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STREAMLINED SALES AND USE TAX AGREEMENT

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Adopted November 12, 2002

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1 ARTICLE I
2 PURPOSE AND PRINCIPLE
3

4 **Section 101: TITLE**

5 This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and
6 Use Tax Agreement.
7

8 **Section 102: FUNDAMENTAL PURPOSE**

9 It is the purpose of this Agreement to simplify and modernize sales and use tax administration in
10 the member states in order to substantially reduce the burden of tax compliance. The Agreement
11 focuses on improving sales and use tax administration systems for all sellers and for all types of
12 commerce through all of the following:

- 13 A. State level administration of sales and use tax collections.
14 B. Uniformity in the state and local tax bases.
15 C. Uniformity of major tax base definitions.
16 D. Central, electronic registration system for all member states.
17 E. Simplification of state and local tax rates.
18 F. Uniform sourcing rules for all taxable transactions.
19 G. Simplified administration of exemptions.
20 H. Simplified tax returns.
21 I. Simplification of tax remittances.
22 J. Protection of consumer privacy.
23

24 **Section 103: TAXING AUTHORITY PRESERVED**

25 This Agreement shall not be construed as intending to influence a member state to impose a tax
26 on or provide an exemption from tax for any item or service. However, if a member state
27 chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions
28 concerning definitions as set out in Article III of this Agreement.
29

1 **Section 104: DEFINED TERMS**

2 This Agreement defines terms for use within the Agreement and for application in the sales and
3 use tax laws of the member states. The definition of a term is not intended to influence the
4 interpretation or application of that term with respect to other tax types.

5
6 An alphabetical list of all the terms defined in the Agreement and their location in the Agreement
7 is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use
8 within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions
9 for application in the sales and use tax laws of the member states are set out in Appendix C of
10 this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are
11 defined when applied in a particular section of the Agreement and are set out in that section of
12 the Agreement. The appendices have the same effect as the Articles in the Agreement.

13

14 **Section 105: TREATMENT OF VENDING MACHINES**

15 The provisions of the Agreement do not apply to vending machines sales. The Agreement does
16 not restrict how a member state taxes vending machine sales.

1 **ARTICLE II**
2 **DEFINITIONS**

3
4 The following definitions apply in this Agreement:

5 **Section 201: AGENT**

6 A person appointed by a seller to represent the seller before the member states.

7 **Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)**

8 Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a
9 transaction, determine the amount of tax to remit to the appropriate state, and maintain a record
10 of the transaction.

11 **Section 203: CERTIFIED SERVICE PROVIDER (CSP)**

12 An agent certified under the Agreement to perform all the seller's sales and use tax functions,
13 other than the seller's obligation to remit tax on its own purchases.

14 **Section 204: ENTITY-BASED EXEMPTION**

15 An exemption based on who purchases the product or who sells the product.

16 **Section 205: MODEL 1 SELLER**

17 A seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions,
18 other than the seller's obligation to remit tax on its own purchases.

19 **Section 206: MODEL 2 SELLER**

20 A seller that has selected a CAS to perform part of its sales and use tax functions, but retains
21 responsibility for remitting the tax.

22 **Section 207: MODEL 3 SELLER**

23 A seller that has sales in at least five member states, has total annual sales revenue of at least five
24 hundred million dollars, has a proprietary system that calculates the amount of tax due each
25 jurisdiction, and has entered into a performance agreement with the member states that
26 establishes a tax performance standard for the seller. As used in this definition, a seller includes
27 an affiliated group of sellers using the same proprietary system.

28 **Section 208: PERSON**

29 An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability
30 partnership, corporation, or any other legal entity.

1 **Section 209: PRODUCT-BASED EXEMPTION**

2 An exemption based on the description of the product and not based on who purchases the
3 product or how the purchaser intends to use the product.

4 **Section 210: PURCHASER**

5 A person to whom a sale of personal property is made or to whom a service is furnished.

6 **Section 211: REGISTERED UNDER THIS AGREEMENT**

7 Registration by a seller with the member states under the central registration system provided in
8 Article IV of this Agreement.

9 **Section 212: SELLER**

10 A person making sales, leases, or rentals of personal property or services.

11 **Section 213: STATE**

12 Any state of the United States and the District of Columbia.

13 **Section 214: USE-BASED EXEMPTION**

14 An exemption based on the purchaser's use of the product.

1 ARTICLE III

2 REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

3
4
5 **Section 301: STATE LEVEL ADMINISTRATION**

6 Each member state shall provide state level administration of sales and use taxes. The state level
7 administration may be performed by a member state's Tax Commission, Department of Revenue,
8 or any other single entity designated by state law. Sellers are only required to register with, file
9 returns with, and remit funds to the state level authority. Each member state shall provide for
10 collection of any local taxes and distribution of them to the appropriate taxing jurisdictions.
11 Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the
12 sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions,
13 and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered
14 under the Agreement.

15
16 **Section 302: STATE AND LOCAL TAX BASES**

17 Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax,
18 all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the
19 tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited
20 by federal law. This section does not apply to sales or use taxes levied on the retail sale or
21 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
22 homes.

23
24 **Section 303: SELLER REGISTRATION**

25 Each member state shall participate in an online sales and use tax registration system in
26 cooperation with the other member states. Under this system:

- 27 A. A seller registering under the Agreement is registered in each of the member states.
28 B. The member states agree not to require the payment of any registration fees or other
29 charges for a seller to register in a state in which the seller has no legal requirement to
30 register.

- 1 C. A written signature from the seller is not required.
- 2 D. An agent may register a seller under uniform procedures adopted by the member states.
- 3 E. A seller may cancel its registration under the system at any time under uniform
- 4 procedures adopted by the governing board. Cancellation does not relieve the seller of its
- 5 liability for remitting to the proper states any taxes collected.

6

7 **Section 304: NOTICE FOR STATE TAX CHANGES**

8 A. Each member state shall lessen the difficulties faced by sellers when there is a change in
9 a state sales or use tax rate or base by making a reasonable effort to do all of the
10 following:

- 11 1. Provide sellers with as much advance notice as practicable of a rate change.
- 12 2. Limit the effective date of a rate change to the first day of a calendar quarter.
- 13 3. Notify sellers of legislative changes in the tax base and amendments to sales and use
- 14 tax rules and regulations.

