to amendments made pursuant to paragraph 10 of Appendix B, this list will be amended as agreed by the Parties.



## **Appendix D**

### **List of Arbitrators**

1. Walter van Gerven  
Cermarsinstraat 42  
B-3012 Wilsele  
Belgium
2. Hans Van Houtte  
Institute for International Trade Law  
Faculty of Law  
B-3000 Leuven  
Belgium

## Appendix E

### Escrow Notice

1. Any funds held in escrow pursuant to Section 12.8 of this Agreement shall be paid by BAT into an interest bearing deposit account (the "**Escrow Account**") at a bank nominated by the European Commission in Brussels (the "**Bank**") in the joint names of BAT and the EU. BAT shall irrevocably release these funds to the order of an escrow agent appointed by the arbitrator (the "**Escrow Agent**").
2. The Escrow Agent shall hold the funds on trust for BAT and the EU in accordance with the terms set out below:
  - (a) Any reasonable bank or other charges arising on the Escrow Account, and any reasonable fees and expenses arising out of the appointment of the Escrow Agent, shall be charged to the Escrow Account;
  - (b) Any interest or profit generated on the Escrow Account (subject to any bank or other charges/fees properly charged to the Escrow Account) (the "**Income**") shall accrue to and form part of the Escrow Account. Each time part of the funds in the Escrow Account is paid out, it shall have added to it the corresponding proportion of the Income.
3. The Escrow Agent shall make payments out of the Escrow Account only pursuant to a written order on behalf of the Parties or the arbitrator(s), in accordance with Section 12.8 of this Agreement. Any such payments shall be made to the accounts of BAT and the EU as may be notified in writing to the Escrow Agent by BAT or the EU from time to time.

## Appendix F Schedule of Payments by BAT

Payments to be made by BAT pursuant to Section 6.4 of this Agreement over the term of 20 years from the Execution Date by BAT will be made on a calendar year basis in accordance with the following schedule:

- The first payment within 5 days of the Execution Date prorated for the remainder of the calendar year;
- Each subsequent payment shall be made on the 5<sup>th</sup> of January of each year.
- In each case, if the date below is not a Business Day, payment will be made on the next subsequent Business Day.

The Payment Schedule:

<b>Year</b>	<b>in EURO</b>	<b>Date Paid</b>
Year 1	€ 3,000,000	Payment made within 5 days after the Execution Date
Year 2	€ 6,000,000	Paid on the 5th of January, 2011
Year 3	€ 6,000,000	Paid on the 5th of January, 2012
Year 4	€ 6,000,000	Paid on the 5th of January, 2013
Year 5	€ 6,000,000	Paid on the 5th of January, 2014
Year 6	€ 6,000,000	Paid on the 5th of January, 2015
Year 7	€ 6,000,000	Paid on the 5th of January, 2016
Year 8	€ 6,000,000	Paid on the 5th of January, 2017
Year 9	€ 6,000,000	Paid on the 5th of January, 2018
Year 10	€ 6,000,000	Paid on the 5th of January, 2019
Year 11	€ 6,000,000	Paid on the 5th of January, 2020
Year 12	€ 6,000,000	Paid on the 5th of January, 2021
Year 13	€ 6,000,000	Paid on the 5th of January, 2022
Year 14	€ 6,000,000	Paid on the 5th of January, 2023
Year 15	€ 6,000,000	Paid on the 5th of January, 2024
Year 16	€ 6,000,000	Paid on the 5th of January, 2025
Year 17	€ 6,000,000	Paid on the 5th of January, 2026
Year 18	€ 6,000,000	Paid on the 5th of January, 2027
Year 19	€ 6,000,000	Paid on the 5th of January, 2028
Year 20	€ 23,000,000	Paid on the 5th of January, 2029
<b>Total Paid</b>	<b>€ 134,000,000</b>	<b>(equivalent to US\$ 200M as agreed on November 2009)</b>