

CO-OPERATION AGREEMENT

dated as of

27 September 2010

among

IMPERIAL TOBACCO LIMITED

AND

**THE EUROPEAN UNION
REPRESENTED BY THE EUROPEAN COMMISSION**

AND

**EACH MEMBER STATE LISTED ON
THE SIGNATURE PAGES HERETO**

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CO-OPERATION AGREEMENT

This Co-operation Agreement dated as of 27 September, 2010 is made by and among:

- (A) the European Union (the **EU**) represented by the European Commission, the Member States of the EU that have executed a copy of this Agreement and become parties hereto (the **Participating Member States**); and
- (B) Imperial Tobacco Limited on its own behalf and for and on behalf of all its Affiliates existing at the date of this Agreement (together, **ITL**),

ITL collectively with the EU and the Participating Member States, the **Parties**,

WITNESSETH:

- (1) **WHEREAS**, the smuggling of Cigarettes, both authentic and counterfeit, is contrary to the public interest in the collection of applicable taxes, ensuring the maintenance of transparent markets, as well as the protection of lawful competition and Trademark rights of legitimate Cigarette manufacturers. It also misleads citizens of the Member States about the source and authenticity of the Cigarettes they purchase. As such illicit traffic of Cigarettes is against the interest of the EU, Member States, as well as ITL and its stakeholders, including employees, customers, business partners and shareholders;
- (2) **WHEREAS**, the EU and the Member States are fully committed to combat vigorously the illegal introduction of both authentic and counterfeit Cigarettes into the Territory of the Member States;
- (3) **WHEREAS**, the illicit traffic in Cigarettes calls for continuous dialogue and legally binding co-operative efforts between the tobacco industry, the Member States and the EU aimed at eliminating the flow of Contraband Cigarettes and Counterfeit Cigarettes and consequent loss of revenues;
- (4) **WHEREAS**, ITL is committed to take commercially reasonable steps as a manufacturer of Cigarettes to promote the Parties' joint objective that Imperial Tobacco Cigarettes be sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements, and, in particular, sold at retail in accordance with all applicable tax and duty laws in the intended retail market;
- (5) **WHEREAS**, ITL agrees to provide all reasonable assistance to the EU and the Participating Member States in the fight against Contraband Cigarettes and Counterfeit Cigarettes, including in part, monetary payments as described in this Agreement;
- (6) **WHEREAS**, ITL recognises that entering into this Co-operation Agreement with the EU and the Participating Member States is in its best interests as it effectively combats the illegal introduction of Imperial Tobacco Cigarettes or Counterfeit Imperial Tobacco Cigarettes into the market in the EU and will benefit and protect ITL's brand value and business within the EU;

- (7) **WHEREAS**, the Parties acknowledge an intention for this Agreement to be renewed in accordance with Section 11.2 following the initial 20 year term;
- (8) **WHEREAS**, the EU acknowledges its intention to encourage those Member States which are not currently Participating Member States subsequently to become signatories to this Co-operation Agreement;
- (9) **WHEREAS**, the Parties recognise that ITL has entered into or may at any time seek to enter into memoranda of understanding with one or more Member States, but understand that such memoranda of understanding do not and shall not be construed to modify or in any way prejudice the obligations under the present Agreement, although such memoranda of understanding may usefully complement or extend the scope of cooperation between two or more Parties subject to their obligations under this Agreement. The Parties further understand that in the event of any inconsistency between any such memoranda and this Agreement, the latter shall prevail.

NOW, THEREFORE, the Parties have agreed to enter into the following Agreement in consideration of the mutual covenants and other valuable considerations set out below, the sufficiency of which is hereby acknowledged.

ARTICLE 1 DEFINITIONS

Section 1.1. *Definitions.*

The following terms, as used herein, have the following meanings:

Additional Payments means the payments by ITL that are to be made, without regard to fault, in accordance with Section 6.1 to compensate the EU and the Participating Member States for their lost taxes and duties and other costs, as well as to provide a source of possible additional funding for anti-contraband enforcement, in the event of a Seizure of Contraband Imperial Tobacco Cigarettes.

Annual Payments means the payments by ITL that are to be made in accordance with Section 4.1 and Schedule 3 to provide the EU and the Participating Member States with a source of possible financial support and funding in their fight to eliminate the illicit trade of Cigarettes within and through the Territory of the Member States.

Affiliate means, in relation to any Party or Person, any direct or indirect subsidiary, as may be from time to time.

Agreement means this Co-operation Agreement, including its Schedules, and any related agreements.

Anti-Contraband and Anti-Counterfeit Initiatives shall have the meaning ascribed to it in Section 3.1.

Applicant shall have the meaning ascribed to it in the EU Compliance Protocols, set out in Schedule 1.

Approved Contractor means a Contractor approved by ITL in accordance with the EU Compliance Protocols, set out in Schedule 1.

Arbitrator(s) shall have the meaning ascribed to it in Section 12.2.

Audit Order shall have the meaning ascribed to it in Section 2.2(d).

Baseline Amount means 90 million Contraband Imperial Tobacco Cigarettes, but does not include seizures of less than 50,000 Imperial Tobacco Cigarettes and does not include seizures of Cigarettes referred to in Section 6.4 of this Agreement. The Baseline Amount may be increased pursuant to Section 6.7 and Section 8.2 of this Agreement.

Blocked Contractor means a former Approved Contractor who is no longer authorised by ITL to conduct business relating to the manufacture, sale, distribution, storage, or shipment of Imperial Tobacco Cigarettes.

Business Day means a day (other than a Saturday or Sunday) on which banks are open in London and Brussels for normal business.

Carton means packaging for approximately 200 Cigarettes, normally contained in 10 Packs.

Certification of Compliance shall have the meaning ascribed to it in Section 2.2(a).

Cigarette means any product that is taxed as a cigarette or as fine-cut tobacco in accordance with the definitions in Council Directive 2002/10/EC and 95/59/EC, which includes, without limitation, any fine-cut 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 purposes of this Agreement, 1 gram of fine cut tobacco shall be considered the equivalent of one individual Cigarette.

Compliance Order shall have the meaning ascribed to it in Section 2.2(d).

Contraband Cigarettes means Cigarettes that have been imported into, distributed in, or sold in, the Territory of a Member State, or were en route to the Territory of a Member State for sale in that Member State, in violation of the applicable tax, duty or other fiscal laws of that Member State or the EU, but, for purposes of this Agreement, shall exclude Counterfeit Cigarettes.

Contraband Imperial Tobacco Cigarettes means Imperial Tobacco Cigarettes which are Contraband Cigarettes.

Contractor means any warehouse, shipper, freight forwarder or any other Person, engaged by ITL in connection with the manufacture, sale, distribution, storage or shipment of more than 25,000,000 Imperial Tobacco Cigarettes in any calendar year in or through the Territory of the Member States or a Designated State, but excluding any Affiliates of Imperial Tobacco Limited unless otherwise expressly stated to the contrary in this Agreement.

Counterfeit Cigarettes means Cigarettes bearing a Trademark of a Cigarette manufacturer that are manufactured by a third party without the consent of that Cigarette 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.

Counterfeit Imperial Tobacco Cigarettes means Counterfeit Cigarettes bearing an Imperial Tobacco Trademark.

Customer Checks Information shall have the meaning ascribed to it in the EU Compliance Protocols.

Designated Manager means any person designated by ITL from time to time for the purposes of this agreement and notified to OLAF.

Designated State means any state listed in Schedule 4, which may be amended in accordance with the procedure therein.

EU shall have the meaning ascribed to it in the preamble of this Agreement.

EU Compliance Protocols means the protocols regarding the manufacture, sale, distribution, storage, and shipment of Imperial Tobacco Cigarettes in and through the Territory of the Member States or any Designated State, as set out in Schedule 1.

Execution Date means the date that this Agreement becomes binding on all of the Parties, being the later of: (i) the date on which the signatures to this Agreement of the EU and the Participating Member States have been delivered to ITL; or (ii) the date on which the signatures to this Agreement of ITL have been delivered to the EU;

Expiration Date means the 20th anniversary of the Execution Date.

First Purchaser means any Person other than an Affiliate of ITL (save as referred to below), to whom ITL directly sells a quantity of more than 25,000,000 Imperial Tobacco Cigarettes annually for sale, distribution or consumption within or into the Territory of one or more of the Member States or any Designated State, and such Person's Affiliates (other than an Affiliate of ITL). For the avoidance of doubt, none of the Affiliates of Imperial Tobacco Limited shall be considered to be a First Purchaser under this Agreement other than those entities notified by ITL to OLAF at the time of signing and those set forth below in relation to Imperial Tobacco Cigarettes; which entities, for the purposes of this Agreement, shall be deemed to be a First Purchaser (if they satisfy the criteria set out above) and not an Affiliate of Imperial Tobacco Limited:

- (a) any Affiliate of Imperial Tobacco Limited which acts in a capacity as a distributor of products that have not been manufactured by Imperial Tobacco Limited or its Affiliates; and

- (b) any Affiliate of Imperial Tobacco Limited which acts in a capacity as a licensed manufacturer of a third party product.

ITL shall inform OLAF of proposed changes to the entities notified to OLAF above.

Follow-up Customer Checks shall have the meaning ascribed to it in the EU Compliance Protocols.

Identification Markings means codes and markings on Imperial Tobacco Cigarette packaging placed on that packaging by ITL or its authorised agents, which correspond to information regarding those Cigarettes as set forth in the Tracking and Tracing Protocols set forth in Schedule 2.

Imperial Tobacco Cigarettes means (i) Cigarettes manufactured by Imperial Tobacco Limited or any of its Affiliates that manufacture Cigarettes bearing Imperial Tobacco Trademarks; or (ii) Cigarettes manufactured on behalf of and authorised by ITL and bearing Imperial Tobacco Trademarks.

Imperial Tobacco Limited (ITL) means Imperial Tobacco Limited and all its Affiliates existing at the date of this Agreement and involved in the manufacture, sale, distribution shipment and/or storage of ITL Cigarettes, and each of them individually.

Imperial Tobacco Trademarks means those trademarks set out in Schedule 5.

Intended Market of Retail Sale means the market which ITL intends as the market of either domestic retail or duty free retail sale for Imperial Tobacco Cigarettes when ITL sells such Cigarettes to a First Purchaser.

Market of Interest shall have the meaning ascribed to it in Protocol 7 of Schedule 2.

Master Case means packaging for approximately 10,000 Cigarettes.

Member States means States that are members of the European Union.

Money Laundering conduct as defined in Article 1(2) of Directive 2005/60/EC. For purposes of this agreement, knowledge, intent or purpose required as an element of money laundering may be inferred from objective factual circumstances, including where a party knows, or consciously avoids knowing, facts establishing a money laundering offence, and any other form of wilful blindness in this respect.

Non-Participating Member States means the Member States that are not a Party to this Agreement.

Notice of Interest shall have the meaning ascribed to it in Protocol 7 of Schedule 2.

OLAF means the Anti-Fraud Office of the European Commission or any successor thereof.

Pack means packaging for approximately 20 Cigarettes.

Participating Member States shall have the meaning ascribed to it in the Preamble of this Agreement.

Person means an individual, corporation, partnership, limited liability company, association, trust or other entity or organisation, including a government or political subdivision or an agency or instrumentality thereof.

Product Supply Compliance Policy shall have the meaning ascribed to it Protocol 14.2 of the EU Compliance Protocols.

Relevant Law means the relevant laws, statutes, ordinances, rules, regulations, or other provisions having the force or effect of law in the EU and/or any Member States which are in effect in each Member State as of its signature date, or are enacted or amended by the EU or a Member State after its signature date.

Reporting System shall have the meaning ascribed to it in the EU Compliance Protocols.

Request for Termination shall have the meaning ascribed to it in the EU Compliance Protocols.

Retail Demand means the legitimate demand estimated as part of its normal business operations by Imperial Tobacco Limited for Imperial Tobacco Cigarettes in a particular market to be sold at retail in that market, both for legitimate local consumption and to satisfy the legitimate demand of the travelling consumer, in accordance with all applicable tax, duty or other fiscal laws.

Seizure means a seizure from a single Person (or in certain specific instances, multiple Persons if shown to be acting in concert with one another), in a single location (or in certain specific instances, multiple locations in close proximity if shown to be part of the same scheme), at a single point in time (or in certain specific instances, multiple points in time in close proximity if shown to be part of the same scheme).

Statement of Non-Compliance shall have the meaning ascribed to it in Section 2.2(b)

Subsequent Purchaser means any Person and such Person's Affiliates, other than an Affiliate of Imperial Tobacco Limited, who acquires more than 10,000,000 Imperial Tobacco Cigarettes in any calendar year from a First Purchaser or sources other than ITL.

subsidiary shall have the meaning given in section 1159 of the Companies Act 2006.

Sufficient Evidence means:

- (i) a criminal conviction in any official EU court or tribunal for any offence relating to the manufacture, sale, distribution, storage, or shipment of Contraband Cigarettes or Counterfeit Cigarettes, or any related Money Laundering;
- (ii) a finding by any official EU court or tribunal in any civil case of involvement in the manufacture, sale, distribution, storage, or shipment of Contraband Cigarettes or Counterfeit Cigarettes, or any related Money Laundering; or

- (iii) a criminal conviction or a civil finding as outlined in (i) and (ii) above, in the 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.

Supplemental Payments means the payments by ITL that are to be made, without regard to fault, in accordance with Section 6.2 to compensate the EU and the Participating Member States for their lost taxes and duties and other costs, as well as to provide a source of possible additional funding for anti-contraband enforcement, in the event of a Seizure of Contraband Imperial Tobacco Cigarettes.

Termination Order shall have the meaning ascribed to it in the EU Compliance Protocols.

Territory of the Member States means the customs territory of the EU, as defined in Article 3 of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code, including, for the avoidance of doubt, the free zones, free ports and duty-free areas physically situated therein as well as the Åland Islands.

Tracking and Tracing Protocols means the commercially reasonable practices and procedures with respect to the tracking and tracing of shipments of Imperial Tobacco Cigarettes after the Execution Date, as set out in Schedule 2.

Trademark means a brand name (alone or in conjunction with any other word), logo, symbol, or any other indicia of product identification.

ARTICLE 2

ITL'S SALES AND DISTRIBUTION COMPLIANCE PRACTICES

Section 2.1. *ITL Policies and Code of Conduct.*

ITL continues to undertake as a matter of company policy to comply with various specific policies relating to the supply of its tobacco products in accordance with the company policies which Imperial Tobacco Group PLC (**ITG**), the ultimate parent company of ITL, and its Affiliates have had in place for some time. These various policies have now been consolidated into the Code of Conduct of ITG available at www.imperial-tobacco.com, which re-affirms the commitment of ITG and its Affiliates, including ITL, to act with integrity in all their business activities as a responsible manufacturer of tobacco products.

In addition, ITL is fully committed to act in accordance with this Agreement.

Section 2.2. *Certification of Compliance.*

- (a) Each year, on the anniversary of the Execution Date, ITL shall provide OLAF with a report, signed by the responsible ITL director at that time, describing ITL's fulfilment of its obligations under the Agreement (the **Certification of Compliance**).