15 B. Failure of a seller to receive notice or failure of a member state to provide notice or limit
16 the effective date of a rate change shall not relieve the seller of its obligation to collect
17 sales or use taxes for that member state.

18

19 **Section 305: LOCAL RATE AND BOUNDARY CHANGES**

20 Each member state that has local jurisdictions that levy a sales or use tax shall:

- 21 A. Provide that local rate changes will be effective only on the first day of a calendar
- 22 quarter after a minimum of sixty days' notice to sellers.
- 23 B. Apply local sales tax rate changes to purchases from printed catalogs wherein the
- 24 purchaser computed the tax based upon local tax rates published in the catalog only on
- 25 the first day of a calendar quarter after a minimum of one hundred twenty days' notice to
- 26 sellers.
- 27 C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on
- 28 the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

- 1 D. Provide and maintain a database that describes boundary changes for all taxing
2 jurisdictions. This database shall include a description of the change and the effective
3 date of the change for sales and use tax purposes.
- 4 E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions
5 levying taxes within the state. For the identification of states, counties, cities, and
6 parishes, codes corresponding to the rates must be provided according to Federal
7 Information Processing Standards (FIPS) as developed by the National Institute of
8 Standards and Technology. For the identification of all other jurisdictions, codes
9 corresponding to the rates must be in the format determined by the governing board.
- 10 F. Provide and maintain a database that assigns each five digit and nine digit zip code
11 within a member state to the proper tax rates and jurisdictions. The state must apply the
12 lowest combined tax rate imposed in the zip code area if the area includes more than one
13 tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not
14 available for a street address or if a seller is unable to determine the nine digit zip code
15 designation of a purchaser after exercising due diligence to determine the designation,
16 the seller may apply the rate for the five digit zip code area. For the purposes of this
17 section, there is a rebuttable presumption that a seller has exercised due diligence if the
18 seller has attempted to determine the nine digit zip code designation by utilizing
19 software approved by the governing board that makes this designation from the street
20 address and the five digit zip code of the purchaser.
- 21 G. Participate with other member states in the development of an address-based system for
22 assigning taxing jurisdictions. The system must meet the requirements developed
23 pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119).
24 The governing board may allow a member state to require sellers that register under this
25 Agreement to use an address-based system provided by that member state. If any
26 member state develops an address-based assignment system pursuant to the Mobile
27 Telecommunications Sourcing Act, a seller may use that system in place of the system
28 provided for in subsection (F) of this section.
- 29

1 **Section 306: RELIEF FROM CERTAIN LIABILITY**

2 Each member state shall relieve sellers and CSPs from liability to the member state and local
3 jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting
4 from the seller or CSP relying on erroneous data provided by a member state on tax rates,
5 boundaries, or taxing jurisdiction assignments. A member state that provides an address-based
6 system for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or pursuant to
7 the federal Mobile Telecommunications Sourcing Act will not be required to provide liability
8 relief for errors resulting from the reliance on the information provided by the member state
9 under the provisions of Section 305, subsection (F).

10
11 **Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS**

- 12 A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G)
13 shall be in a downloadable format approved by the governing board.
- 14 B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased
15 product is received by the purchaser at the business location of the seller.
- 16 C. The databases provided by Section 305, subsections (D), (E), and (F) are not a
17 requirement of a state prior to entering into the Agreement. The governing board shall
18 establish the effective dates for availability and use of the databases.

19
20 **Section 308: STATE AND LOCAL TAX RATES**

- 21 A. No member state shall have multiple state sales and use tax rates on items of personal
22 property or services after December 31, 2005, except that a member state may impose a
23 single additional rate, which may be zero, on food and food ingredients and drugs as
24 defined by state law pursuant to the Agreement.
- 25 B. A member state that has local jurisdictions that levy a sales or use tax shall not have
26 more than one local sales tax rate or more than one local use tax rate per local
27 jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates
28 must be identical.
- 29 C. The provisions of this section do not apply to sales or use taxes levied on electricity,
30 piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail

1 sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
2 homes, or mobile homes.

3
4 **Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS**
5 **FROM THE RULES**

6 A. Each member state shall agree to require sellers to source the retail sale of a product in
7 accordance with Section 310. The provisions of Section 310 apply regardless of the
8 characterization of a product as tangible personal property, a digital good, or a service.
9 The provisions of Section 310 only apply to determine a seller's obligation to pay or
10 collect and remit a sales or use tax with respect to the seller's retail sale of a product.
11 These provisions do not affect the obligation of a purchaser or lessee to remit tax on the
12 use of the product to the taxing jurisdictions of that use.

13 B. Section 310 does not apply to sales or use taxes levied on the following:

- 14 1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or
15 mobile homes. These items must be sourced according to the requirements of each
16 member state.
- 17 2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or
18 aircraft that do not qualify as transportation equipment, as defined in Section 310,
19 subsection (D). The retail sale of these items shall be sourced according to the
20 requirements of each member state, and the lease or rental of these items must be
21 sourced according to Section 310, subsection (C).
- 22 3. Telecommunications services, as set out in Section 315, shall be sourced in
23 accordance with Section 314.

24
25 **Section 310: GENERAL SOURCING RULES**

26 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

- 27 1. When the product is received by the purchaser at a business location of the seller, the
28 sale is sourced to that business location.
- 29 2. When the product is not received by the purchaser at a business location of the seller,
30 the sale is sourced to the location where receipt by the purchaser (or the purchaser's

1 donee, designated as such by the purchaser) occurs, including the location indicated
2 by instructions for delivery to the purchaser (or donee), known to the seller.

3 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location
4 indicated by an address for the purchaser that is available from the business records of
5 the seller that are maintained in the ordinary course of the seller's business when use
6 of this address does not constitute bad faith.

7 4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the
8 location indicated by an address for the purchaser obtained during the consummation
9 of the sale, including the address of a purchaser's payment instrument, if no other
10 address is available, when use of this address does not constitute bad faith.

11 5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4)
12 apply, including the circumstance in which the seller is without sufficient information
13 to apply the previous rules, then the location will be determined by the address from
14 which tangible personal property was shipped, from which the digital good or the
15 computer software delivered electronically was first available for transmission by the
16 seller, or from which the service was provided (disregarding for these purposes any
17 location that merely provided the digital transfer of the product sold).

18 B. The lease or rental of tangible personal property, other than property identified in
19 subsection (C) or subsection (D), shall be sourced as follows:

20 1. For a lease or rental that requires recurring periodic payments, the first periodic
21 payment is sourced the same as a retail sale in accordance with the provisions of
22 subsection (A). Periodic payments made subsequent to the first payment are sourced
23 to the primary property location for each period covered by the payment. The primary
24 property location shall be as indicated by an address for the property provided by the
25 lessee that is available to the lessor from its records maintained in the ordinary course
26 of business, when use of this address does not constitute bad faith. The property
27 location shall not be altered by intermittent use at different locations, such as use of
28 business property that accompanies employees on business trips and service calls.

29 2. For a lease or rental that does not require recurring periodic payments, the payment is
30 sourced the same as a retail sale in accordance with the provisions of subsection (A).

- 1 3. This subsection does not affect the imposition or computation of sales or use tax on
2 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
3 property for lease.
- 4 C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify
5 as transportation equipment, as defined in subsection (D), shall be sourced as follows:
- 6 1. For a lease or rental that requires recurring periodic payments, each periodic payment
7 is sourced to the primary property location. The primary property location shall be as
8 indicated by an address for the property provided by the lessee that is available to the
9 lessor from its records maintained in the ordinary course of business, when use of this
10 address does not constitute bad faith. This location shall not be altered by intermittent
11 use at different locations.
- 12 2. For a lease or rental that does not require recurring periodic payments, the payment is
13 sourced the same as a retail sale in accordance with the provisions of subsection (A).
- 14 3. This subsection does not affect the imposition or computation of sales or use tax on
15 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
16 property for lease.
- 17 D. The retail sale, including lease or rental, of transportation equipment shall be sourced the
18 same as a retail sale in accordance with the provisions of subsection (A),
19 notwithstanding the exclusion of lease or rental in subsection (A). “Transportation
20 equipment” means any of the following:
- 21 1. Locomotives and railcars that are utilized for the carriage of persons or property in
22 interstate commerce.
- 23 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001
24 pounds or greater, trailers, semi-trailers, or passenger buses that are:
- 25 a. Registered through the International Registration Plan; and
- 26 b. Operated under authority of a carrier authorized and certificated by the U.S.
27 Department of Transportation or another federal authority to engage in the
28 carriage of persons or property in interstate commerce.

- 1 3. Aircraft that are operated by air carriers authorized and certificated by the U.S.
2 Department of Transportation or another federal or a foreign authority to engage in
3 the carriage of persons or property in interstate or foreign commerce.
- 4 4. Containers designed for use on and component parts attached or secured on the items
5 set forth in subsections (D)(1) through (D)(3).

7 **Section 311: GENERAL SOURCING DEFINITIONS**

8 For the purposes of Section 310, subsection (A), the terms "receive" and "receipt" mean:

- 9 A. Taking possession of tangible personal property,
- 10 B. Making first use of services, or
- 11 C. Taking possession or making first use of digital goods, whichever comes first.

12 The terms "receive" and "receipt" do not include possession by a shipping company on behalf of
13 the purchaser.

15 **Section 312: MULTIPLE POINTS OF USE**

16 Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a
17 direct pay permit that knows at the time of its purchase of a digital good, computer software
18 delivered electronically, or a service that the digital good, computer software delivered
19 electronically, or service will be concurrently available for use in more than one jurisdiction shall
20 deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points
21 of Use or MPU" Exemption Form).

- 22 A. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to
23 collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect,
24 pay, or remit the applicable tax on a direct pay basis.
- 25 B. A purchaser delivering the MPU Exemption Form may use any reasonable, but
26 consistent and uniform, method of apportionment that is supported by the purchaser's
27 business records as they exist at the time of the consummation of the sale.
- 28 C. The MPU Exemption Form will remain in effect for all future sales by the seller to the
29 purchaser (except as to the subsequent sale's specific apportionment that is governed by

1 the principle of subsection (B) and the facts existing at the time of the sale) until it is
2 revoked in writing.

- 3 D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form
4 to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in
5 apportioning the tax due on a digital good or a service that will be concurrently available
6 for use in more than one jurisdiction.

7
8 **Section 313: DIRECT MAIL SOURCING**

- 9 A. Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct
10 pay permit shall provide to the seller in conjunction with the purchase either a Direct
11 Mail Form or information to show the jurisdictions to which the direct mail is delivered
12 to recipients.

- 13 1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to
14 collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit
15 the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for
16 all future sales of direct mail by the seller to the purchaser until it is revoked in
17 writing.
- 18 2. Upon receipt of information from the purchaser showing the jurisdictions to which
19 the direct mail is delivered to recipients, the seller shall collect the tax according to
20 the delivery information provided by the purchaser. In the absence of bad faith, the
21 seller is relieved of any further obligation to collect tax on any transaction where the
22 seller has collected tax pursuant to the delivery information provided by the
23 purchaser.

- 24 B. If the purchaser of direct mail does not have a direct pay permit and does not provide the
25 seller with either a Direct Mail Form or delivery information, as required by subsection
26 (A) of this section, the seller shall collect the tax according to Section 310, subsection
27 (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax
28 to any state to which the direct mail is delivered.

1 C. If a purchaser of direct mail provides the seller with documentation of direct pay
2 authority, the purchaser shall not be required to provide a Direct Mail Form or delivery
3 information to the seller.
4

5 **Section 314: TELECOMMUNICATION SOURCING RULE**

6 A. Except for the defined telecommunication services in subsection (C), the sale of
7 telecommunication service sold on a call-by-call basis shall be sourced to (i) each level
8 of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii)
9 each level of taxing jurisdiction where the call either originates or terminates and in
10 which the service address is also located.

11 B. Except for the defined telecommunication services in subsection (C), a sale of
12 telecommunications services sold on a basis other than a call-by-call basis, is sourced to
13 the customer's place of primary use.

14 C. The sale of the following telecommunication services shall be sourced to each level of
15 taxing jurisdiction as follows:

16 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone
17 service and prepaid calling service, is sourced to the customer's place of primary use
18 as required by the Mobile Telecommunications Sourcing Act.