- (b) If, after receipt of any Certification of Compliance, OLAF reasonably concludes that ITL is failing to perform its obligations under the Agreement, it may, but by no later than 60 days after OLAF has received the Certification of Compliance, provide ITL with a statement clearly describing the areas where OLAF reasonably believes that ITL is failing to perform its obligations under the Agreement, OLAF's reasons for that belief, and what measures OLAF believes ITL must take in order to perform its obligations under the Agreement (the **Statement of Non-Compliance**).
- (c) OLAF may also provide ITL with a Statement of Non-Compliance at any other time it reasonably believes that: (i) ITL is significantly failing to comply with its obligations pursuant to this Agreement; and (ii) such failure could likely result in a significant increase in the volume of Contraband Imperial Tobacco Cigarettes.
- (d) Within 30 days of receiving a Statement of Non-Compliance, under subsections (b) or (c) above, ITL must provide OLAF with a written response. Thereafter, authorised representatives of ITL and the European Commission shall meet and confer and attempt to resolve in good faith any dispute relating to the Statement of Non-Compliance. If the dispute has not been resolved within 60 days of ITL receiving a Statement of Non-Compliance, the European Commission may refer the dispute to arbitration in accordance with Section 12.2 and may seek an order from an Arbitrator requiring ITL to bring itself into compliance with the Agreement (a **Compliance Order**), and/or an order requiring ITL to permit OLAF to conduct an audit of ITL in order to determine what Compliance Orders may be required (an **Audit Order**).
- (e) An Audit Order issued under this Section shall specifically require ITL to do the following and only the following:
 - (i) if OLAF seeks entry into premises, allow OLAF entry to any of its business premises or business premises of its Affiliates during reasonable business hours, for the sole purpose of observing business operations, provided that OLAF provides ITL with reasonable notice of where and when it seeks to do so; and
 - (ii) if OLAF seeks to review documents, then subject to confidentiality under applicable law, and in accordance with the standards set forth in Article 339 of the Treaty on the Functioning of the European Union, ITL shall provide OLAF with specified business records created after the Execution Date that OLAF reasonably believes will assist in its anti-contraband and anti-counterfeit efforts.
- (f) In any proceedings brought under Section 2.2(d), an Arbitrator may issue a Compliance Order or an Audit Order to ITL only when it has been proven by the greater weight of the evidence that: (i) ITL has materially failed to adhere to one or more of its obligations under the Agreement; (ii) such failure was identified by OLAF in its Statement of Non-Compliance; and (iii) such failure has not been adequately remedied by the time of the arbitration hearing.

Section 2.3 Acquisition of Other Tobacco Companies and New Manufacturing Facilities.

In the event that ITL acquires other tobacco companies and /or manufacturing facilities, ITL shall make commercially reasonable efforts to implement within 12 months of such acquisition the requirements of the EU Compliance Protocols in Schedule 1 and the Tracking and Tracing Protocols in Schedule 2 for such companies and manufacturing facilities.

Should ITL reasonably require additional time for the implementation of the EU Compliance Protocols and/or the Tracking and Tracing Protocols for such companies and manufacturing facilities, ITL may make a request to OLAF for such an extension. The EU and Participating Member States agree that consent to a request for a reasonable extension under this Section shall not be unreasonably withheld.

Section 2.4 Subsequent changes to Affiliates of ITL.

In the event that any Affiliate of Imperial Tobacco Limited ceases at any time to be an Affiliate of Imperial Tobacco Limited, then from the date that they cease to be an Affiliate of Imperial Tobacco Limited: (i) Imperial Tobacco Limited and its remaining Affiliates shall cease to have any liability to the other Parties to this Agreement for the acts or omissions of such Affiliate subsequent to the aforesaid date relating to the sale, distribution, storage and/or shipment of non-Imperial Tobacco Cigarettes, and so long as any Imperial Tobacco Cigarettes manufactured prior to sale which are transferred are in quantities commensurate with normal business practice; (ii) the terms of this Agreement shall cease to apply to such Affiliate; and (iii) the definition of "ITL" in this Agreement shall be deemed to be amended from such date so as to exclude any such Affiliates thereafter. In circumstances where ITL effects such a transfer of an Affiliate with its stock it shall inform OLAF of the quantities and brands of the manufactured product transferred.

ARTICLE 3

ANTI-CONTRABAND AND ANTI-COUNTERFEIT INITIATIVES

Section 3.1. Anti-Contraband and Anti-Counterfeit Initiatives.

It is the policy of the EU and the Member States to combat vigorously the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes within or through the Territory of the Member States. Subject to budgetary constraints, the EU intends to intensify efforts to curb the introduction, sale and distribution of Contraband Cigarettes and Counterfeit Cigarettes, apply appropriate equipment for monitoring and tracking the introduction, sale, distribution, storage, and shipment of Contraband Cigarettes and Counterfeit Cigarettes, and continue to train law-enforcement personnel in how best to detect and seize Contraband Cigarettes and Counterfeit Cigarettes.

Section 3.2. Support for Anti-Contraband and Anti-Counterfeit Initiatives.

- (a) Recognising that it is in the best interests of ITL to prevent the illegal importation and introduction of Contraband Cigarettes and Counterfeit Cigarettes into the Territory of the Member States and to prevent the

counterfeiting of Imperial Tobacco Cigarettes, ITL agrees to provide all reasonable assistance, both direct and indirect, to the EU and the Participating Member States in the fight against Contraband Cigarettes and Counterfeit Cigarettes, as set forth in this Agreement, including without limitation Section 4.1 (Annual Payments), Section 6.1 (Additional Payments) and Section 6.2 (Supplemental Payment). Subject to Section 10.1, any monetary payments under this Agreement may serve as a source of additional funding for Anti-Contraband and Anti-Counterfeit Initiatives.

- (b) Subject to Article 10, for any dispute relating to a payment that has been or will be provided by ITL in accordance with this Section 3.2, the Parties involved in the dispute shall meet and confer in an attempt to resolve the dispute in good faith in accordance with Section 12.1.
- (c) Any payments to be made by ITL under this Agreement shall be made to such bank account as nominated by the EU and notified to ITL.

ARTICLE 4
PAYMENTS TO SUPPORT THE ANTI-CONTRABAND AND ANTI-COUNTERFEIT
COOPERATION

4.1 Annual Payments.

For the term of this Agreement in accordance with Section 11.1, ITL agrees to make Annual Payments according to Schedule 3 which may be used to support the EU and the Participating Member States in their fight to eliminate illicit trade of Cigarettes. These Annual Payments shall be made in accordance with the provisions of Schedule 3. The Parties agree to discuss the possible use of funds under Section 4.1 above at the annual meetings described in Section 8.1 below.

ARTICLE 5
NOTIFICATION AND INSPECTION OF CONTRABAND AND COUNTERFEIT SEIZURES

For Seizures of Cigarettes bearing Imperial Tobacco Trademarks by the Member States after the Execution Date, the Parties agree to the following procedures:

Section 5.1. *Notice of Seizure.*

Within 30 days after notification to OLAF of a Seizure by a Member State of 50,000 or more Cigarettes bearing Imperial Tobacco Trademarks or bearing descriptors logos and/or other designs giving the appearance of being ITL Trademarks, OLAF may provide ITL with a notice of Seizure, which shall include:

- (a) the date, time and location of the Seizure;
- (b) the brand of seized Cigarettes indicated on the packaging and, if available, any indication of the Intended Market of Retail Sale;

- (c) the quantity of seized Cigarettes;
- (d) any Identification Markings that appear on the Master Cases or Cartons of the seized cigarettes; and
- (e) as to Seizures made by the Member States outside the Territory of the Member States, the basis of the seizing Member State's belief that the Cigarettes seized were destined for introduction into the Territory of the Member States.

Section 5.2. *Inspection of Seizures.*

- (a) To the extent permitted by law, ITL may, for a period of 30 days from receipt of the notice provided pursuant to Section 5.1 above, inspect such seized Cigarettes in the condition they were in at the time of Seizure, and select representative random samples of the seized Cigarettes for examination. ITL shall notify OLAF and the seizing authority promptly whether it intends to exercise such option. The seizing authority may also make a selection of such samples which ITL must examine.
- (b) Within 30 days of inspection of the seized Cigarettes, or, should ITL choose not to inspect the seized Cigarettes, within 60 days of receipt of the notice provided pursuant to Section 5.1 above, ITL shall provide a written response to OLAF stating whether the Cigarettes are Imperial Tobacco Cigarettes or Counterfeit Imperial Tobacco Cigarettes. Should ITL choose not to inspect the seized Cigarettes, the seized Cigarettes shall be deemed to be Contraband Imperial Tobacco Cigarettes.
- (c) Should ITL reasonably require additional time for inspection of the seized Cigarettes, ITL may make a request to OLAF for such an extension. The EU and Participating Member States agree that consent to a request for a reasonable extension under this Section shall not be unreasonably withheld.

Section 5.3. *Determination of Seizures.*

Where notice of Seizure described in Section 5.1 above has been delivered reasonably in accordance with the requirements of Section 5.1 and ITL has inspected the seized Cigarettes or has chosen not to inspect them, in accordance with Section 5.2(b):

- (a) if the Cigarettes are determined by ITL to be Counterfeit Imperial Tobacco Cigarettes, its response shall include documentation and examination results demonstrating that conclusion. The determination as to whether Cigarettes are Counterfeit Imperial Tobacco Cigarettes or Imperial Tobacco Cigarettes shall involve a consideration of the factors set forth in Schedule 3, which shall be amended by agreement between the Parties as new technologies and techniques are developed;

- (b) if the seized Cigarettes are Contraband Imperial Tobacco Cigarettes manufactured after the Execution Date, ITL's response shall include as much information as is available to it concerning:
- (i) the place of manufacture of the seized Cigarettes;
 - (ii) the date of manufacture of the seized Cigarettes;
 - (iii) the Intended Market of Retail Sale of the seized Cigarettes;
 - (iv) any intervening warehousing and shipping;
 - (v) the identity of the First Purchaser of the seized Cigarettes;
 - (vi) the identity of any known Subsequent Purchaser of the seized Cigarettes;
 - (vii) invoices to the First Purchaser that relate to the seized Cigarettes; and
 - (viii) payment records from the First Purchaser for any Cigarettes seized.
- (c) The Parties recognise and understand that the mere fact of Seizure of Contraband Imperial Tobacco Cigarettes at any point in the distribution chain does not, in and of itself, automatically implicate ITL, or the First Purchaser to whom the seized Imperial Tobacco Cigarettes were originally sold, as a violator of any applicable tax or duty laws.

Section 5.4. *Sampling and examination.*

OLAF or any Participating Member State may sample and test seized Cigarettes at any time. If OLAF disputes any determination made by ITL as to whether the seized goods are Counterfeit Imperial Tobacco Cigarettes or Contraband Imperial Tobacco Cigarettes, OLAF shall reply in writing to ITL detailing the basis for the dispute within 60 days after receiving the response referred to in Section 5.3, and thereafter ITL and OLAF shall meet and confer and attempt to resolve the dispute in good faith. If the dispute cannot be resolved within 30 days of ITL receiving OLAF's reply, the samples in dispute shall be submitted to an independent laboratory or facility for examination to determine if the Cigarettes are Counterfeit Imperial Tobacco Cigarettes in accordance with the factors set forth in Schedule 4, and any other physical factors it considers relevant. The determination of the selected independent laboratory or facility as to whether the Cigarettes are Contraband Imperial Tobacco Cigarettes or Counterfeit Imperial Tobacco Cigarettes shall be final and binding on the Parties. The costs of the laboratory or facility's services shall be paid by the non-prevailing Party. The independent laboratory or facility shall be designated by mutual agreement of the Parties on the Execution Date.

ARTICLE 6
PAYMENT OBLIGATIONS RELATING TO CONTRABAND SEIZURES

Section 6.1. *Additional Payments.*

- (a) For Seizures of Contraband Imperial Tobacco Cigarettes by a Participating Member State after the Execution Date, the response of ITL shall also include an Additional Payment:
- (i) of an amount equal to 100% of the taxes and duties that would have been paid on the amount of such seized Cigarettes if they had been legally sold in the Participating Member State of Seizure; or
 - (ii) of an amount equal to 100% of the taxes and duties that would have been paid for the same amount of a similar legal product in the Participating Member State of Seizure at the time of the Seizure, if the seized Cigarettes are not a brand or brands sold in the Participating Member State of Seizure,

in each case less any amount of taxes and duties already paid to the EU or any Member State(s) in relation to those Contraband Imperial Tobacco Cigarettes.

- (b) For Seizures of Contraband Imperial Tobacco Cigarettes by a Non-Participating Member State after the Execution Date, the response of ITL shall also include an Additional Payment:
- (i) of an amount equal to 100% of the taxes and duties that would have been remitted to the EU in respect of such seized Cigarettes if they had been legally sold in the Non-Participating Member State of Seizure; or
 - (ii) of an amount equal to 100% of the taxes and duties that would have been remitted to the EU in respect of the same amount of a similar legal product in the Non-Participating Member State of Seizure at the time of the Seizure, if the seized Cigarettes are not a brand or brands sold in the non-Participating Member State of Seizure,

in each case less any amount of taxes and duties already paid to the EU or any Member State(s) in relation to those Contraband Imperial Tobacco Cigarettes.

Section 6.2. *Supplemental Payment.*

If the Contraband Imperial Tobacco Cigarettes seized, when added to the number of Contraband Imperial Tobacco Cigarettes already seized in the same calendar year, results in a total number that exceeds the Baseline Amount, the response of ITL shall also include (in addition to the Additional Payment due in accordance with Section 6.1, a Supplemental Payment equal to 400% of the Additional Payment.

Section 6.3. *No Fault.*

For any Additional Payments or Supplemental Payments to be made pursuant to Section 6.1 or Section 6.2, it shall not be incumbent on the EU and the Member States

to establish fault on the part of ITL and such payments, if due, shall be made even though ITL shall have complied in all respects with its obligations under this Agreement relating to anti-contraband efforts and initiatives.

Section 6.4. *Exemptions from ITL's Payment Obligations.*

Notwithstanding any other provision to the contrary in this Article 6, ITL shall have no obligation to make Additional Payments or Supplemental Payments pursuant to Section 6.1 or Section 6.2 above, and Contraband Imperial Tobacco Cigarettes shall not be included in the calculations to determine the amount of any Additional Payment or Supplemental Payment described in Section 6.1 or Section 6.2 or count towards the Baseline Amount, where:

- (a) any Contraband Imperial Tobacco Cigarettes have been seized for a second or subsequent time;
- (b) any Member State sells, resells, or authorises the sale or resale of the seized Contraband Imperial Tobacco Cigarettes, any such Additional Payment or Supplemental Payment made in relation to those seized Cigarettes shall be refunded by the respective Participating Member State and/or the EU;
- (c) any seizures were made acting on specific information provided by ITL;
- (d) the notice of Seizure described in Section 5.1 above was not delivered reasonably in accordance with the requirements of Section 5.1;
- (e) ITL has not been permitted to inspect the seized Cigarettes or ITL has not been permitted to select samples of the seized Cigarettes, in substantial accordance with the requirements of Section 5.2 above, or the seizing authority has determined that the seized Cigarettes are not Contraband Imperial Tobacco Cigarettes as evidenced by the release of the seized Cigarettes;
- (f) subject to Section 6.4(j), the total volume of Contraband Imperial Tobacco Cigarettes seized in the particular Seizure was less than 50,000 Cigarettes after exclusion of any amount excluded by the seizing authority or a court pursuant to Article 32 of Directive 2008/118/EC by virtue of having been acquired in another Member State for own use and transported by the purchaser;
- (g) the Contraband Imperial Tobacco Cigarettes were manufactured prior to the Execution Date;
- (h) the Contraband Imperial Tobacco Cigarettes were stolen by a third party and ITL can reasonably demonstrate that such theft has occurred;
- (i) the Contraband Imperial Tobacco Cigarettes were seized by a Member State outside of the Territory of the Member States and the greater weight of the evidence demonstrates that the Cigarettes seized were not destined for introduction into the Territory of the Member States; or
- (j) the Contraband Imperial Tobacco Cigarettes were seized by a Member State and ITL can reasonably demonstrate that such Contraband Imperial Tobacco

Cigarettes were sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements of the EU and a Member State, or the Identification Markings demonstrate that they were sold at retail. For the purposes of this Agreement, the amount of seized genuine Cigarettes deemed to have been “sold at retail” in relation to any particular Seizure for an Additional Payment and a Supplemental Payment (if applicable) shall only include:

- (i) the portion of any Seizure which comprises, for any brand and Intended Market of Retail Sale, less than 7,500 Cigarettes from any one production run; and/or
- (ii) the portion of any Seizure on which there are either valid tax stamps from a Member State and/or in respect of which ITL can demonstrate that applicable duties and taxes of a Member State have been paid

Any amounts of genuine product deemed to have been “sold at retail” pursuant to Section 6.4(j) shall be deducted from the total Seizure amount for purposes of calculating the amount of the Additional Payment and the Supplemental Payment (if applicable) pursuant to Section 6.1 and Section 6.2. In the event that the deductions for genuine products "sold at retail" result in the Seizure being less than 50,000 Contraband Imperial Tobacco Cigarettes, ITL shall still make an Additional Payment and the Supplemental Payment (if applicable) in respect of this lower amount, but this amount shall not be taken into account for the purposes of reaching the Baseline Amount under Section 6.2

Section 6.5. *Dispute resolution.*

For any dispute relating to: (i) the application of the provisions in Sections 6.1, 6.2 or 6.4; (ii) the amount, if any, of a payment to be made under Section 6.1 or Section 6.2; or (iii) the determination of the appropriate Member State by which the Cigarettes were seized, the Parties involved in the dispute shall meet and confer in an attempt to resolve the dispute in good faith in accordance with the provisions of Article 12.