19 2. A sale of post-paid calling service is sourced to the origination point of the
20 telecommunications signal as first identified by either (i) the seller's
21 telecommunications system, or (ii) information received by the seller from its service
22 provider, where the system used to transport such signals is not that of the seller.

23 3. A sale of prepaid calling service is sourced in accordance with Section 310. Provided
24 however, in the case of a sale of mobile telecommunications service that is a prepaid
25 telecommunications service, the rule provided in Section 310, subsection (A)(5) shall
26 include as an option the location associated with the mobile telephone number.

27 4. A sale of a private communication service is sourced as follows:

28 a. Service for a separate charge related to a customer channel termination point is
29 sourced to each level of jurisdiction in which such customer channel termination
30 point is located.

- 1 b. Service where all customer termination points are located entirely within one
2 jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the
3 customer channel termination points are located.
- 4 c. Service for segments of a channel between two customer channel termination points
5 located in different jurisdictions and which segment of channel are separately charged
6 is sourced fifty percent in each level of jurisdiction in which the customer channel
7 termination points are located.
- 8 d. Service for segments of a channel located in more than one jurisdiction or levels of
9 jurisdiction and which segments are not separately billed is sourced in each
10 jurisdiction based on the percentage determined by dividing the number of customer
11 channel termination points in such jurisdiction by the total number of customer
12 channel termination points.

13

14 **Section 315: TELECOMMUNICATION SOURCING DEFINITIONS**

15 For the purpose of Section 314, the following definitions apply:

- 16 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in
17 47 CFR 22.99, in which common carriers are authorized to offer and provide radio
18 telecommunications service for hire to subscribers in aircraft.
- 19 B. "Call-by-call Basis" means any method of charging for telecommunications services
20 where the price is measured by individual calls.
- 21 C. "Communications Channel" means a physical or virtual path of communications over
22 which signals are transmitted between or among customer channel termination points.
- 23 D. "Customer" means the person or entity that contracts with the seller of
24 telecommunications services. If the end user of telecommunications services is not the
25 contracting party, the end user of the telecommunications service is the customer of the
26 telecommunication service, but this sentence only applies for the purpose of sourcing
27 sales of telecommunications services under Section 314. "Customer" does not include a
28 reseller of telecommunications service or for mobile telecommunications service of a
29 serving carrier under an agreement to serve the customer outside the home service
30 provider's licensed service area.

- 1 E. "Customer Channel Termination Point" means the location where the customer either
2 inputs or receives the communications.
- 3 F. "End user" means the person who utilizes the telecommunication service. In the case of
4 an entity, "end user" means the individual who utilizes the service on behalf of the
5 entity.
- 6 G. "Home service provider" means the same as that term is defined in Section 124(5) of
7 Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 8 H. "Mobile telecommunications service" means the same as that term is defined in Section
9 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 10 I. "Place of primary use" means the street address representative of where the customer's
11 use of the telecommunications service primarily occurs, which must be the residential
12 street address or the primary business street address of the customer. In the case of
13 mobile telecommunications services, "place of primary use" must be within the licensed
14 service area of the home service provider.
- 15 J. "Post-paid calling service" means the telecommunications service obtained by making a
16 payment on a call-by-call basis either through the use of a credit card or payment
17 mechanism such as a bank card, travel card, credit card, or debit card, or by charge made
18 to a telephone number which is not associated with the origination or termination of the
19 telecommunications service. A post-paid calling service includes a telecommunications
20 service that would be a prepaid calling service except it is not exclusively a
21 telecommunication service.
- 22 K. "Prepaid calling service" means the right to access exclusively telecommunications
23 services, which must be paid for in advance and which enables the origination of calls
24 using an access number or authorization code, whether manually or electronically dialed,
25 and that is sold in predetermined units or dollars of which the number declines with use
26 in a known amount.
- 27 L. "Private communication service" means a telecommunication service that entitles the
28 customer to exclusive or priority use of a communications channel or group of channels
29 between or among termination points, regardless of the manner in which such channel or
30 channels are connected, and includes switching capacity, extension lines, stations, and

1 any other associated services that are provided in connection with the use of such
2 channel or channels.

3 M. "Service address" means:

- 4 1. The location of the telecommunications equipment to which a customer's call is
5 charged and from which the call originates or terminates, regardless of where the call
6 is billed or paid.
- 7 2. If the location in subsection (M)(1) is not known, service address means the
8 origination point of the signal of the telecommunications services first identified by
9 either the seller's telecommunications system or in information received by the seller
10 from its service provider, where the system used to transport such signals is not that
11 of the seller.
- 12 3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the service
13 address means the location of the customer's place of primary use.

14
15 **Section 316: ENACTMENT OF EXEMPTIONS**

- 16 A. A member state may enact a product-based exemption without restriction if the
17 Agreement does not have a definition for the product or for a term that includes the
18 product. If the Agreement has a definition for the product or for a term that includes the
19 product, a member state may exempt all items included within the definition but shall
20 not exempt only part of the items included within the definition unless the Agreement
21 sets out the exemption for part of the items as an acceptable variation.
- 22 B. A member state may enact an entity-based or a use-based exemption without restriction
23 if the Agreement does not have a definition for the product whose use or purchase by a
24 specific entity is exempt or for a term that includes the product. If the Agreement has a
25 definition for the product whose use or specific purchase is exempt, a member state may
26 enact an entity-based or a use-based exemption that applies to that product as long as the
27 exemption utilizes the Agreement definition of the product. If the Agreement does not
28 have a definition for the product whose use or specific purchase is exempt but has a
29 definition for a term that includes the product, a member state may enact an entity-based
30 or a use-based exemption for the product without restriction.

1 C. For purposes of complying with the requirements in this section, the inclusion of a
2 product within the definition of tangible personal property is disregarded.
3

4 **Section 317: ADMINISTRATION OF EXEMPTIONS**

5 A. Each member state shall observe the following provisions when a purchaser claims an
6 exemption:

7 1. The seller shall obtain identifying information of the purchaser and the reason for
8 claiming a tax exemption at the time of the purchase as determined by the governing
9 board.

10 2. A purchaser is not required to provide a signature to claim an exemption from tax
11 unless a paper exemption certificate is used.

12 3. The seller shall use the standard form for claiming an exemption electronically as
13 adopted by the governing board.

14 4. The seller shall obtain the same information for proof of a claimed exemption
15 regardless of the medium in which the transaction occurred.

16 5. A member state may utilize a system wherein the purchaser exempt from the payment
17 of the tax is issued an identification number that shall be presented to the seller at the
18 time of the sale.

19 6. The seller shall maintain proper records of exempt transactions and provide them to a
20 member state when requested.

21 7. A member state shall administer use-based and entity-based exemptions when
22 practicable through a direct pay permit, an exemption certificate, or another means
23 that does not burden sellers.

24 B. Each member state shall relieve sellers that follow the requirements of this section from
25 any tax otherwise applicable if it is determined that the purchaser improperly claimed an
26 exemption and to hold the purchaser liable for the nonpayment of tax. This relief from
27 liability does not apply to a seller who fraudulently fails to collect the tax or solicits
28 purchasers to participate in the unlawful claim of an exemption.
29

30 **Section 318: UNIFORM TAX RETURNS**

- 1 Each member state shall:
- 2 A. Require that only one tax return for each taxing period for each seller be filed for the
3 member state and all the taxing jurisdictions within the member state.
- 4 B. Require that returns be due no sooner than the twentieth day of the month following the
5 month in which the transaction occurred.
- 6 C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in
7 a simplified format that does not include more data fields than permitted by the
8 governing board. A member state may require additional informational returns to be
9 submitted not more frequently than every six months under a staggered system
10 developed by the governing board.
- 11 D. Allow any seller that is registered under the Agreement, which does not have a legal
12 requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit
13 its sales and use tax returns as follows:
- 14 1. Upon registration, a member state shall provide to the seller the returns required by
15 that state.
- 16 2. A member state may require a seller to file a return anytime within one year of the
17 month of initial registration, and future returns may be required on an annual basis in
18 succeeding years.
- 19 3. In addition to the returns required in subsection (D)(2), a member state may require
20 sellers to submit returns in the month following any month in which they have
21 accumulated state and local tax funds for the state in the amount of one thousand
22 dollars or more.
- 23 E. Participate with other member states in developing a more uniform sales and use tax return
24 that, when completed, would be available to all sellers.
- 25 F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns
26 electronically. It is the intent of the member states that all member states have the
27 capability of receiving electronically filed returns by January 1, 2004.

28

29 **Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS**

30 Each member state shall:

- 1 A. Require only one remittance for each return except as provided in this subsection. If any
2 additional remittance is required, it may only be required from sellers that collect more
3 than thirty thousand dollars in sales and use taxes in the member state during the
4 preceding calendar year as provided herein. The amount of the additional remittance
5 shall be determined through a calculation method rather than actual collections and shall
6 not require the filing of an additional return.
- 7 B. Require, at each member state's discretion, all remittances from sellers under Models 1,
8 2, and 3 to be remitted electronically.
- 9 C. Allow for electronic payments by both ACH Credit and ACH Debit.
- 10 D. Provide an alternative method for making "same day" payments if an electronic funds
11 transfer fails.
- 12 E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are
13 due to that state on the next succeeding business day.
- 14 F. Require that any data that accompanies a remittance be formatted using uniform tax type
15 and payment type codes approved by the governing board.
- 16

17 **Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS**

18 Each member state shall use the following to provide a deduction for bad debts to a seller. To
19 the extent a member state provides a bad debt deduction to any other party, the same procedures
20 will apply. Each member state shall:

- 21 A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is
22 attributed to bad debts shall not include interest.
- 23 B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for
24 calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C.
25 Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes
26 charged on the purchase price; uncollectable amounts on property that remain in the
27 possession of the seller until the full purchase price is paid; expenses incurred in
28 attempting to collect any debt, and repossessed property.
- 29 C. Allow bad debts to be deducted on the return for the period during which the bad debt is
30 written off as uncollectable in the claimant's books and records and is eligible to be

1 deducted for federal income tax purposes. For purposes of this subsection, a claimant
2 who is not required to file federal income tax returns may deduct a bad debt on a return
3 filed for the period in which the bad debt is written off as uncollectable in the claimant's
4 books and records and would be eligible for a bad debt deduction for federal income tax
5 purposes if the claimant was required to file a federal income tax return.

6 D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected
7 in whole or in part, the tax on the amount so collected must be paid and reported on the
8 return filed for the period in which the collection is made.

9 E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the
10 period during which the bad debt is written off, a refund claim may be filed within the
11 member state's otherwise applicable statute of limitations for refund claims; however,
12 the statute of limitations shall be measured from the due date of the return on which the
13 bad debt could first be claimed.

14 F. Where filing responsibilities have been assumed by a CSP, allow the service provider to
15 claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP
16 must credit or refund the full amount of any bad debt allowance or refund received to the
17 seller.

18 G. Provide that, for the purposes of reporting a payment received on a previously claimed
19 bad debt, any payments made on a debt or account are applied first proportionally to the
20 taxable price of the property or service and the sales tax thereon, and secondly to
21 interest, service charges, and any other charges.

22 H. In situations where the books and records of the party claiming the bad debt allowance
23 support an allocation of the bad debts among the member states, permit the allocation.
24

25 **Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1**

26 A. The purpose of this section is to set forth the member states' policy for the protection of
27 the confidentiality rights of all participants in the system and of the privacy interests of
28 consumers who deal with Model 1 sellers.

29 B. As used in this section, the term "confidential taxpayer information" means all
30 information that is protected under a member state's laws, regulations, and privileges; the

1 term "personally identifiable information" means information that identifies a person;
2 and the term "anonymous data" means information that does not identify a person.

3 C. The member states agree that a fundamental precept in Model 1 is to preserve the
4 privacy of consumers by protecting their anonymity. With very limited exceptions, a
5 CSP shall perform its tax calculation, remittance, and reporting functions without
6 retaining the personally identifiable information of consumers.

7 D. The governing board may certify a CSP only if that CSP certifies that:

- 8 1. Its system has been designed and tested to ensure that the fundamental precept of
9 anonymity is respected;
- 10 2. That personally identifiable information is only used and retained to the extent
11 necessary for the administration of Model 1 with respect to exempt purchasers;
- 12 3. It provides consumers clear and conspicuous notice of its information practices,
13 including what information it collects, how it collects the information, how it uses the
14 information, how long, if at all, it retains the information and whether it discloses the
15 information to member states. Such notice shall be satisfied by a written privacy
16 policy statement accessible by the public on the official web site of the CSP;
- 17 4. Its collection, use and retention of personally identifiable information will be limited
18 to that required by the member states to ensure the validity of exemptions from
19 taxation that are claimed by reason of a consumer's status or the intended use of the
20 goods or services purchased; and
- 21 5. It provides adequate technical, physical, and administrative safeguards so as to
22 protect personally identifiable information from unauthorized access and disclosure.