Section 6.6. *Refunds.*

- (a) If a Participating Member State or the EU accepts an Additional Payment and a Supplemental Payment (if applicable) in regard to a particular Seizure of Imperial Tobacco Cigarettes and later collects duties or taxes or the monetary equivalent from ITL in regard to that particular Seizure, the Participating Member State and/or the EU shall promptly refund to ITL the amount of these payments that have been paid equal to the duty and taxes or the monetary equivalent collected or paid.
- (b) If a Participating Member State or the EU accepts an Additional Payment and a Supplemental Payment (if applicable) in regard to a particular Seizure of Imperial Tobacco Cigarettes and it is later found that duties and taxes or the monetary equivalent had already been paid with regard to that particular Seizure, the Participating Member State and/or the EU shall promptly refund to

ITL the amount of these payments that have paid equal to the duty and taxes or the monetary equivalent collected or paid.

- (c) If a Participating Member State or any sub-division thereof sells or resells or authorises the sale or resale of Cigarettes on which an Additional Payment and/or a Supplemental Payment has been received, it shall notify OLAF within 30 days of such sale or resale.

Section 6.7. *Persisting Problems and ITL's Payment Obligations.*

If at any time after the second anniversary of the Execution Date a Party asserts that there is a serious persisting problem concerning Contraband Cigarettes or Counterfeit Cigarettes entering into a Participating Member State, which could bring about serious imbalances in the application of the Agreement, ITL and the EU shall meet and discuss as soon as reasonably possible any appropriate measures to ensure the continued functioning of the Agreement, including, if necessary, amendment or suspension of ITL's payment obligations under Article 6 as to that Participating Member State and increase of the Baseline Amount in accordance with Section 8.2. If no agreement is reached, the issue shall be settled in accordance with the provisions of Article 12.

For the purposes of this Section, it shall be presumed that a serious persisting problem exists if ITL can reasonably demonstrate:

- (a) that for a substantial period of time, Seizures in a Member State significantly exceed the Seizures by that Member State in the previous year so as to materially deviate from the expectations of the Parties, and
- (b) more than 50% of the seized Cigarettes were sold at retail (as determined in accordance with Section 6.4(j)) and the applicable taxes on the retail price of the Cigarettes were paid.

If the increase in the incidence of Contraband ITL Cigarettes in the pertinent Member State is substantially attributable to a failure on the part of ITL to comply with its obligations pursuant to this Agreement, and/or its failure to sell Cigarettes into a market consistent with Retail Demand in that market, amendment of Article 6 obligations is not appropriate.

Section 6.8. *Payment Schedule.*

Additional Payments according to Section 6.1 above and Supplemental Payments according to Section 6.2 shall be made by ITL at the end of the quarter following the notification of seizure described in Section 5.1.

ARTICLE 7
TRACKING AND TRACING

Section 7.1. *Tracking and Tracing Protocols.*

Consistent with this Agreement and applicable packaging laws, ITL agrees to adopt, implement, maintain and be bound by the Tracking and Tracing Protocols in

accordance with the timetable for the implementation of the Tracking and Tracing Protocols, in particular Schedule 2, Protocol 8.

Should ITL reasonably require additional time for the implementation of the Tracking and Tracing Protocols, ITL may make a request to OLAF for such an extension. The EU and Participating Member States agree that consent to a request for a reasonable extension under this Section shall not be unreasonably withheld.

Section 7.2. *Certification of Compliance with Tracking and Tracing Protocols.*

Each year, on the anniversary of the Execution Date, ITL shall provide the EU and the Participating Member States with a report, signed by the relevant ITL director at that time, describing ITL's compliance with the requirements of the Tracking and Tracing Protocols. Such certification shall be part of the annual Certification of Compliance and shall be governed by the procedures set forth in Section 2.2.

Section 7.3. *Imperial Tobacco Distribution Business*

If, during any 12 month period after the Execution Date, OLAF learns of at least 10 seizures of Contraband Imperial Tobacco Cigarettes, each totalling at least 1 million Imperial Tobacco Cigarettes from a single Intended Market of Retail Sale in relation to which any excluded Affiliate, ALTADIS Distribution France, S.A or Compañía de Distribución Integral LOGISTA, S.A or their subsidiaries, are considered the First Purchaser, OLAF may provide ITL, subject to Relevant Law, with specific information concerning the seizures. After consultation with OLAF, ITL shall determine whether any further action for that specific market of seizure is required. If, during any subsequent 12 month period, OLAF learns of 5 further seizures in the same single Intended Market of Retail Sale, each of which totals at least 1 million Imperial Tobacco Cigarettes distributed through any excluded Affiliate, ALTADIS Distribution France, S.A or Compañía de Distribución Integral LOGISTA, S.A or their subsidiaries, OLAF shall notify ITL, and, provided that such company is still an Affiliate of ITL, ITL shall no longer consider that company which is a First Purchaser for that specific market of seizure a First Purchaser, and shall implement all obligations under this Agreement in relation to that company within 12 months of such notice by OLAF. In the event that the thresholds in this section are met, ITL shall not undertake any action to avoid or limit the exclusion of the relevant identified subsidiary from consideration as a First Purchaser under this Agreement, or to replace the relevant identified subsidiary with another subsidiary to be considered a First Purchaser, or to transfer the business of the relevant identified subsidiary to another subsidiary considered a First Purchaser under this Agreement.

ARTICLE 8
REVIEW OF AGREEMENT

Section 8.1. *Annual Meetings.*

At least once per year, the authorised representatives of ITL and the European Commission shall meet to confer and assess the functioning of the Agreement. At that meeting, ITL and the European Commission may each present any suggestions they may have to improve the functioning of the Agreement. Subject to Relevant Law, the

European Commission and ITL may communicate to each other concerns relating to any Party's activities in connection with their commitments and obligations under the Agreement.

Section 8.2. *Review of Baseline Amount.*

After the second anniversary of the Execution Date, upon request by any Party, the Parties shall meet and confer to review the Baseline Amount. Any dispute arising out of a difference of opinion amongst the Parties concerning whether the Baseline Amount should be modified shall be resolved pursuant to Article 12.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

Section 9.1. *Mutual Representations.*

Each of the EU and the Participating Member States hereby represents and warrants to Imperial Tobacco Limited, and Imperial Tobacco Limited hereby represents and warrants to each of the EU and the Participating Member States that:

- (a) the execution, delivery and performance of this Agreement by such Party is within its governmental or corporate powers, as the case may be, and has been duly authorised by all necessary action on its part;
- (b) the Person executing this Agreement on behalf of such Party has the full right and authority to do so; and
- (c) this Agreement constitutes a valid and binding agreement of such Party, enforceable in accordance with its terms.

ARTICLE 10
SETOFF

Section 10.1. *Right of Setoff.*

- (a) In the event that the EU or any Participating Member State brings disputes or claims of a monetary nature in any jurisdiction against ITL in connection with any alleged misconduct relating to the manufacture, sale, distribution, shipment or storage of ITL Cigarettes before the Execution Date, ITL shall have the right to set off against any payments due under this Agreement, the amount of any damage, loss, liability, interest, reasonable court costs, expenses, or penalty of a monetary nature incurred, or suffered by ITL in connection with such disputes or claims.
- (b) Upon any Party learning of the reasonable likelihood of a potential payment or of an actual payment that may result in ITL having a right to setoff under this Section 10.1, that Party shall provide each other Party, to the fullest extent

permitted by law, with prompt notice of the existence of such claim, action, suit, or proceeding.

- (c) Subject to Section 10.1(f) below, upon learning of the reasonable likelihood of a potential payment or of an actual payment that may result in ITL having a right to setoff under this Section 10.1, ITL may, upon giving the EU 30 days notice, begin paying any funds which are due to the EU and the Participating Member States under this Agreement into an interest-bearing escrow account, up to the amount ITL reasonably claims can be setoff, rather than paying such funds directly to the EU and the Participating Member States. Payment of funds into escrow by ITL pursuant to this subsection (c) shall not be deemed a breach of this Agreement.
- (d) In each instance where ITL pays funds into escrow as set forth in Section 10.1(c), ITL and the EU shall make a good faith effort to agree as to whether utilisation of the escrow account provided for in Section 10.1(c) above is appropriate. If they have not agreed within 60 days after notice was provided pursuant to Section 10.1(b) the EU shall have the right to refer the matter to arbitration in accordance with Section 12, to challenge the applicability of Section 10.1(c). In order for such a challenge to be upheld by an Arbitrator(s), the EU must demonstrate that ITL does not have a reasonable basis to support its belief that it is incurring, or may incur, damage, loss, liability, tax, custom duty, fees, non-criminal penalties, non-criminal charges, civil judgments, orders or other civil sanction, or expense that may be eligible for setoff pursuant to Section 10.1(a) above. If the Arbitrator(s) determines that ITL does not have a reasonable basis to place the aforesaid funds into the escrow account, the Arbitrator(s) shall order that such funds together with accrued interest be released from the escrow account within 30 days and paid to the EU and the Participating Member States pursuant to this Agreement.
- (e) Subject to Section 10.1(f) below, before exercising any right to setoff pursuant to Section 10.1(a) above by claiming amounts held in escrow, ITL shall provide at least 30 days notice to the EU of its intention to do so. Upon receipt of such notice, ITL and the EU shall immediately make a good faith effort to agree as to whether setoff is appropriate and, if so, what the amount of the setoff should be. If ITL and the EU have not agreed within 60 days of notice being received by the EU, either Party may refer the matter to arbitration in accordance with Section 12.1 to determine whether a right of setoff exists pursuant to this Section 10.1. In order to establish any right of setoff, ITL must demonstrate by the greater weight of the evidence that: (i) ITL has incurred or suffered damage, loss, liability or expense that is eligible for setoff pursuant to Section 10.1(a) above and (ii) the amount so incurred or suffered. This Section 10.1(e) does not in any way affect the rights of ITL to pay funds into escrow in accordance with Section 10.1(c) above. Upon a ruling by an Arbitrator(s) that ITL has failed to establish a right of setoff, all funds owed to the EU and the Participating Member States under the terms of the Agreement that were the subject of dispute together with accrued interest, shall promptly be paid over to the EU and the Participating Member States. Upon a ruling by an Arbitrator(s) that ITL has established a right of setoff, ITL shall be entitled to recover such funds from escrow and/or set off against future payments in accordance with the Arbitrator's (or Arbitrators') ruling.

- (f) At any point in this setoff procedure, ITL and any EU and the Participating Member States may agree in their absolute discretion that ITL has a right of setoff, in which case ITL shall be entitled to avoid putting any part or all of the funds into escrow and/or to recover such funds from escrow and/or set off against future payments, in accordance with this Agreement.
- (g) Any reference in this Section 10.1 to the entire term of this Agreement shall be interpreted so that the right to setoff continues from the initial term into any subsequent extensions of the term.
- (h) Nothing in this section shall reduce or otherwise affect the other obligations of the Parties under this Agreement, which shall continue in full force and effect during and after any setoff proceedings pursuant to this section.

ARTICLE 11
EXPIRY AND TERMINATION OF PAYMENT OBLIGATIONS

Section 11.1. *Termination.*

- (a) This Agreement shall terminate upon the Expiration Date unless terminated earlier in accordance with this Section.
- (b) The Arbitrators shall terminate this Agreement, on an application by ITL, made after the service of a termination notice, if they determine that the EU or any Participating Member State is in material breach of this Agreement, or there is a sustained and substantially complete failure of the reasonable expectations of ITL of the benefits to that Party of said agreement due to the behaviour of the other Party, save that they shall not terminate this Agreement if such breach or failure of reasonable expectations has been substantially remedied through subsequent action of the Parties, or could be addressed adequately through an order of the Arbitrators and the Party in default complies with that order, or could be addressed adequately through a reasonable amendment of the Agreement to which all Parties can agree.
- (c) The reasonable expectations of ITL are to be assessed by reference to the terms of this Agreement and related agreements, documents and all other correspondence between the Parties and/or their counsel provided and/or executed at or immediately prior to the Execution Date.
- (d) Termination of the Agreement by the Arbitrators shall include only termination of the pecuniary payment provisions contained in Articles 4 and 6.
- (e) If the Arbitrators determine that there is a basis for termination, the Agreement shall terminate in accordance with Section 11.1(d) as to the EU and all of the Participating Member States save that where the precipitating cause of the termination is clearly confined in its application to a particular Participating Member State or particular Participating Member States, in which case the Arbitrators shall determine termination with regard to any such particular Participating Member State. In such circumstances:

- i. all amounts payable by ITL under this Agreement will be reduced by the amounts that would have otherwise been due to any and all former Participating Member States.
 - ii. after partial termination of the Agreement with respect to any particular Participating Member State(s), such former Participating Member State(s) shall not be entitled to receive from ITL any of the non-pecuniary benefits of this Agreement.
- (f) With regard to termination of the Agreement under this Clause, if a termination notice is filed by ITL:
- i. the relevant funds due thereafter from ITL shall be held in escrow until the issue of termination is resolved and the Arbitrator(s) order(s) the release of said funds to the appropriate Party or Parties;
 - ii. all other obligations of the Parties pursuant to this Agreement shall remain in effect unless so ordered by the Arbitrators.

Section 11.2. *Subsequent Agreement.*

It is the intention of the Parties, if feasible, to extend the duration of this Agreement beyond the Expiration Date. Accordingly, beginning no later than 2 years prior to the Expiration Date, if this Agreement has not been terminated earlier in accordance with its terms, the representatives of the Parties shall meet and attempt in good faith to reach another agreement between the Parties covering the same subject matter addressed herein.

ARTICLE 12
GOVERNING LAW AND DISPUTE RESOLUTION

Section 12.1. *Dispute Resolution for Claims Brought Under the Terms of the Agreement.*

- (a) It is the intention of the Parties to settle amicably, by negotiation or agreement, any differences of opinion on matters of performance, procedure and management arising out of this Agreement.
- (b) Without prejudice to the provisions of Section 2.2, in the event of a dispute, the dispute shall be notified to the other Parties in writing, and shall be dealt with in the first instance by the Head of Legal Affairs for OLAF, and the Designated Manager of ITL. These designated representatives shall discuss and attempt to resolve the dispute in good faith.
- (c) If such good faith discussions fail to resolve the dispute within 30 Business Days of notification, then the dispute shall be escalated to the Company Secretary of ITL and the Director level or equivalent for the EU and any Participating Member State directly involved in the dispute, who shall meet as soon as reasonably practicable thereafter to attempt to resolve the dispute in good faith.