23 E. Each member state shall provide public notification to consumers, including their exempt
24 purchasers, of the state's practices relating to the collection, use and retention of
25 personally identifiable information.

26 F. When any personally identifiable information that has been collected and retained is no
27 longer required for the purposes set forth in subsection (D)(4), such information shall no
28 longer be retained by the member states.

29 G. When personally identifiable information regarding an individual is retained by or on
30 behalf of a member state, such state shall provide reasonable access by such individual to

1 his or her own information in the state's possession and a right to correct any inaccurately
2 recorded information.

3 H. If anyone other than a member state, or a person authorized by that state's law or the
4 Agreement, seeks to discover personally identifiable information, the state from whom
5 the information is sought should make a reasonable and timely effort to notify the
6 individual of such request.

7 I. This privacy policy is subject to enforcement by member states' attorneys general or other
8 appropriate state government authority.

9 J. Each member states' laws and regulations regarding the collection, use, and maintenance
10 of confidential taxpayer information remain fully applicable and binding. Without
11 limitation, the Agreement does not enlarge or limit the member states' authority to:

- 12 1. Conduct audits or other review as provided under the Agreement and state law.
- 13 2. Provide records pursuant to a member state's Freedom of Information Act, disclosure
14 laws with governmental agencies, or other regulations.
- 15 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
- 16 4. Prevent, consistent with federal law, disclosures or misuse of federal return
17 information obtained under a disclosure agreement with the Internal Revenue Service.
- 18 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental
19 purposes.

20 K. This privacy policy does not preclude the governing board from certifying a CSP whose
21 privacy policy is more protective of confidential taxpayer information or personally
22 identifiable information than is required by the Agreement.

23 24 **Section 322: SALES TAX HOLIDAYS**

25 A. If a member state allows for temporary exemption periods, commonly referred to as sales
26 tax holidays, the member state shall:

- 27 1. Not apply an exemption after December 31, 2003, unless the items to be exempted
28 are specifically defined in the Agreement and the exemptions are uniformly applied to
29 state and local sales and use taxes.

- 1 2. Provide notice of the exemption period at least sixty days' prior to the first day of the
2 calendar quarter in which the exemption period will begin.
- 3 B. A member state may establish a sales tax holiday that utilizes price thresholds set
4 by such state and the provisions of the Agreement on the use of thresholds shall
5 not apply to exemptions provided by a state during a sales tax holiday. In order to
6 provide uniformity, a price threshold established by a member state for exempt
7 items shall include only items priced below the threshold. A member state shall
8 not exempt only a portion of the price of an individual item during a sales tax
9 holiday.
- 10 C. The governing board shall establish procedures to provide uniformity for the
11 administrative issues involved with the implementation of a sales tax holiday. These
12 issues include, but are not limited to:
 - 13 1. Treatment of layaway purchases;
 - 14 2. Exempt and nonexempt items that are packaged together;
 - 15 3. Treatment of coupons or discounts;
 - 16 4. Splitting of items normally sold together;
 - 17 5. Treatment of rainchecks;
 - 18 6. Exchanges;
 - 19 7. Shipping and handling charges;
 - 20 8. Service charges;
 - 21 9. Restocking fees; and
 - 22 10. Order date/Back orders.

23

24 **Section 323: CAPS AND THRESHOLDS**

- 25 A. Each member state shall:
 - 26 1. Not have caps or thresholds on the application of state sales or use tax rates or
27 exemptions that are based on the value of the transaction or item after December 31,
28 2005. A member state may continue to have caps and thresholds until that date.

1 2. Not have caps that are based on the application of the rates unless the member state
2 assumes the administrative responsibility in a manner that places no additional burden
3 on the retailer.

4 B. Each member state that has local jurisdictions that levy a sales or use tax shall not place
5 caps or thresholds on the application of local rates or use tax rates or exemptions that are
6 based on the value of the transaction or item after December 31, 2005. A member state
7 may continue to have caps and thresholds until that date.

8 C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or
9 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or
10 mobile homes or to instances where the burden of administration has been shifted from
11 the retailer.

12
13 **Section 324: ROUNDING RULE**

14 A. After December 31, 2005, each member state shall adopt a rounding algorithm that meets
15 the following criteria:

16 1. Tax computation must be carried to the third decimal place, and

17 2. The tax must be rounded to a whole cent using a method that rounds up to the next
18 cent whenever the third decimal place is greater than four.

19 B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item
20 or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state
21 and local taxes. No member state shall require a seller to collect tax based on a bracket
22 system.

23
24 **Section 325: CUSTOMER REFUND PROCEDURES**

25 A. These customer refund procedures are provided to apply when a state allows a purchaser
26 to seek a return of over-collected sales or use taxes from the seller.

27 B. Nothing in this section shall either require a state to provide, or prevent a state from
28 providing, a procedure by which a purchaser may seek a refund directly from the state
29 arising out of sales or use taxes collected in error by a seller from the purchaser.

1 Nothing in this section shall operate to extend any person's time to seek a refund of sales
2 or use taxes collected or remitted in error.

3 C. These customer refund procedures provide the first course of remedy available to
4 purchasers seeking a return of over-collected sales or use taxes from the seller. A cause
5 of action against the seller for the over-collected sales or use taxes does not accrue until
6 a purchaser has provided written notice to a seller and the seller has had sixty days to
7 respond. Such notice to the seller must contain the information necessary to determine
8 the validity of the request.