- (d) Nothing communicated in any discussions, negotiations or offers of settlement made during, or arising from, the dispute escalation process pursuant to Section 12.1(b) or Section 12.1(c) above shall be admissible in any way in any litigation or arbitration.

Section 12.2. *Arbitration Clause*

- (a) Any dispute between the Parties arising out of or relating to this Agreement or any breach, clarification or enforcement of any provision of this Agreement or any conduct contemplated herein which remains unresolved 60 Business Days after the date of the written notice provided pursuant to Section 12.1(b) above may be referred exclusively to arbitration pursuant to the UNCITRAL Rules as amended by this Section 12.2. Unless otherwise requested by a Party, as set forth below, arbitration shall be conducted by the highest-listed and available arbitrator on the list attached to this Agreement as Schedule 7 (the **Arbitrator**).
- (b) For disputes concerning Article 2 or Protocols 3, 4 and 5 of Schedule 1 (EU Compliance Protocols), Article 4 or Schedule 3 (Annual Payments), Article 5 (Seizures), Article 6 or Schedule 7 (Seizure Payments), Article 7 or Schedule 2 (Tracking and Tracing Protocols), Section 8.2 (Baseline Amount) and Article 11 (Termination) any Party may request arbitration by a three-person panel. In this event, one arbitrator shall be selected by the ITL Party or Parties to the dispute, one arbitrator shall be selected by the EU and the Participating Member State Party or Parties to the dispute and the arbitrator who is at the top of the list attached to this Agreement as Schedule 7 shall be appointed as the third arbitrator and chairperson of the arbitration panel (the **Arbitrators**).
- (c) If the arbitrator who is at the top of the list in Schedule 7 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 in Schedule 7 shall be appointed as the single Arbitrator or the third arbitrator and chairperson of the arbitration panel for the purposes of that dispute. Should the arbitrator who is at the top of the list in Schedule 7 be permanently unable to hear the Parties' disputes, the next-highest-listed arbitrator in Schedule 7 shall be considered the highest-listed arbitrator for the purposes of the Agreement.
- (d) The Parties may add to, remove from, or reorder the list of arbitrators in Schedule 7 at any time by mutual agreement in writing. If all of the arbitrators on the list in Schedule 7 are unable to hear the Parties' dispute pursuant to this clause, the single Arbitrator or the third arbitrator shall be appointed by agreement of the Parties. Where the list in Schedule 7 has been exhausted and the Parties are unable to agree on the appointment of the single Arbitrator or a third arbitrator, the single Arbitrator or the third arbitrator shall be appointed by: (i) by the arbitrator who is at the top of the list in Schedule 7, failing which; (ii) the process in (i) shall be followed by each arbitrator in Schedule 7 in turn until the single Arbitrator or a third arbitrator is appointed.
- (e) The arbitration proceedings shall be conducted in the English language and the seat of the arbitration shall be deemed to be Geneva, Switzerland, unless otherwise agreed by the Parties to the dispute. Consistent with Relevant Law,

and any applicable law governing ITL's disclosure obligations the arbitration proceedings shall be confidential to the extent possible, and the Parties shall not disclose the nature or scope of the proceedings, or any information obtained in or arising out of the proceedings, to any third party. No *amicus curiae* or "friend of the court" briefs may be filed in the proceedings. The Arbitrator(s) shall provide the rules of the proceedings and shall issue a written opinion stating the reasons for the relief granted. The arbitration proceedings, or any action to compel arbitration, shall be governed by the substantive laws of the State of Geneva, Switzerland, without regard to choice of law doctrine.

- (f) By agreeing to refer disputes to arbitration pursuant to this Article 12, to the extent permitted by law, the Parties irrevocably waive their right to any form of appeal, review, or recourse to any state court or other judicial authority, save that the final decision by the Arbitrator(s) shall be exclusively appealable to the Federal Supreme Court of Switzerland.
- (g) In any arbitral proceedings in which the Arbitrator is to make a determination of whether or not ITL has complied with its obligation to make commercially reasonable efforts to achieve an undertaking under this Agreement, the Arbitrator shall, in making such a determination, take into account the customs and practices of other tobacco companies of a similar size operating in the same relevant markets, the product and brand portfolio of ITL in these relevant markets, the costs of compliance relative to the volume of product supplied by ITL to such markets or distributors, the alternative forms of distribution available in such markets and the amount of information and cooperation obtainable from contract counterparties in such markets as part of normal business operations.

Section 12.3. *Governing Law.*

The applicable law to interpret this Agreement shall be the laws of England and Wales without regard to the choice of law doctrine.

ARTICLE 13
MISCELLANEOUS

Section 13.1. *Notices.*

- (a) All notices, requests and other communications hereunder shall be in writing (including facsimile transmission or electronic mail, both with acknowledgement) and shall be given to the following persons:
 - (i) the Director of OLAF, or his or her designee;
 - (ii) the Company Secretary of ITL, or his or her designee

as indicated by OLAF and ITL from time to time. The postal address, facsimile transmission address and electronic mail address of said designated persons shall also be indicated by OLAF and ITL from time to time.

- (b) Notices regarding Disputes according to Article 6 and Article 12 or the termination of the Agreement according to Article 11 shall be in writing and sent by prepaid recorded delivery, special delivery, registered post or courier, and an advance informal alert of such notification shall be given by means of facsimile transmission or electronic mail, to
 - (i) the Company Secretary of ITL, or his or her designee
 - (ii) the Director-General of the Legal Service of the European Commission

as indicated by OLAF and ITL from time to time. The postal address, facsimile transmission address and electronic mail address of said designated persons shall also be indicated by OLAF and ITL from time to time.

Section 13.2. *Waivers.*

No provision of this Agreement may be waived unless such waiver is in writing and is signed by the Party against whom the waiver is to be effective.

Section 13.3. *Expenses.*

All costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such cost or expense.

Section 13.4. *Nature of Payments.*

The Parties agree that no part of any of the payments made pursuant to this Agreement is being paid as (or in settlement of actual or potential claims for) fines or penalties, civil or criminal, or enhanced, multiple or punitive damage awards. Nor does any part of such payments represent the cost of a tangible or intangible asset or other future benefit.

Section 13.5. *Successors and Assigns.*

The provisions of this Agreement, including the obligations set forth herein, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 13.6. *Legality and Severability.*

- (a) All obligations under this Agreement are subject to Relevant Law. Without prejudice to the rights of the Parties under Article 11 the Parties agree that to the extent that any obligation of any Party under this Agreement would violate Relevant Law, the Party shall be excused from performing such obligation only to the extent that performance would violate such law and shall not incur any liability as a result thereof.
- (b) Without prejudice to the rights of the Parties under Article 11, in the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court or tribunal of competent jurisdiction to be illegal, void or

unenforceable, or there is a legislative, executive or administrative action with the same effect in a Participating Member State, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as to reasonably effectuate the intent of the Parties hereto. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the intent and purpose of such void or unenforceable provision.

Section 13.7. *Counterparts; Effectiveness; Third Party Beneficiaries.*

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective on the Execution Date. No provision of this Agreement is intended to confer upon any Person other than the Parties any rights or remedies hereunder.

Section 13.8. *Entire Agreement.*

This Agreement, including the Schedules and Appendices, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior drafts of this Agreement and any prior understandings reached between the Parties during negotiation of this Agreement, whether oral or written. Notwithstanding the foregoing, each of the Parties may rely upon express representations made in any letter from another Party or their counsel executed on or immediately prior to the Execution Date relating to the Agreement.

Section 13.9. *Captions.*

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

Section 13.10. *Designated Representatives.*

(a) The EU and the Participating Member States hereby appoint the Director of OLAF as their designated representative for communications with ITL relating to this Agreement. The designated representative is hereby given authority by the EU and each Participating Member State to act on its behalf for the purposes of this Agreement, including without limitation, giving and receiving notices and inquiries, amending this agreement and reviewing and approving any documentation or protocols required to be reviewed or approved under this Agreement.

(b) ITL hereby appoints the Designated Manager as its designated representative for communications between ITL, the EU and the Participating Member States on all matters relating to this Agreement.

Section 13.11. *Amendments.*

Any provision of this Agreement may be amended but only if such amendment is in writing and is signed by each Party or by the designated representative of each Party to this Agreement.

Section 13.12. *Use of Information Provided by ITL.*

Any information provided by ITL to the EU and the Participating Member States or OLAF pursuant to the Agreement shall be used only for the purposes of promoting the Parties' joint objective of combating Cigarette smuggling, Cigarette counterfeiting and any related Money Laundering. In no case shall any such information be used or provided to third parties for any other purpose without the prior written consent of ITL, unless the EU and/or the Participating Member State(s) is compelled to disclose the information by judicial or administrative process or by other requirements of law. Such consent will not be unreasonably withheld where the disclosure is proportionate in relation to the interests of the common goals of this Agreement and all necessary measures can be taken and have been taken to limit the impact of any such disclosure on the business of ITL and any of its contractors and on the privacy and personal security of all employees of ITL and its contractors.

Section 13.13. *Equal Treatment Provision.*

If, at any time during the operation of this Agreement, the EU enters into an agreement or amends an existing or future agreement with another Cigarette manufacturer 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 Cigarette manufacturer than the terms of this Agreement, then ITL may request of the EU that it receive treatment under this Agreement at least as relatively favourable as the overall terms provided to the other Cigarette manufacturer. The EU 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.

Section 13.14. *Additional Participating Member States.*

Any Member State may become a Participating Member State by executing a copy of this Agreement in the appropriate form and delivering a counterpart thereof to ITL and the other Parties thereto.

Section 13.15. *Use of the Agreement.*

This Agreement may be admitted into evidence, without the consent of the Parties: (i) in any proceeding for the purposes of enforcing the terms hereof; or (ii) if the contemplated use of said document would not be contrary to the intent of this Agreement, in support of any claim or defence any Party may wish to raise in any proceeding brought against it. Otherwise, the Agreement may not be admitted into evidence in any proceeding without the consent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorised officers as of the day and year first written above.

Imperial Tobacco Limited

By:

Alison Cooper
Chief Executive
Imperial Tobacco Limited

Date: _____

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; and

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

Luis Romero Requena
Director General
Legal Service
European Commission

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

Date: _____

Imperial Tobacco Limited hereby warrants that should any of its direct or indirect subsidiaries that are not already Parties to this Agreement undertake to sell, distribute, ship or store Cigarettes within or through the Territory of the Member States, or any Designated State, whether directly or indirectly, Imperial Tobacco Limited shall ensure that such subsidiaries adhere to the terms of this Agreement. Imperial Tobacco Limited also warrants that neither it, nor any of its direct or indirect subsidiaries, shall take any action to avoid or limit the obligations of Imperial Tobacco Limited created by this Agreement. Imperial Tobacco Limited hereby declares that it has the authority to make the warranties herein concerning its said subsidiaries.

Imperial Tobacco Limited

Alison Cooper

Chief Executive
Imperial Tobacco Limited

SCHEDULE 1

EU COMPLIANCE PROTOCOLS

PROTOCOL 1

GENERAL STATEMENT OF ANTI-MONEY LAUNDERING/ANTI-SMUGGLING COMPLIANCE PROTOCOLS

- 1.1 *Commitment of ITL.*
- (a) Consistent with these EU Compliance Protocols, ITL reiterates its ongoing commitment and obligation to comply with all applicable laws, including those of the EU and the Member States, governing its conduct relating to:
 - (i) the payment of import duties, value added tax, excise tax and other imposts applicable to Cigarettes manufactured or sold by ITL;
 - (ii) the handling of payments which are received from customers, licensees, and other obligors in respect of Imperial Tobacco Cigarettes;
 - (iii) currency reporting and record-keeping requirements; and
 - (iv) trade restrictions or prohibitions.
 - (b) Conduct that is unlawful or that violates ITL's policies and procedures will not be condoned under any circumstances. This includes conduct that occurs in a country that does not enforce a restriction or prohibition in its own law or in which the violation is not subject to public criticism or censure.
 - (c) After detecting any violation of these EU Compliance Protocols, ITL shall make all commercially reasonable efforts to prevent and/or penalise any further similar conduct.
 - (d) The fact that a competitor or other company may appear to be engaged in an illegal activity without incurring any penalties does not mean that ITL can be involved in such illegal activity or condone the involvement of its customers or anyone associated with ITL in such illegal activity.
- 1.2 *Scope and Purpose of the EU Compliance Protocols.*
- (a) These EU Compliance Protocols are designed to promote the Parties' joint objective that Imperial Tobacco Cigarettes be sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements, and, in particular, sold at retail in accordance with all applicable tax and duty laws in the Intended Market of Retail Sale.
 - (b) These EU Compliance Protocols are designed to achieve the Parties' joint objective of meaningful cooperation, in particular between ITL and OLAF, in eliminating the sales of smuggled and/or counterfeit Cigarettes as well as any associated Money Laundering. Furthermore, these EU Compliance Protocols

are designed to further the Parties' joint objectives: (i) that ITL terminate sales of Cigarettes to persons, corporations and/or distributors that have been found to be unlawfully, knowingly or recklessly engaged in or facilitating the distribution of smuggled products or Money Laundering; (ii) that the EU and the Participating Member States are in a better position to investigate and prosecute such persons, and to prevent and detect such frauds; and (iii) that ITL be provided active and effective support for its efforts to deter any act or practice that favours or facilitates the use of its Cigarettes in smuggling or as a vehicle to launder illegal proceeds. The information provided by ITL to the EU and the Participating Member States and OLAF pursuant to these EU Compliance Protocols will contribute to the vigorous pursuit of persons suspected of illegally smuggling Cigarettes, counterfeiting and Money Laundering throughout the world.

PROTOCOL 2
KNOW YOUR CUSTOMER

- 2.1 *Conducting Business with Approved Contractors.* Beginning 180 days after the Execution Date, ITL shall conduct business only with Approved Contractors for the manufacture, sale, distribution, storage, or shipment of Cigarettes in excess of 25,000,000 Imperial Tobacco Cigarettes in any calendar year within or into the Territory of one or more of the Member States or any Designated State.
- 2.2 Beginning one year after the Execution Date, ITL shall, on a worldwide basis, conduct business only with Approved Contractors for the manufacture, sale, distribution, storage, or shipment of Cigarettes in excess of 25,000,000 Imperial Tobacco Cigarettes in any calendar year.
- 2.3 *Market Demand.* ITL shall sell and distribute Cigarettes only in amounts that are commensurate with the Retail Demand in the Intended Market of Retail Sale, and ITL will refuse to supply Cigarettes in volumes exceeding that amount.
- 2.4 *Customer Checks.*
 - (a) ITL shall undertake customer checks with respect to all of its Contractors, or Persons reasonably likely to be engaged by ITL as Contractors, (together **Applicants**), in order to satisfy itself that such Persons are able and committed to honour the objectives and practices set forth in these EU Compliance Protocols and therefore are eligible to become Approved Contractors.
 - (b) As part of its customer checks, a representative of ITL shall:
 - (i) meet with a representative of each Applicant;
 - (ii) visit the Applicant's principal place of operations;
 - (iii) obtain Customer Checks Information from each Applicant or other sources;

- (iv) assess and verify each Applicant's ability and commitment to comply with the objectives and procedures of this Agreement to the extent applicable to it;
 - (v) assess and verify each Applicant's ability and commitment to implement its own Know-Your-Customer procedures consistent with this Agreement and for each Applicant to require the same of its wholesale Cigarette customers, if any; and
 - (vi) create a report detailing the result of the customer checks.
- (c) **Customer Checks Information** means the following information, to the extent that it is reasonably available:
- (i) where the Applicant is an individual, information regarding his or her identity, including but not limited to, full name, business registration number (if any), date and place of birth, and applicable tax registration numbers and a copy of their official identification and/or passport;
 - (ii) where the Applicant is a corporation or other entity, information regarding its identity, including but not limited to, full name, business registration number, date and place of incorporation, corporate capital, applicable tax registration numbers, copies of its articles of incorporation or equivalent documents, its corporate Affiliates, the names of its officers and directors, and the name of any designated representatives, including but not limited to the representatives' complete names and copies of their official identification and/or passports;
 - (iii) where the Applicant is seeking to become a First Purchaser, a description of the intended use and Intended Market of Retail Sale of the Cigarettes to be purchased from ITL. This 'sales plan' shall be required to be updated as needed and will include complete identification as practicable of the Subsequent Purchasers to whom the Cigarettes will be sold;
 - (iv) documentation regarding the number of persons employed by the Applicant at the date for the request for information;
 - (v) documentation regarding any criminal offences, or charges filed by governmental agencies, against the Applicant or any of its managers, directors and/or legal representatives; and
 - (vi) complete identification of the bank accounts through which the payments for the Cigarettes sold to the Applicant shall be made, including but not limited to the complete name and address of the bank, the complete name and address of the account holder, and all information concerning the identification of the account. In addition to the foregoing information, if the bank account to be used to pay ITL belongs to an Affiliate of the Applicant, full disclosure of the precise relationship between the Affiliate and the Applicant (or subsequently,

the Approved Contractor) shall be required to be made to ITL prior to the acceptance of any payment from such an Affiliate. This information shall be required to be updated, as needed, by the Applicant if the Applicant becomes an Approved Contractor.

- (d) If, following its customer checks, ITL is not satisfied that an Applicant is able and committed to honour the objectives and practices set forth in these EU Compliance Protocols, ITL shall refuse to conduct business with that Applicant.
- (e) If, following its customer checks, ITL is satisfied that an Applicant is able and committed to implement effectively the objectives and practices set forth in these EU Compliance Protocols, ITL will record that fact and that Applicant shall be considered an **Approved Contractor**.
- (f) ITL shall maintain a list of all Approved Contractors, which shall be updated every 6 months.
- (g) Follow-up Customer Checks (as defined in (h) below) shall be undertaken at least annually for each Approved Contractor, and shall also be undertaken in cases where ITL has been notified by the Approved Contractor or becomes aware of a change in ownership and/or control of the Approved Contractor. ITL will require Approved Contractors to notify it promptly of any material change in their ownership or control.
- (h) **Follow-up Customer Checks** means:
 - (i) reiterating to Approved Contractors their obligations under these EU Compliance Protocols, and monitoring their continued compliance therewith;
 - (ii) for Approved Contractors who are First Purchasers, reiterating that these EU Compliance Protocols require that they may only purchase Imperial Tobacco Cigarettes for sale or distribution in amounts that are commensurate with the Retail Demand in the Intended Market of Retail Sale and that ITL will refuse to sell Imperial Tobacco Cigarettes to them in volumes exceeding that amount;
 - (iii) reiterating to Approved Contractors ITL's commitment to cooperate with the EU and the Participating Member States, including OLAF;
 - (iv) answering questions that Approved Contractors may have regarding these EU Compliance Protocols;
 - (v) providing Approved Contractors with any changes to the EU Compliance Protocols that may affect their obligations; and,
 - (vi) creating a report containing the result of the Follow-up Customer Checks procedure.

- (i) If, after completing Follow-up Customer Checks, ITL is no longer satisfied that an Approved Contractor is able and committed to honour the objectives and practices set forth in these EU Compliance Protocols, ITL shall refuse to continue conducting business with that entity and that entity shall cease to be an Approved Contractor.
- 2.5 *Approved Contractor Records.* ITL shall maintain files containing its records of Approved Contractors for at least for five years after creation. These records shall include the following:
- (a) commercial documents relating to the Approved Contractor of a material nature to this Agreement, including for example invoices, correspondence of a material nature to and from said Approved Contractor, internal correspondence of a material nature relating thereto, documentation concerning the reasons any exception has been granted under Protocol 5.1(b) below, contracts, credit analysis, cargo manifests, declarations to any relevant authorities, transport documents, and other shipping documents in either hard copy or locally approved electronic format.
 - (b) documents obtained by ITL as part of Approved Contractors' Customer Checks Information;
 - (c) any inquiries from and responses to government agencies regarding the Approved Contractor or its business; and
 - (d) all records relating to payments made by First Purchasers for Imperial Tobacco Cigarettes.

PROTOCOL 3
APPROVED CONTRACTOR RELATIONS

- 3.1 *Contracts with Approved Contractors.* To the extent permitted by law, ITL undertakes to make commercially reasonable efforts to enter into commercial agreements with Approved Contractors who are or intend to be involved in the manufacture, sale, distribution, storage or shipment of Cigarettes into one or more of the Member States or any Designated State, within 12 months of the Execution Date that will provide for the following, as applicable:
- (a) *Delivery Terms.* Delivery terms applicable to sales of Imperial Tobacco Cigarettes will be specified on the invoice to the First Purchaser using terminology set out in Incoterms 2000. Passage of risk will transfer to the First Purchaser in accordance with the applicable Incoterm(s). ITL shall require its Approved Contractors to deliver Imperial Tobacco Cigarettes directly to the Intended Market of Retail Sale, or to take other measures that are designed to ensure delivery of Imperial Tobacco Cigarettes to the Intended Market of Retail Sale. Under no circumstances may the Approved Contractor take any action directly or indirectly to interfere with the transportation of the Imperial Tobacco Cigarettes to the delivery point specified in the invoice or to the Intended Market of Retail Sale without the specific prior approval of ITL.

- (b) *Packaging.* The Approved Contractor shall be required to agree that it will take no action directly or indirectly to alter, remove, or deface any Identification Markings or any other aspects of the Imperial Tobacco Cigarettes' packaging.
 - (c) *Legal Compliance.* The Approved Contractor shall be required to agree to transport and/or resell the Imperial Tobacco Cigarettes in full compliance with all applicable laws and regulations, including without limitation (a) any laws or regulations governing the shipment of Imperial Tobacco Cigarettes in bond or under duty suspension, (b) any fiscal or other laws or regulations governing the importation and resale of Imperial Tobacco Cigarettes, and (c) any laws designed to combat the laundering of illegal proceeds. The Approved Contractor shall be required to agree to take no action to promote or facilitate the resale of the Imperial Tobacco Cigarettes by the First Purchaser's customers or Subsequent Purchasers in violation of any fiscal, labelling, trade, or other laws or in a way which would otherwise contravene the First Purchaser's obligations under its terms and conditions of sale. The First Purchaser shall be required to agree not to resell the Imperial Tobacco Cigarettes to any Person or entity whom it knows or has reason to believe to be engaged in or facilitating any illegal trade or to any Blocked Contractor. ITL shall require the Approved Contractor to acknowledge and accept that ITL reserves the right to suspend or terminate any and all commercial relationships with the Approved Contractor, and in particular to suspend any sales and/or shipments of Imperial Tobacco Cigarettes to the Approved Contractor, if the Approved Contractor violates its terms and conditions of sale, including, without limitation, those relating to delivery and/or packaging, or is otherwise shown to have unlawfully, knowingly or recklessly engaged in or facilitated any illegal trade.
 - (d) *Cooperation with Governments.* ITL shall require the Approved Contractor to acknowledge and accept in writing that ITL intends to cooperate with governmental inquiries into any illegal importation, movement, or sale of Imperial Tobacco Cigarettes. The First Purchaser shall be required to agree in writing expressly to authorise ITL to disclose the terms and conditions of any sale of Imperial Tobacco Cigarettes to the First Purchaser in response to a valid and specific governmental inquiry in that regard.
- 3.2 *Investigations by the EU and the Participating Member States.* ITL shall, to the extent permitted by law, require its Approved Contractors to cooperate fully with the EU and the Participating Member States for the purposes of investigating Cigarette smuggling and/or the laundering of proceeds arising out of the illegal trade in Cigarettes.
- 3.3 *Further Efforts.* ITL shall make commercially reasonable efforts to ensure that substantively equivalent provisions are inserted progressively on the first practicable occasion into the contracts entered into by any First Purchasers with Subsequent Purchasers, and by Subsequent Purchasers with other Subsequent Purchasers.

PROTOCOL 4

TERMINATION OF APPROVED CONTRACTORS AND SUBSEQUENT PURCHASERS

- 4.1 *Termination of Business Relationships with Approved Contractors.*
- (a) To the extent permitted by law and pre-existing contractual obligations, ITL shall terminate business relations with, including the supply of Imperial Tobacco Cigarettes to, any Approved Contractor upon OLAF providing ITL with, or ITL otherwise coming into possession of, Sufficient Evidence that such Approved Contractor has, following the Execution Date, unlawfully, knowingly or recklessly engaged in or facilitated the manufacture, sale, distribution, storage, or shipment of Contraband Cigarettes or any related Money Laundering. Thereafter, such Approved Contractor shall be a Blocked Contractor. ITL shall notify OLAF upon termination of any Contractor pursuant to this section.
 - (b) In the event that OLAF provides ITL with, or ITL otherwise comes into possession of, Sufficient Evidence that a Subsequent Purchaser has, following the Execution Date, unlawfully, knowingly or recklessly engaged in or facilitated the manufacture, sale, distribution, storage, or shipment of Contraband Cigarettes, ITL will request the First Purchaser of Imperial Tobacco Cigarettes that sells Imperial Tobacco Cigarettes to such Subsequent Purchaser to cease supplying Imperial Tobacco Cigarettes to such Subsequent Purchaser, if such Subsequent Purchaser is a direct customer of the First Purchaser. In the event that the First Purchaser refuses to honour such request, to the extent permitted by law, including pre-existing contractual obligations, ITL will cease supplying Imperial Tobacco Cigarettes to such First Purchaser, who will thereafter be a Blocked Contractor. If such Subsequent Purchaser is not a direct customer of a First Purchaser, then ITL shall request that the First Purchaser make such commercially reasonable efforts as may be required to terminate its direct and/or indirect supply of Imperial Tobacco Cigarettes to such Subsequent Purchaser. In the event that the First Purchaser refuses to take such steps to terminate its direct and/or indirect supply of Imperial Tobacco Cigarettes to such Subsequent Purchaser, to the extent permitted by law, including pre-existing contractual obligations, ITL will cease supplying Imperial Tobacco Cigarettes to such First Purchaser, who will thereafter be a Blocked Contractor.
 - (c) ITL shall maintain a list of Blocked Contractors. Unless otherwise agreed to by ITL and OLAF, a Blocked Contractor shall remain so designated for 5 years after the termination of ITL's business relationship with such Blocked Contractor and no such Blocked Contractor will be permitted to conduct business with ITL or any Affiliates thereof, directly or indirectly, relating to the manufacture, sale, distribution, shipment, or storage of Imperial Tobacco Cigarettes during that time. After the expiration of the 5-year period, a Blocked Contractor may reapply to become an Approved Contractor and, at that time, will be subject to the applicable customer checks requirements.

4.2 *Request for Termination of Business Relationships with Approved Contractors.*

- (a) If OLAF believes that an Approved Contractor or Subsequent Purchaser has, following the Execution Date, unlawfully, knowingly or recklessly engaged in or facilitated the manufacture, sale, distribution, storage, or shipment of Contraband Cigarettes or Counterfeit Cigarettes or any related Money Laundering, but does not possess Sufficient Evidence to support its belief, OLAF may present its evidence to ITL as part of a request that, to the extent permitted by law, including pre-existing contractual obligations, ITL terminate the supply of Imperial Tobacco Cigarettes to the Approved Contractor or Subsequent Purchaser (the **Request for Termination**).
- (b) Within 45 days of receiving a Request for Termination, ITL shall provide a response to OLAF reflecting its determination. In the event that ITL disagrees with OLAF's conclusions and rejects the Request for Termination, it shall provide the reasons for that decision. If OLAF, after considering ITL's response, remains of the view that the supply of Imperial Tobacco Cigarettes to the Approved Contractor and/or Subsequent Purchaser should be terminated, OLAF and ITL shall meet and confer in good faith and attempt to resolve the dispute. If the dispute has not been resolved within 30 days of the meet and confer, OLAF may refer the dispute to arbitration in accordance with the provisions of Section 12.2 and may seek an order from an Arbitrator requiring ITL to terminate its business relationship with the Approved Contractor in question, to the extent permitted by law, including pre-existing contractual obligations (the **Termination Order**), or, if the Person that is the subject of the Request for Termination is a Subsequent Purchaser, that Imperial Tobacco Limited proceed under Protocol 4.1(b), above as if Sufficient Evidence existed concerning such Subsequent Purchaser.
- (c) In any arbitration proceedings brought under Protocol 4.2 hereof, an Arbitrator may issue a Termination Order to ITL only where it has been proven by the greater weight of the evidence that the Approved Contractor or Subsequent Purchaser in question has, following the Execution Date, unlawfully, knowingly or recklessly engaged in or facilitated the manufacture, sale, distribution, storage, or shipment of Contraband Cigarettes or Counterfeit Cigarettes or any related Money Laundering.

PROTOCOL 5

ACCOUNTABILITY OF PAYMENTS FOR CIGARETTES

5.1 *Acceptable Forms of Payment.*

- (a) ITL shall adhere to its anti-money laundering policies, which are designed to ensure that it receives payment for Imperial Tobacco Cigarettes solely from legal sources. The policies developed by ITL to track and monitor all payments made for Cigarettes sold and/or distributed by ITL shall include measures designed to prevent the use of the proceeds of any illegal activity, in any form whatsoever, as payment for Cigarettes. Specifically, as those policies relate to transactions with Approved Contractors relating to the manufacture, sale, distribution, storage or shipment of Imperial Tobacco Cigarettes:

- (i) acceptable forms of payment shall be limited to:
 - (A) wire transfers or cheques, in both cases from a bank account in the name of the Person or Affiliate of such Person with whom ITL is transacting;
 - (B) cashier's cheques or bank drafts, in both cases issued by a bank in the country in which the Person with whom ITL is transacting is located; and
 - (C) payment drawn, on the basis of letters of credit, by the Person or an Affiliate of the Person with whom ITL is transacting, on a bank in the country where the said Person or Affiliate is located, but only where it is not commercially feasible under local conditions for that Person or Affiliate to use the forms of payment specified in (A) or (B) above ; and
 - (D) cash, but only where the nature and scale of the business of the Person with whom ITL is transacting (e.g., a small retail outlet) are such that it is not commercially feasible under local conditions for that Person to use the forms of payment specified in (A) or (B);
 - (ii) all payments must be made in the same currency and same amount as the invoice;
 - (iii) all payments for Imperial Tobacco Cigarettes must be made by the invoiced customer or an Affiliate of that customer disclosed to ITL in accordance with Protocol 2.4(c)(vi);
 - (iv) payments for each invoice or group of invoices due shall be made by a single instrument; and
 - (v) payment must be made from an account designated by the Approved Contractor during the customer checks process, under Protocol 2.4(c)(vi) above.
- (b) Exceptions to the five requirements set forth above in Protocol 5.1(a) may be made on a case-by-case basis. Such exceptions must be approved by the responsible ITL Director at that time, in advance and in writing, and the reasons for granting any exception shall be documented and made available to OLAF upon request.