9 D. In connection with a purchaser's request from a seller of over-collected sales or use
10 taxes, a seller shall be presumed to have a reasonable business practice, if in the
11 collection of such sales or use taxes, the seller: i) uses either a provider or a system,
12 including a proprietary system, that is certified by the state; and ii) has remitted to the
13 state all taxes collected less any deductions, credits, or collection allowances.
14

15 **Section 326: DIRECT PAY PERMITS**

16 Each member state shall provide for a direct pay authority that allows the holder of a direct pay
17 permit to purchase otherwise taxable goods and services without payment of tax to the supplier
18 at the time of purchase. The holder of the direct pay permit will make a determination of the
19 taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each
20 state can set its own limits and requirements for the direct pay permit. The governing board shall
21 advise member states when setting state direct pay limits and requirements, and shall consider
22 use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI
23 Audit and Legal Issues for Tax Administration.
24

25 **Section 327: LIBRARY OF DEFINITIONS**

26 Each member state shall utilize common definitions as provided in this section. The terms
27 defined are set out in the Library of Definitions, in Appendix C of this Agreement. A member
28 state shall adhere to the following principles:

29 A. If a term defined in the Library of Definitions appears in a member state's sales
30 and use tax statutes or administrative rules or regulations, the member state shall

1 enact or adopt the Library definition of the term in its statutes or administrative
2 rules or regulations in substantially the same language as the Library definition.

3 B. A member state shall not use a Library definition in its sales or use tax statutes or
4 administrative rules or regulations that is contrary to the meaning of the Library
5 definition.

6 C. Except as specifically provided in Section 316 and the Library of Definitions, a
7 member state shall impose a sales or use tax on all products or services included
8 within each definition or exempt from sales or use tax all products or services
9 within each definition.

11 **Section 328: TAXABILITY MATRIX**

12 A. To ensure uniform application of terms defined in the Library of Definitions each
13 member state shall complete a taxability matrix adopted by the governing board.
14 The member state's entries in the matrix shall be provided and maintained in a
15 database that is in a downloadable format approved by the governing board. A
16 member state shall provide notice of changes in the taxability of the products or
17 services listed in the taxability matrix as required by the governing board.

18 B. A member state shall relieve sellers and CSPs from liability to the member state and
19 its local jurisdictions for having charged and collected the incorrect amount of sales
20 or use tax resulting from the seller or CSP relying on erroneous data provided by the
21 member state in the taxability matrix.

23 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

24 Each member state shall provide that the effective date of rate changes for services covering a
25 period starting before and ending after the statutory effective date shall be as follows:

26 A. For a rate increase, the new rate shall apply to the first billing period starting on or after
27 the effective date.

28 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective
29 date.

1 **ARTICLE IV**
2 **SELLER REGISTRATION**
3

4 **Section 401: SELLER PARTICIPATION**

- 5 A. The member states shall provide an online registration system that will allow sellers to
6 register in all the member states.
- 7 B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable
8 sales into the member states, including member states joining after the seller's
9 registration. Withdrawal or revocation of a member state shall not relieve a seller of its
10 responsibility to remit taxes previously or subsequently collected on behalf of the state.
- 11 C. In member states where the seller has a requirement to register prior to registering under
12 the Agreement, the seller may be required to provide additional information to complete
13 the registration process or the seller may choose to register directly with those states.
- 14 D. A member state or a state that has withdrawn or been expelled shall not use registration
15 with the central registration system and the collection of sales and use taxes in the
16 member states as a factor in determining whether the seller has nexus with that state for
17 any tax at any time.

18
19 **Section 402: AMNESTY FOR REGISTRATION**

- 20 A. Subject to the limitations in this section:
- 21 1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a
22 seller who registers to pay or to collect and remit applicable sales or use tax on sales
23 made to purchasers in the state in accordance with the terms of the Agreement,
24 provided that the seller was not so registered in that state in the twelve-month period
25 preceding the effective date of the state's participation in the Agreement.
- 26 2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax
27 together with penalty or interest for sales made during the period the seller was not
28 registered in the state, provided registration occurs within twelve months of the
29 effective date of the state's participation in the Agreement.

1 3. Amnesty similarly shall be provided by any additional state that joins the Agreement
2 after the seller has registered.

3 B. The amnesty is not available to a seller with respect to any matter or matters for which
4 the seller received notice of the commencement of an audit and which audit is not yet
5 finally resolved including any related administrative and judicial processes.

6 C. The amnesty is not available for sales or use taxes already paid or remitted to the state or
7 to taxes collected by the seller.

8 D. The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of
9 a material fact, as long as the seller continues registration and continues payment or
10 collection and remittance of applicable sales or use taxes for a period of at least thirty-six
11 months. Each member state shall toll its statute of limitations applicable to asserting a tax
12 liability during this thirty-six month period.

13 E. The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a
14 seller and not to sales or use taxes due from a seller in its capacity as a buyer.

15 F. A member state may allow amnesty on terms and conditions more favorable to a seller
16 than the terms required by this section.
17

18 **Section 403: METHOD OF REMITTANCE**

19 When registering, the seller may select one of the following methods of remittances or other
20 method allowed by state law to remit the taxes collected:

21 A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or
22 use tax functions, other than the seller's obligation to remit tax on its own purchases.

23 B. MODEL 2, wherein a seller selects a CAS to use which calculates the amount of tax due
24 on a transaction.

25 C. MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that
26 has been certified as a CAS.
27

28 **Section 404: REGISTRATION BY AN AGENT**

29 A seller may be registered by an agent. Such appointment shall be in writing and submitted to a
30 member state if requested by the member state.

1 ARTICLE V

2 PROVIDER AND SYSTEM CERTIFICATION

3
4 **Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED**
5 **SYSTEMS**

- 6 A. The governing board shall certify automated systems and service providers to aid in the
7 administration of sale and use tax collections.
- 8 B. The governing board may certify a person as a CSP if the person meets all of the
9 following requirements:
- 10 1. The person uses a CAS;
 - 11 2. The person integrates its CAS with the system of a seller for whom the person
12 collects tax so that the tax due on a sale is determined at the time of the sale;
 - 13 3. The person agrees to remit the taxes it collects at the time and in the manner specified
14 by the member states;
 - 15 4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
 - 16 5. The person agrees to protect the privacy of tax information it obtains in accordance
17 with Section 321 of the Agreement; and
 - 18 6. The person enters into a contract with the member states and agrees to comply with
19 the terms of the contract.
- 20 C. The governing board may certify a software program as a CAS if the governing board
21 determines that the program meets all of the following requirements:
- 22 1. It determines the applicable state and local sales and use tax rate for a transaction, in
23 accordance with Sections 309 to 315, inclusive;
 - 24 2. It determines whether or not an item is exempt from tax;
 - 25 3. It determines the amount of tax to be remitted for each taxpayer for a reporting
26 period;
 - 27 4. It can generate reports and returns as required by the governing board; and
 - 28 5. It can meet any other requirement set by the governing board.
- 29 D. The governing board may establish one or more sales tax performance standards for
30 Model 3 sellers that meet the eligibility criteria set by the governing board and that

1 developed a proprietary system to determine the amount of sales and use tax due on
2 transactions.