PROTOCOL 6
DISCLOSURE OF INFORMATION

- 6.1 *Responding to Inquiries.* Within 45 days of a written request by OLAF, ITL shall provide OLAF with the following:
- (i) the list of Approved Contractors and Blocked Contractors as of the date of the request;

- (ii) sales volumes to Approved Contractors after the Execution Date;
 - (iii) reasonable estimates of the annual Retail Demand for any domestic or duty free market in the Member States or any Designated State for any time period after the Execution Date and any domestic or duty free market if there have been 3 Seizures in the Member States of more than 50,000 Contraband Imperial Tobacco Cigarettes within the previous 12 months that had such domestic market as the Intended Market of Retail Sale; and
 - (iv) information relating to the storage and shipment of Imperial Tobacco Cigarettes for any market of retail or duty free sale after the Execution Date.
- 6.2 *Provision of Information.* Subject to applicable data protection and secrecy laws, within 45 days of a specific written request by OLAF, ITL shall provide to OLAF, Customer Checks Information and Approved Contractor records created after the Execution Date relating to activity occurring after that date.
- 6.3 Subject to Relevant Law, in the event that OLAF or the Participating Member States make a seizure of Contraband Imperial Tobacco Cigarettes, and OLAF seeks information regarding other Imperial Tobacco Cigarettes that may be in transit, ITL shall make commercially reasonable efforts promptly (i.e. as soon as possible during the next Business Day) to provide, at OLAF's request, the information listed in Protocol 3.3(a) of Schedule 2, to the extent available, for all shipments of Imperial Tobacco Cigarettes to the same First Purchaser associated with the seized Contraband Imperial Tobacco Cigarettes for a period encompassing three months prior to and three months subsequent to the date of shipment of the seized Contraband Imperial Tobacco Cigarettes.
- 6.4 ITL shall make commercially reasonable efforts to respond within 20 business days to specific requests for information from the EU and/or Participating Member States about their products, the tracking and tracing programmes implemented pursuant to the Agreement, and Approved Contractor sales necessary for the fight against the illegal introduction of both authentic and counterfeit Cigarettes. If necessary to the request, ITL shall also disclose client confidential information (insofar as they are permitted to do so under applicable law or pre-existing contractual obligations), provided those requests are for the sole purpose of combating the illegal introduction of both Contraband and Counterfeit ITL Cigarettes.

PROTOCOL 7
IMPERIAL TOBACCO LIMITED DESIGNATED MANAGER

- 7.1 *The Designated Manager.*
- (a) The Designated Manager shall report directly to senior management of ITL.
 - (b) The Designated Manager shall be responsible for:

- (i) reviewing ITL's practices relating to the manufacture, sale, distribution, storage, and shipment of Imperial Tobacco Cigarettes;
- (ii) undertaking and executing any and all of the commitments made under this Agreement by ITL;
- (iii) overseeing compliance by ITL with ITL's Product Supply Compliance Policy and the Agreement;
- (iv) developing the education and training programmes for employees relating to the manufacture, sale, distribution, storage and shipment of Imperial Tobacco Cigarettes in accordance with ITL's Product Supply Compliance Policy and the Agreement, which are provided for in Protocol 11; and
- (v) serving, directly and/or through appropriate staff, as a contact point for communication between ITL and the EU, the Participating Member States and OLAF.

PROTOCOL 8

SHIPMENT TO WAREHOUSES FOR SALE AT LATER DATE AND EARLY WARNING SYSTEM NOTIFICATION

- 8.1 *Information on Cigarettes in Customs Warehouses.* ITL shall, upon receiving a request from OLAF, inform OLAF of quantities of Imperial Tobacco Cigarettes kept in stock as of the date of the request in tax and customs warehouses in the possession, custody or control of ITL in the Territory of the Member States or any Designated State, under the regime of transit or duty suspension.
- 8.2 *Early Warning System Notification.* With respect to all Imperial Tobacco Cigarettes manufactured in the Territory of the Member States for export outside the Territory of the Member States, and/or subject to duty-suspended movement in transit in the Territory of the Member States, ITL agrees, upon request from OLAF or any Participating Member State, to notify customs authorities in the country of departure (electronically where the appropriate infrastructure exists), OLAF, and any additional requesting Participating Member State at the time of departure from ITL. The notification shall include:
 - (i) the date of the shipment from the last point of ITL's physical custody of the Imperial Tobacco Cigarettes;
 - (ii) details concerning the Imperial Tobacco Cigarettes shipped (brand, amount, warehouse);
 - (iii) the intended shipping destination;
 - (iv) the identity of the Person to whom the Cigarettes are being shipped;
 - (v) the mode of transportation, including the identity of the transporter;

- (vi) the expected date of arrival of the shipment at the intended shipping destination; and

8.3 *Notification of Intended Market of Retail Sale*

Upon further request from OLAF or any Participating Member State, ITL agrees to notify customs authorities in the country of departure (electronically where the appropriate infrastructure exists), OLAF, and any additional requesting Participating Member State at the time of departure from ITL of the Intended Market of Retail Sale for Cigarettes destined for export or of the Intended Market of Retail Sale, where known, for Cigarettes under the regime of transit or duty suspension.

PROTOCOL 9
DELEGATION OF AUTHORITY

- 9.1 Substantial discretionary authority relating to the manufacture, sale, distribution, shipment and/or storage of Imperial Tobacco Cigarettes, or the establishment of policies and business practices relating to them, shall be delegated by ITL only to ITL employees that ITL reasonably believes, after the exercise of due diligence, have demonstrated the ability and commitment to act in full compliance with all applicable laws and the requirements of this Agreement.

PROTOCOL 10
PERFORMANCE REVIEWS

- 10.1 ITL shall have in place and shall continue to update procedures to review on an annual basis, the performance of management employees or other decision-making employees whose activities relate to the manufacture, sale, distribution, shipment and/or storage of Imperial Tobacco Cigarettes and to take effective and appropriate steps, against the employee and/or vis-à-vis the authorities, in the event that an employee fails to comply with this Agreement.

PROTOCOL 11
TRAINING PROGRAMMES

- 11.1 *Training Programmes.* ITL shall have in place and shall continue to update mandatory training programmes for its management employees or other decision-making employees whose activities involve the manufacture, sale, distribution, storage, and/or shipment of Imperial Tobacco Cigarettes, or the establishment of policies and business practices relating thereto. The curriculum for such training programmes shall cover this Agreement and its application to the policies and business practices relating to the manufacture, sale, distribution, storage, and/or shipment of Imperial Tobacco Cigarettes and shall be notified to OLAF and the Participating Member States. The employees

responsible for designing and implementing the training programmes covered under this sub-section shall, at least once a year either conduct or participate in training programmes designed to educate and inform ITL's employees about their compliance obligations under this Agreement and their Product Supply Compliance Policy, with supplemental training to be required if necessary at the discretion of the Designated Manager.

- 11.2 *Compliance by ITL Employees.* ITL shall make commercially reasonable efforts to ensure compliance by their officers, employees and agents with the principles and requirements of this Agreement.

PROTOCOL 12 MONITORING AND AUDITING SYSTEMS

- 12.1 *Development of Monitoring and Auditing Systems.* The Designated Manager as indicated by ITL from time to time will develop effective anti-contraband and anti-counterfeit monitoring and auditing systems, which shall be implemented throughout ITL consistent with the Agreement and in accordance with ITL policies and principles.

PROTOCOL 13 REPORTING OF SUSPICIOUS ACTIVITY

- 13.1 *Reporting Requirements.* ITL agrees to require that if an employee of ITL suspects that there has been a violation of these EU Compliance Protocols by another employee or by an Approved Contractor, the employee must promptly report the activity to one of the following Persons: his or her supervisor, the department head, an appropriately designated individual governed by ITL policy of Public Interest Disclosure or another designated person as indicated by ITL from time to time. To the extent permitted by law, the identity of the reporting employee will be kept confidential, if requested by the individual. ITL shall establish the means so that these reports may be made anonymously.
- 13.2 *Reporting System.* ITL shall create and maintain an internal reporting system (the **Reporting System**) to allow ITL employees anonymously to report, by any means including email, regular mail, or telephone:
- (a) any suspicious transactions, including, but not limited to, any suspected involvement of ITL employees or Approved Contractors in:
 - (i) the illegal manufacture, sale, distribution, storage, or shipment of Contraband or Counterfeit Imperial Tobacco Cigarettes;
 - (ii) any related illegal activity; or

- (iii) transactions that do not correspond to ordinary commercial practices and render Imperial Tobacco Cigarettes vulnerable to diversion into smuggling channels; or
 - (b) any transaction between ITL and an Approved Contractor that is made or attempted in cash, cash equivalents, bearer or third-party instruments, when the amount of the transaction exceeds Ten Thousand United States Dollars (US\$10,000.00) and the ITL employee cannot verify that the transaction has been reported, or when the ITL employee has reason to believe or to suspect that a series of transactions has been structured so as not to trigger the reporting requirement when the transactions are considered individually, but when taken as a whole would trigger the reporting requirement.
- 13.3 ITL shall immediately investigate any report of any potential suspicious transaction as referred to in this section that is not spurious and shall provide OLAF with a report, to the extent permitted by law, if on investigation, there are reasonable grounds for believing that there has been an infringement.
- 13.4 *Cooperation of ITL Employees.* ITL shall encourage its employees and/or agents to make themselves available to OLAF for interviews and for the purposes of giving sworn statements, as reasonably requested and required by OLAF, relating to matters which are covered by this Agreement that arose after the Execution Date.
- 13.5 *Prohibition of victimisation.* Anyone raising a concern in the genuine belief that wrongdoing has occurred, is occurring or may 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 prohibited and shall constitute a serious offence to be dealt with under the disciplinary procedure for employees.

PROTOCOL 14

INTERNAL DISSEMINATION AND COMMUNICATION

- 14.1 *Agreement.* The Agreement shall be made available to all ITL employees on ITL's internal website. Also available at the internal website shall be easy to understand memoranda explaining the requirements of these EU Compliance Protocols.
- 14.2 *ITL Compliance Policy.* No later than 180 days after the Execution Date, ITL shall revise its internal policies which address the manufacture, sale, distribution, storage, and shipment of Imperial Tobacco Cigarettes within or into the Territory of the Member States or any Designated States, and consolidate these policies into one document, (the "**Product Supply Compliance Policy**"). As new situations arise, ITL shall make changes and modifications as necessary to the Product Supply Compliance Policy, and shall inform OLAF thereof. In the event of any inconsistency between the

Product Supply Compliance Policy and these Protocols, the latter shall prevail.

- 14.3 *Internal Publication.* The current version of the Product Supply Compliance Policy shall be made available to all ITL employees on ITL's internal website. Also available at the internal website shall be:
- (a) frequently asked questions and answers relating to the Agreement and the Product Supply Compliance Policy; and
 - (b) a link to the Reporting System.

SCHEDULE 2

TRACKING AND TRACING PROTOCOLS

to be applied to EU Member States and Designated States

PROTOCOL 1

GENERAL STATEMENT OF TRACKING AND TRACING

1.1 *Scope and Purpose of Tracking and Tracing Protocols.*

- (a) ITL recognises that giving the EU and the Participating Member States the effective and timely information to track and trace sales of Imperial Tobacco Cigarettes is an important component of its commitment to fight the trade in Contraband Imperial Tobacco Cigarettes. ITL is committed to a continuous process of dialogue and cooperation with the EU and the Participating Member States to evaluate and address the trade in Contraband Imperial Tobacco Cigarettes, and to making commercially reasonable efforts to implement product tracking and tracing measures that target, and are reasonably likely to provide the EU and the Participating Member States with substantial additional assistance in their efforts to combat, the trade in Contraband Imperial Tobacco Cigarettes.
- (b) These Tracking and Tracing Protocols set forth the basic tracking and tracing procedures that the Parties believe are appropriate in the light of existing market conditions and the current state of Tracking and Tracing technologies, and describe additional steps which the Parties have identified in order to combat Contraband Imperial Tobacco Cigarettes during the term of the Agreement. These provisions, however, do not apply to products which are sold and distributed for any market in promotional packaging so long as the total volume of the Cigarettes using that promotional packaging for any market does not exceed 150 million Cigarettes in any calendar year. Notwithstanding the immediately preceding, if the total volume of promotionally packaged products in the Member States and the Designated States in any given year exempted from the applicability of the Tracking and Tracing Protocols by the preceding sentence exceeds one billion Cigarettes, the European Commission and ITL shall meet and confer to reassess the applicability of these Tracking and Tracing Protocols to promotional packaging, and, unless otherwise agreed at or following that meet and confer, thereafter, these provisions shall apply to any amount of promotional packaging in the Member States and the Designated States in any given year that exceeds 750 million Cigarettes and involves a promotional packaging that itself exceeds twenty million cigarettes. Should ITL reasonably require a reasonable increase in the volume thresholds for promotionally packaged products exempted from the applicability of the Tracking and Tracing Protocols under this Protocol 1.1(b), ITL may make a reasoned request to OLAF for such an increase. The EU and Participating Member States agree that consent to a reasoned request for a reasonable increase under this Protocol 1.1(b) shall not be unreasonably withheld.

- 1.2 *Conflict with Other Laws.* Nothing in these Tracking and Tracing Protocols shall require ITL to act in a way that violates applicable law.

PROTOCOL 2
MARKING AND CODING

2.1 *Labelling for Intended Market of Retail Sale.*

- (a) On or before the Execution Date, ITL shall provide OLAF with information on markings and markets, and such information shall include 30 copies of a manual designed to allow for the determination of the Intended Market of Retail Sale for all ITL Cigarettes sold worldwide (the “*IMRS Manual*”). The IMRS Manual shall also specify markets that have unique country specific markings and those that do not have unique country specific markings. ITL shall update the IMRS Manual as appropriate.
- (b) The Parties agree that ITL shall make commercially reasonable efforts to mark Cartons and Packs of Imperial Tobacco Cigarettes with markings, codes or other information which permit a determination of the Intended Market of Retail Sale.
- (c) In the event that ITL begins selling in a new market not covered by Tracking and Tracing Protocol 2.1 or 2.2, ITL shall notify the Representatives of the EU and the Participating Member States as to the markings that ITL shall undertake to apply. Such markings shall meet the requirements contained in Protocol 2.3, below, and 2.1(b), above.

2.2 *Intended Market of Retail Sale: Exceptions.*

- (a) The Parties further agree that, as an exception to Protocol 2.1, Cartons and Packs that have as their Intended Market of Retail Sale those markets identified as not having unique country specific marking and specified in the IMRS Manual shall bear the labelling identified in the IMRS Manual for those markets, and that no additional, market-specific markings or other labelling shall be required by this Agreement in respect of identifying the Intended Market of Retail Sale.
- (b) ITL may change the labelling of Cartons and/or Packs, subject to the terms of Protocol 2.2(a) at any time so long as the new markings, codes or other information would permit a determination of the Intended Market of Retail Sale of such Cartons and Packs. ITL shall provide notice of such new labelling to Designated Representative of the EU and the Participating Member States prior to the introduction of any Imperial Tobacco Cigarettes bearing such new labelling into the retail channel in the Intended Market of Retail Sale, and immediately upon ITL becoming aware that any Imperial Tobacco Cigarettes bearing such new labelling are otherwise no longer under the control of ITL.

- 2.3 *Carton and Pack Marking.* In addition to the markings required by Protocol 2.1 as of the Execution Date, ITL shall mark all Cartons and Packs with embossed codes or other markings to allow for the complete identification of:

- (a) the date of manufacture of the product;
- (b) the manufacturing facility at which the product was manufactured;
- (c) the machine of manufacture; and
- (d) the production shift during which the product was manufactured.

Upon the execution of this Agreement and as an exception to the above requirements, ITL shall provide OLAF with a list of facilities that are unable to comply with the provisions of Protocol 2.3, either in respect of all Cartons and/or Packs of Imperial Tobacco Cigarettes produced at those facilities (the **Excluded Facilities**), or in respect of certain specified Imperial Tobacco Cigarettes produced at Excluded Facilities (the **Excluded Facility Products**), and the provisions of this Protocol 2.3 shall accordingly not apply to such Excluded Facilities or Excluded Facility Products.

- 2.4 *Annual Review.* On an annual basis, ITL and the Representatives of the EU and the Participating Member States shall meet to determine what, if any, additional or improved markings, labelling, codes or scanning shall be required in general, or which, if any, requirements shall be changed on a market-by-market basis, including as a result of developments in Track and Trace standards, and to discuss the availability of technology which can be used to provide secure methods for distinguishing Counterfeit ITL Cigarettes from genuine ITL Cigarettes. ITL shall provide the Designated Representative of the EU and the Participating Member States with updates, if any, to the IMRS Manual referred to in Protocol 2.1. ITL agrees to make commercially reasonable efforts to implement such agreed changes within a reasonable period of time, and to notify OLAF of the schedule for implementation thereof. Any such agreement shall be made based on a number of factors, including but not limited to changes in market dynamics, developments in Tracking and Tracing technology, changes in national or local labelling requirements, and, if applicable, increases in Contraband Imperial Tobacco Cigarettes in general or which had as the Intended Market of Retail Sale the market in question.

PROTOCOL 3 TRACKING AND TRACING

ITL agrees to make commercially reasonable efforts towards the research, development and a phased implementation of tracking and tracing technologies to assist in the identification of First Purchaser and other relevant information for Master Cases, Cartons and Packs.

3.1 *Master Case and Carton Labelling*

- (a) ITL and/or its Contractors shall mark Master Cases with unique, machine scannable barcode labels prior to selling those Master Cases to a First Purchaser. The labels shall contain both the barcode and a human readable translation (i.e. spelled out in letters and numbers) of the barcode and shall be affixed to Master Cases with “non-peelable” adhesive. The labels shall permit ITL to link the code to product information, including the date of manufacture

of the product, the manufacturing facility at which the product was manufactured, the machine of manufacture, the production shift during which the product was manufactured, and, when scanned pursuant to Protocol 3.2, the identification of the First Purchaser and other information, including, but not limited to, that information identified in Protocol 3.3. Master Case labelling shall be implemented by ITL according to a schedule agreed by the Parties, as set forth in Protocol 8. Unique identifiers shall also be placed on Cartons according to a schedule agreed by the Parties.

- (b) In the event that the First Purchaser is the sole First Purchaser of ITL for the Intended Market of Retail Sale and that market has Carton and Pack markings satisfying unique country specific markings in accordance with Protocol 2.1, then ITL and/or its Contractors need not mark Master Cases sold to that First Purchaser for that market with unique barcode labels. Markets meeting these conditions are set forth in Protocol 8. ITL shall inform OLAF of any change to the list of sole First Purchaser markets within 30 days of any such change and shall update the list accordingly.
- (c) During the term of the Agreement, ITL shall maintain an ongoing programme of research and development concerning methods and technologies for improving the security of Master Case marking. ITL shall provide a yearly report to the Representatives of the EU and the Participating Member States concerning new technologies for Master Case markings. In the event that as a result of such research and development, ITL identifies suitable technologies for the improvement or replacement of machine scannable barcode labels with other Master Case marking technologies that permit unique identification of Master Cases for the purpose of tracking sales to First Purchasers, ITL may update its Master Case labelling with such technologies, ensuring that at all times Master Cases required by these Tracking and Tracing Protocols to be marked to permit their unique identification are so marked in accordance with this Protocol 3.1, or are marked so as to provide equivalent tracking and tracing capability.

3.2 *Master Case and Carton Scanning.*

- (a) To the extent required by the schedule in Protocol 8, and subject to the exception set forth in Protocol 3.2(b), ITL and/or its Contractors shall scan Master Cases sold to First Purchasers in order to record the information reflected in the barcode labels applied pursuant to Protocol 3.1, and to link that information in a database with the information described below in Protocol 3.3(a). The Cartons contained in a Master Case shall be linked to that Master Case via the database created and maintained by ITL pursuant to Section 3.3. ITL shall implement this Master Case and Carton scanning according to a schedule agreed by the Parties.
- (b) Notwithstanding subsection (a), in the event that the First Purchaser is the sole First Purchaser of ITL for the Intended Market of Retail Sale, and that market has Carton and Pack markings satisfying unique country specific markings in accordance with Protocol 2.1, then ITL and/or its Contractors need not physically scan Master Cases sold to that First Purchaser for that market. Markets meeting these conditions are set forth in Protocol 8. Should any

market subject to the exception under this subsection become no longer entitled to such exception, ITL shall notify OLAF within 30 days of such occurrence, and shall make commercially reasonable efforts to implement the requirements of this Agreement in such market within 12 months of the notice to OLAF under this subsection.

- (c) Upon request, ITL shall make commercially reasonable efforts to provide OLAF and the Participating Member States with access to code reading technologies to enable the scanning of Master Cases, Cartons and Packs.

3.3 *Database.*

- (a) ITL shall make commercially reasonable efforts to maintain a First Purchaser database (**First Purchaser Database**) searchable by customer order or Master Case barcode number or Carton Code (and should Pack coding become available, by Pack Code) for all markets in which it has implemented Master Case labelling and scanning pursuant to the requirements of Tracking and Tracing Protocols 3.1 and 3.2. For all shipments of Imperial Tobacco Cigarettes where Master Case barcode labels are scanned pursuant to Protocol 3.2(a) and where the product shipped is produced 30 days or more after the Execution Date, the information contained in the First Purchaser Database shall include:

- (i) First Purchaser name, invoice and order number,
- (ii) shipment date,
- (iii) destination of shipment,
- (iv) product description
- (v) point of departure from the final ITL factory or warehouse,
- (vi) the consignee to whom the product was shipped, and
- (vii) the Intended Market of Retail Sale;

provided however that in no event shall the First Purchaser Database be required to include any of the foregoing information with respect to shipments of product produced less than 30 days after the Execution Date.

- (b) With respect to all shipments encompassed by Protocol 3.3(a), ITL shall maintain any additional records necessary to identify the sales price and the Intended Market of Retail Sale, including, but not limited to, the sales invoice, for at least five years.
- (c) Electronic records created in the First Purchaser Database pursuant to Protocol 3.3(a) shall be kept for at least five years.
- (d) OLAF and ITL shall meet annually in accordance with Protocol 2.4 to discuss ITL's compliance with the First Purchaser Database requirements of this

Agreement, and new technologies relating to the First Purchaser Database in order to determine whether it is appropriate to expand upon the information listed in subsection (a) above, or otherwise make changes to the First Purchaser Database.

- (e) Within 3 months of the implementation of the First Purchaser Database in a market pursuant to Protocol 3.3(a) and the schedule set forth in Protocol 8 to these Tracking and Tracing Protocols, ITL shall provide the EU and the Participating Member States through their duly designated authorised representatives and law enforcement authorities with First Purchaser and other relevant information via automated response to requests resulting from Seizures by the authorities of Contraband Imperial Tobacco Cigarettes.
- (f) The Parties agree that the information contained in the First Purchaser Database is highly sensitive and confidential business information. Accordingly, such information shall be used by the EU and the Participating Member States solely for the purposes specified in this Agreement, and for no other purpose, and shall be kept secret and confidential and shall not be disclosed to third parties, except as required by law.

PROTOCOL 4 SUBSEQUENT LAYER TRACKING

- 4.1 ITL, OLAF and Participating Member States recognise that in certain circumstances, effective tracking and tracing to prevent the trade in illegal product can be enhanced when First Purchasers and Subsequent Purchasers maintain additional databases that are similar to the tracking and tracing database to be maintained by ITL, regarding second purchaser sales or subsequent purchaser sales. For this purpose, ITL shall make commercially reasonable efforts, including appropriate training, to develop and expand the scope of their tracking and tracing database technology to cover the sales of First Purchasers and Subsequent Purchasers (where feasible) and to give OLAF and Participating Member States access to the information relating to ITL Cigarettes contained in any such database. In any event, ITL shall make commercially reasonable efforts to deploy their tracking and tracing technology to those First Purchasers and Subsequent Purchasers that voluntarily request such deployment.

PROTOCOL 5 NEW MASTER CASE, CARTON AND PACK CODING AND SCANNING TECHNOLOGIES

- 5.1 *Research of New Master Case, Carton and Pack Labelling and Scanning Technologies.* ITL shall maintain an ongoing programme researching alternative or enhanced methods for marking Master Cases, Cartons and Packs with machine scannable or human readable (i.e. spelled out in letters and numbers) codes, and shall meet with representatives of the EU and the Participating Member States on an annual basis, in accordance with Protocol 2.4, to determine if, how and when any new technology should be implemented.

PROTOCOL 6
PACK CODING AND SCANNING

- 6.1 *Monitoring of Pack Coding Technologies.*
- (a) ITL shall monitor developing technologies for marking Packs with unique scannable codes.
 - (b) During the term of the Agreement, ITL shall monitor developments concerning methods and technologies for improving Pack coding technologies. ITL shall provide a yearly report to the Representatives of the EU and the Participating Member States concerning new technologies for Pack coding.
- 6.2 *Implementation of Pack Coding Technologies.* In recognition of the principles of the Agreement, once Pack coding technologies are commercially feasible, ITL agrees and undertakes to implement Pack coding technologies in accordance with the conditions set forth below. ITL will scan the Pack codes at the time of packing a Carton and/or Master Case, thus linking individual Packs, Cartons and Master Cases, to the First Purchaser via the Master Case code.
- (a) ITL shall implement Pack coding technologies for Imperial Tobacco Cigarettes that have a market listed in Protocol 8 of these Tracking and Tracing Protocols as the Intended Market of Retail Sale, if:
 - (i) the implementation of Pack coding for Imperial Tobacco Cigarettes that have that market as the Intended Market of Retail Sale is achievable through commercially reasonable efforts;
 - (ii) the effectiveness of the Pack coding technology has been demonstrated to be appropriate for industrial application; and
 - (iii) the implementation of Pack coding is reasonably likely to reduce significantly the amount of Contraband Imperial Tobacco Cigarettes that have that market as the Intended Market of Retail Sale.
 - (b) Beginning 180 days after the Execution Date, OLAF may provide written notice to ITL that the criteria of Protocol 6.2(a) have been met for Imperial Tobacco Cigarettes that have a particular market as defined in Protocol 8 as the Intended Market of Retail Sale, and request that ITL implement Pack coding for those Imperial Tobacco Cigarettes. If ITL disagrees with OLAF's written request, ITL and OLAF shall meet and confer in good faith within 30 days of ITL receiving such a request from OLAF in order to determine whether the criteria of Protocol 6.2(a) have been met and whether Pack coding should be implemented for Imperial Tobacco Cigarettes that have the market in question as the Intended Market of Retail Sale. If the dispute cannot be resolved within 60 days of ITL receiving OLAF's written request, such dispute may be referred by either party to arbitration in accordance with Section 12.1 and by application of the criteria set forth in Protocol 6.2(a) as applicable.
 - (c) Nothing in this Protocol 6 shall preclude ITL from adopting (either unilaterally or at the request of OLAF or the EU and the Participating Member States)

measures set forth in subsection (a) above, for Cigarettes with a particular Intended Market of Retail Sale.

PROTOCOL 7
ADDITIONAL MEASURES

7.1 *Notice of Interest*

- (a) If, during any 12 month period after the Execution Date, OLAF learns of at least 5 Seizures, each totalling at least 4 million Contraband Imperial Tobacco Cigarettes and each concerning the same Imperial Tobacco Trademark that have a particular market as the Intended Market of Retail Sale (the **Market of Interest**), it may provide ITL with information regarding these incidents (a **Notice of Interest**). A Notice of Interest shall provide historical data for Seizures of Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale, including the number of Seizures of such Imperial Tobacco Cigarettes for the previous twelve months, and for each such Seizure OLAF shall make best efforts to provide:
- (i) the date and location of the Seizure;
 - (ii) the brand of seized Cigarettes indicated on the packaging;
 - (iii) the amount of seized Cigarettes;
 - (iv) any Identification Markings that appear on the Master Cases or Cartons of seized cigarettes;
 - (v) a brief statement outlining the basis for OLAF's belief that the seized Cigarettes are Contraband Imperial Tobacco Cigarettes as opposed to Counterfeit Imperial Tobacco Cigarettes; and
 - (vi) if available, samples of the seized Cigarettes (to the extent possible), in the condition they were in at the time of Seizure, unless ITL has already inspected the Seizure under Section 5.2 of this Agreement.
- (b) Promptly upon receiving a Notice of Interest, ITL shall conduct an internal review in order to determine whether, on the basis of the information available to it, it is possible to determine whether there has been trade in Contraband Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale as outlined in the Notice of Interest provided to ITL by OLAF under Protocol 7.1(a) above, and, if so, the cause and source of such trade, and what measures should be taken to address that trade.
- (c) If OLAF has provided ITL with samples of the seized Cigarettes, ITL shall, as part of the internal review described in Protocol 7.1(b) above, examine the samples in order to determine, in accordance with the factors set forth in 0, whether the seized Cigarettes are Counterfeit Imperial Tobacco Cigarettes or Imperial Tobacco Cigarettes.

- (d) Within 60 days of receiving a Notice of Interest, ITL shall provide a written response to OLAF detailing the findings of its internal review and, if necessary, the steps it has taken, or will be taking, to address the issues raised in the Notice of Interest. The response shall include the findings as to whether the Cigarettes seized are Imperial Tobacco Cigarettes or Counterfeit Imperial Tobacco Cigarettes and, if Counterfeit Imperial Tobacco Cigarettes, examination results demonstrating that conclusion. Any dispute as to whether the Cigarettes are Counterfeit Imperial Tobacco Cigarettes shall be settled in accordance with Section 5.4.
- (e) If OLAF takes issue with the response of ITL, it may request in writing that ITL undertake one or more of the following measures:
 - (i) make commercially reasonable efforts to implement subsequent layer tracking for selected First Purchasers of ITL Cigarettes that have the Market of Interest as the Intended Market of Retail Sale;
 - (ii) to the extent permissible by law and pre-existing contractual obligations entered into prior to the date of such request and in force at the date of such request, request that the First Purchaser who sells to a Subsequent Purchaser whose products have been the subject of at least two of the seizures that gave rise to the Notice of Interest, request that such Subsequent Purchaser implement Subsequent Layer Tracking, if such Subsequent Purchaser is a direct customer of the First Purchaser. In the event that the First Purchaser refuses to honour such request, ITL will to the extent permissible by law and pre-existing contractual obligations cease supplying ITL Cigarettes to such First Purchaser, who will thereafter be a Blocked Contractor. If such Subsequent Purchaser is not a direct customer of a First Purchaser, then ITL shall to the extent permissible by law and pre-existing contractual obligations request that the First Purchaser make commercially reasonable efforts to require that such Subsequent Purchaser implement Subsequent Layer Tracking. In the event that the First Purchaser refuses to take such steps, ITL will to the extent permissible by law and pre-existing contractual obligations cease supplying ITL Cigarettes to such First Purchaser, who will thereafter be a Blocked Contractor;
 - (iii) implement new coding technologies, or accelerate the schedule for implementation of the labelling and scanning requirements, such that such implementation occurs within a reasonable time frame not to exceed 12 months, for relevant sales of Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale or for relevant First Purchasers of Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale; or
 - (iv) remove the Market of Interest from Protocol 8 and Schedule 4, (if applicable), add the Market of Interest to Protocol 8, or Schedule 4, as appropriate.

- (f) Within 30 days of ITL receiving a written request from OLAF under Protocol 7.1(e) above, ITL and OLAF shall meet and confer in good faith in order to determine whether any of the measures set forth in subsection Protocol 7.1(e) above should be implemented. If the dispute has not been resolved within 60 days of ITL receiving OLAF's written request, such dispute may be referred by either Party to arbitration in accordance with Section 12.2.
- (g) In any proceeding brought under Protocol 7.1(f) of these Tracking and Tracing Protocols, an Arbitrator may require ITL to implement one or more of the measures set forth in Protocol 7.1(e) above only where it has been proven by the greater weight of the evidence that:
 - (i) in the 12 month period referred to in the Notice of Interest, there have been at least 5 Seizures each totalling at least 4 million Contraband Imperial Tobacco Cigarettes and each concerning the same Imperial Tobacco Trademark, that have the Market of Interest as the Intended Market of Retail Sale;
 - (ii) measures that ITL has adopted for Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale are insufficient to combat the trade in Contraband Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale;
 - (iii) the measure(s) to be implemented from Protocol 7.1(e) above are achievable through commercially reasonable efforts and are an effective response to the trade in Contraband Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale;
 - (iv) to implement these measures within the 12 month time frame required under Protocol 7.1(e)(i) would not result in economically disproportionate consequences for ITL;
 - (v) the implementation of the measure(s) from Protocol 7.1(e) above are reasonably likely to reduce materially the amount, or materially improve the prevention or detection, of Contraband Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale; and
 - (vi) where the measure to be implemented from Protocol 7.1(e) above is a new Master Case, Carton or Pack coding technology, it has been demonstrated that it is, or would be, effective and its implementation is reasonably targeted at the elimination, prevention or detection of Contraband Imperial Tobacco Cigarettes that have the Market of Interest as the Intended Market of Retail Sale.
- (h) Should ITL reasonably require additional time for the implementation of new Master Case, Carton or Pack coding technologies, or the acceleration of the schedule for implementation of the labelling and scanning requirements set out in Protocol 7.1(e)(i)-(iv) above, ITL may make a reasoned request to OLAF

for such an extension. The EU and Participating Member States agree that consent to a reasoned request for a reasonable extension under this Protocol 7.1(h) shall not be unreasonably withheld.

- (i) Nothing in this Protocol 7 shall preclude ITL from adopting (either unilaterally or at the request of OLAF or the EU and the Participating Member States) the measures set forth in Protocol 7.1(e) above for Cigarettes with a particular Intended Market of Retail Sale.

PROTOCOL 8
TRACKING AND TRACING IMPLEMENTATION TIMETABLE

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

SCHEDULE 3

SCHEDULE OF ANNUAL PAYMENTS

1. The Annual Payments to be made by ITL during the term of this Agreement as set out in Article 4 shall be made on the following dates:

Date	GBP (£)	USD (\$equivalent)
1 October 2010	£7,730,842.97	12.5 million
1 October 2011	£7,730,842.97	12.5 million
1 October 2012	£7,730,842.97	12.5 million
1 October 2013	£7,730,842.97	12.5 million
1 October 2014	£7,730,842.97	12.5 million
1 October 2015	£7,730,842.97	12.5 million
1 October 2016	£7,730,842.97	12.5 million
1 October 2017	£7,730,842.97	12.5 million
1 October 2018	£7,730,842.97	12.5 million
1 October 2019	£7,730,842.97	12.5 million
1 October 2020	£10,823,180.16	17.5 million
1 October 2021	£10,823,180.16	17.5 million
1 October 2022	£10,823,180.16	17.5 million
1 October 2023	£10,823,180.16	17.5 million
1 October 2024	£10,823,180.16	17.5 million
1 October 2025	£10,823,180.16	17.5 million
1 October 2026	£10,823,180.16	17.5 million
1 October 2027	£10,823,180.16	17.5 million
1 October 2028	£10,823,180.16	17.5 million
1 October 2029	£10,823,180.16	17.5 million

TOTAL	£185,540,231.30	In USD 300 million
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2. Each Annual Payment will provide the EU and the Participating Member States with a source of possible financial support and funding in their fight to eliminate the illicit trade of Cigarettes within and through the Territory of the Member States for the year commencing on the payment date. Any amounts not spent in the relevant year may provide a possible source for funding of anti-illicit trade activities in future years.
3. With regard to the first payment which will be due on 1 October 2010, ITL agrees to make a pre-payment of the equivalent of USD (\$) 5 million, within 30 days of the Execution Date with the remainder of the first payment to be made according to the above schedule.
4. Annual Payments made by ITL shall be in GBP (£) and shall be the equivalent of the USD (\$) amounts using the London closing rate of 12 January 2010 as published by Bloomberg.
5. Annual Payments made by ITL will be made to such bank account as nominated from time to time in writing by the European Union.
6. If 1 October is not a Business Day, the payment will be made on the first Business Day after 1 October.

SCHEDULE 3

FACTORS FOR ESTABLISHING COUNTERFEIT IMPERIAL TOBACCO CIGARETTES

For the purpose of Section 5.3(a) of this Agreement, in determining whether Cigarettes bearing Imperial Tobacco Trademarks are Counterfeit Imperial Tobacco Cigarettes, the following factors shall be considered and compared with indicia of genuine Imperial Tobacco Cigarettes as provided by ITL and updated from time to time by agreement of the Parties:

- the look, shape, colour, and size of the packaging;
- the materials used in the packaging;
- the size, font, colour, language and content of the text appearing on the packaging;
- the markings, codes, and stamps appearing on the packaging;
- the look, shape, colour, and size of the Cigarettes;
- the markings on the Cigarettes;
- the materials used in the Cigarettes paper and filter;
- the nature and quality of the tobacco; and
- all the ingredients of the Cigarettes.

SCHEDULE 4

LIST OF DESIGNATED STATES

MATERIAL OMITTED DUE TO A REQUEST FOR CONFIDENTIAL TREATMENT

Procedure for Amending Designated States List

OLAF may seek to amend the list of Designated States by adding a state to, or deleting a state from, the list of Designated States, based upon a reasonable belief that the addition or deletion of a state from that list is consistent with the purpose and intent of this Agreement. OLAF shall notify ITL of any proposed change to the list. If ITL objects to the proposed change, ITL shall state its objection in writing within 30 days of receiving the notice. ITL and OLAF shall meet and confer within 60 days of ITL sending its objection in an attempt to reach agreement on any changes to the list of Designated States. If ITL and OLAF cannot reach agreement, either of them may seek arbitration in accordance with Section 12.2.

If a state is added to the list of Designated States by agreement between ITL and OLAF, ITL shall have one year from the date a state is added to the Designated States list in which to comply with all its obligations pursuant to this Agreement and the Appendices thereto in connection with that Designated State. If a state is added to the list of Designated States by an Arbitrator, ITL shall make commercially reasonable efforts to comply with its obligations pursuant to this Agreement in connection with that Designated State within 30 days of the Arbitrator's order to that effect.

SCHEDULE 5

LIST OF TRADEMARKS BY MARKET

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

Country	Brand
Austria	Davidoff, Drum, Ernte 23, Excellence, Fortuna, Gauloises, Gitanes, Golden Virginia, JPS, Lambert & Butler, Peter Stuyvesant, Players, R1, Route 66, Van Nelle, West
Belgium	Bastos, Brandaris, Davidoff, Drum, Embassy, Feuille d'Or, Fortuna, Gauloises, Gitanes, Gold Leaf, Golden Virginia, Harelbeke, John Player, JPS, Lambert & Butler, Montecristo, News, Norman Young Company, Regal, Route 66, Superkings, Van Nelle
Bulgaria	Davidoff, Golden Gate, Golden Virginia, Imperial Style, Lambert & Butler, Paramount, R1, Superkings, West
Canary Islands	Amsterdamer, B.N., Davidoff, Drum, Ducados, Embassy, Ernte 23, Fortuna, Gauloises, Golden Virginia, JP Blue, Lambert & Butler, Nobel, Paramount, R1, Regal, Reval, Richmond, Superkings, Swing, Van Nelle, West, Windsor Blue
Corsica	Corsica, Davidoff, Drum, Fine, Fortuna, Gauloises, Gitanes, Golden Virginia, JPS, Marigny, News, Royale, West
Republic of Cyprus	Davidoff, Drum, Embassy, Golden Virginia, Lambert & Butler, Maxim, R1, Regal, Richmond, Superkings, West
Czech Republic	Astor, Cabinet, Davidoff, Drum, Embassy, Ernte 23, Gauloises, Golden Virginia, Lambert & Butler, Mars, Moon, Nova Smes, Paramount, R1, Regal, Reval, Route 66, Superkings, West
Denmark	Drum, Gauloises, Golden Virginia, Players
Estonia	Davidoff, Form, Paramount, Smart, Trend
Finland	Aroma, Bonus, Camel, Colt, Davidoff, Gauloises, Paramount, Savuke (Kevyt), Smart
France	Amsterdamer, Ariel, Bastos, Brooklyn, Caporal, Davidoff, Django, Drum, Fine, Fortuna, Gallia, Gauloises, Gitanes, Gold Leaf, Golden Virginia, JPS, Lambert & Butler, Marigny, Montecristo, News, Norman Young Company, Royale, Superkings, West
Germany	Astor, Atika, Buccaneer, Cabinet, Davidoff, Drum, Duett, Eckstein No.5, Ernte 23, Gauloises, Gitanes, Golden Virginia, Goldfield, Imperial, JPS, Juno, Lambert & Butler, P&S, Peter Stuyvesant, Players, R1, R6, Reval, Roth Händle, Route 66, Salem, Schwarze Hand, Superkings, Van Nelle, West
Greece	Astor, Davidoff, Drum, Embassy, Gauloises, Gitanes, Golden Virginia, JPS, Lambert & Butler, Maxim, R1, R6, Regal, Richmond, Superkings, Van Nelle, West
Hungary	Davidoff, Drum, Ernte 23, Fonix, Gauloises, Golden Gate, Golden Virginia, Lambert & Butler, Moon, Mustang, Pakli, Paramount, R1, Regal, Route 66, Style, Superkings,

	Symphonia, West
Ireland	Drum, Gold Flake, Golden Virginia, JP Blue, JPS, Lambert & Butler, Players, Regal, Richmond, Superkings, Woodbine
Italy	Davidoff, Drum, Embassy, Fine, Fortuna, Gauloises, Gitanes, Golden Virginia, JPS, Lambert & Butler, Peter Stuyvesant, R1, R6, Route 66, Superkings, Van Nelle, West
Latvia	Davidoff
Lithuania	Davidoff, West
Luxembourg	Bastos, Brandaris, Davidoff, Drum, Embassy, Ernte 23, Fortuna, Gauloises, Gitanes, Gold Leaf, Golden Virginia, Harelbeke, JPS, Lambert & Butler, Montecristo, News, Norman Young Company, R1, R6, Regal, Reval, Roth Händle, Route 66, Schwarze Hand, Superkings, Van Nelle, West
Malta	Davidoff, Drum, Embassy, Golden Virginia, Lambert & Butler, Maxim, Regal, Richmond, Superkings
Netherlands	Bastos, Brandaris, Davidoff, Drum, Embassy, Ernte 23, Evergreen, Fortuna, Gauloises, Golden Virginia, Interval, John Player, JPS, Lambert & Butler, R1, R6, Regal, Rider, Superkings, Van Nelle, West, Winner, Zilver
Poland	Brilliant, Cabinet, Davidoff, Downtown, Drum, Fox, Gauloises, Golden Virginia, Imperial Style, Iris, Lambert & Butler, Mars, Mint up, Mocne, Paramount, Popularne, Poznanskie, R1, Radomskie, Route 66, Spike, Superkings, Tiger, West
Portugal	Davidoff, Drum, Ducados, Embassy, Fortuna, Gauloises, Gitanes, Gold Leaf, Golden Virginia, JP Blue, JPS, Lambert & Butler, Regal, Richmond, Superkings, Van Nelle, West
Romania	Davidoff, Drum, Gauloises
Slovakia	Dalila, Davidoff, Drum, Gauloises, Golden Gate, Golden Virginia, Imperial Style, Lambert & Butler, Mars, Moon, Paramount, R1, Route 66, West
Slovenia	Boss, Davidoff, Drum, Ernte 23, Extra 91, F 57, Gauloises, Golden Virginia, Paramount, R1, Route 66, Set, Style, T&L, West, West MYO
Spain/Balearic Islands	Amsterdamer, B.N., Bastos, Bisonte, Boncalo, Brooklyn, Celtas, Davidoff, Diana, Drum, Ducados, Embassy, Fine, For U, Fortuna, Gauloises, Gitanes, Gold Leaf, Golden Virginia, JP Blue, JPS, Lambert & Butler, News, Nobel, Origenes, Piper, R1, Regal, Richmond, Sombra, Superkings, UN-X-2, Van Nelle
Sweden	Davidoff, Drum, Eventyr, Paramount, West
United Kingdom (UK)	Balmoral, Beaumont, Capstan, Concept, Davidoff, Drum, Embassy, Gauloises, Gitanes, Gold Leaf, Golden Virginia, JP Blue, JPS, Kingsmen, Lambert & Butler, Londis, Maxim, Players, Regal, Richmond, Select, Sky, Superkings, Supreme, Warwick, Windsor Blue, Woodbine

This list will be updated as appropriate and/or as agreed by the Parties.

SCHEDULE 6

AMENDING PAYMENT OBLIGATIONS

The payment regime set forth in Article 6 reinforces ITL's commitment to take commercially reasonable steps as a manufacturer of Cigarettes to promote the Parties' joint objective that Imperial Tobacco Cigarettes be sold, distributed, stored, and shipped in accordance with all applicable fiscal and legal requirements, and, in particular, sold at retail in accordance with all applicable tax and duty laws in the Intended Market of Retail Sale, and in quantities consistent with Retail Demand in such intended market. The Parties recognise that there are factors within the control and factors outside the control of ITL and that the payment regime was designed with reference to a reasonable estimate of the annual quantity of Seizures of Contraband Imperial Tobacco Cigarettes they might expect in the Territory of the Member States as of the Execution Date, in the light of the substantial efforts of the Parties in their ongoing fight against the illegal trade in Cigarettes.

The Parties also recognise, however, that as new Member States join the European Union, as Non-Participating Member States wish to become Participating Member States, and as circumstances change with respect to the movement and pricing of Cigarettes in the Member States, problems could arise that might bring about serious imbalances in the application of the obligations of ITL under Article 6, requiring their possible amendment so that they continue to comport with the reasonable expectations of the Parties that the provisions of Article 6 will serve as an incentive for ITL to address factors within its control and to comply with its obligations under this Agreement, but not as a mechanism to increase ITL's obligations by virtue of factors outside the control of ITL.

In determining whether to amend the provisions of, and the obligations of ITL under Article 6, the Parties shall consider whether there has been a significant increase in the incidence of Contraband Imperial Tobacco Cigarettes in any Participating Member State whose Seizures of Contraband Imperial Tobacco Cigarettes are likely to result in payments in the following calendar year. If there has been a significant increase in such incidence substantially caused by external factors, as evidenced by the fact that a substantial portion of the Seizures of Imperial Tobacco Contraband Cigarettes are Cigarettes for which applicable taxes on the retail price have been paid in a non-Member State, the Parties shall either amend, or provide ITL with appropriate relief from the obligations under Article 6. However, amendment of, or relief from, payment obligations is only appropriate where: (i) the significant increase in the incidence of Contraband Imperial Tobacco Cigarettes in that Participating Member State is not substantially attributable to a failure on the part of ITL to adhere to the terms of this Agreement; and (ii) ITL can reasonably demonstrate that its sales to a pertinent Intended Market of Retail Sale are consistent with reasonable estimates of Retail Demand in such Intended Market of Retail Sale, and such market seems to account for a meaningful proportion of the increase in such incidence as described above.

SCHEDULE 7

LIST OF ARBITRATORS

- 1.) Walter van Gerven
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B-3012 Wilsele
Belgium

- 2.) Hans Van Houtte
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Faculty of Law
B-3000 Leuven
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