1 ARTICLE VI

2 MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES

3 TAX COLLECTION

4
5 **Section 601: MONETARY ALLOWANCE UNDER MODEL 1**

- 6 A. Each member state shall provide a monetary allowance to a CSP in Model 1 in
7 accordance with the terms of the contract between the governing board and the CSP. The
8 details of the monetary allowance will be provided through the contract process. The
9 governing board shall require that such allowance be funded entirely from money
10 collected in Model 1.
- 11 B. The contract between the governing board and a CSP may base the monetary allowance
12 to a CSP on one or more of the following:
- 13 1. A base rate that applies to taxable transactions processed by the CSP.
 - 14 2. For a period not to exceed twenty-four months following a voluntary seller's
15 registration through the Agreement's central registration process, a percentage of tax
16 revenue generated for a member state by the voluntary seller for each member state
17 for which the seller does not have a requirement to register to collect the tax.

18
19 **Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS**

20 The member states initially anticipate that they will provide a monetary allowance to sellers
21 under Model 2 based on the following:

- 22 A. All sellers shall receive a base rate for a period not to exceed twenty-four months
23 following the commencement of participation by a seller. The base rate will be set after
24 the base rate has been established for Model 1. This allowance will be in addition to any
25 discount afforded by each member state at the time.
- 26 B. The member states anticipate a monetary allowance to a Model 2 Seller based on the
27 following:
- 28 1. For a period not to exceed twenty-four months following a voluntary seller's
29 registration through the Agreement's central registration process, a percentage of tax

1 revenue generated for a member state by the voluntary seller for each member state
2 for which the seller does not have a requirement to register to collect the tax.

3 2. Following the conclusion of the twenty-four month period, a seller will only be
4 entitled to a vendor discount afforded under each member state's law at the time the
5 base rate expires.
6

7 **Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER**
8 **SELLERS THAT ARE NOT UNDER MODELS 1 OR 2**

9 The member states anticipate that they will provide a monetary allowance to sellers under Model
10 3 and to all other sellers that are not under Models 1 or 2 based on the following:

- 11 A. For a period not to exceed twenty-four months following a voluntary seller's registration
12 through the Agreement's central registration process, a percentage of tax revenue
13 generated for a member state by the voluntary seller for each member state for which the
14 seller does not have a requirement to register to collect the tax.
15 B. Vendor discounts afforded under each member state's law.

ARTICLE VII
AGREEMENT ORGANIZATION

Section 701: EFFECTIVE DATE

The Agreement shall become binding and take effect when at least ten states comprising at least twenty percent of the total population, as determined by the 2000 Federal census, of all states imposing a state sales tax have petitioned for membership and have been found to be in compliance with the requirements of the Agreement pursuant to Section 805. The Agreement shall take effect on the first day of a calendar quarter at least sixty days after the tenth state is found in compliance, but cannot take effect prior to July 1, 2003.

Section 702: APPROVAL OF INITIAL STATES

Prior to the effective date of the Agreement, a state may seek membership by forwarding a petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing States. A petitioning state shall also provide a copy of its petition for membership and certificate of compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state shall not vote on its own petition for membership.

The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

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ARTICLE VIII
STATE ENTRY AND WITHDRAWAL

Section 801: ENTRY INTO AGREEMENT

After the effective date of the Agreement, a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. The petition for membership shall include such state’s proposed date of entry. The petitioning state’s proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

The petitioning state shall provide a copy of its petition for membership and the certificate of compliance to each member state when the petitioning state submits its petition for membership to the governing board. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state’s web site.

Section 802: CERTIFICATE OF COMPLIANCE

The certificate of compliance shall be signed by the chief executive of the state’s tax agency. The certificate of compliance shall document compliance with the provisions of the Agreement and cite applicable statutes, rules, regulations, or other authorities evidencing such compliance.

Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES

Each member state shall annually re-certify that such state is in compliance with the Agreement. Each member state shall make a re-certification to the governing board on or before August 1 of each year after the year of the state’s entry. In its annual re-certification, the state shall include any changes in its statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the Agreement. The re-certification shall be signed by the chief executive of the state’s tax agency.

1 A member state that cannot re-certify its compliance with the Agreement shall submit a statement of
2 non-compliance to the governing board. The statement of non-compliance shall include any action or
3 decision that takes such state out of compliance with the Agreement and the steps it will take to return to
4 compliance. The governing board shall promulgate rules and procedures to respond to statements of
5 noncompliance in accordance with Section 809.

6
7 Each member state shall post its annual re-certification or statement of non-compliance on that state's
8 web site.

9
10 **Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL**

11 The governing board shall determine if a petitioning state is in compliance with the Agreement. A three-
12 fourths vote of the entire governing board is required to approve a state's petition for membership. The
13 governing board shall provide public notice and opportunity for comment prior to voting on a state's
14 petition for membership. A state's membership is effective on the proposed date of entry in its petition
15 for membership or the first day of the calendar quarter after its petition is approved by the governing
16 board, whichever is later, and is at least sixty days after its petition is approved.

17
18 **Section 805: COMPLIANCE**

19 A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and
20 policies is substantially compliant with each of the requirements set forth in the Agreement.

21
22 **Section 806: AGREEMENT ADMINISTRATION**

23 Authority to administer the Agreement shall rest with the governing board comprised of representatives
24 of each member state. Each member state may appoint up to four representatives to the governing
25 board. The representatives shall be members of the executive or legislative branches of the state. Each
26 member state shall be entitled to one vote on the governing board. Except as otherwise provided in the
27 Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of
28 the governing board present and voting. The governing board shall determine its meeting schedule, but
29 shall meet at least once annually. The governing board shall provide a public comment period at each
30 meeting to provide members of the public an opportunity to address the board on matters relevant to the

1 administration or operation of the Agreement. The governing board shall provide public notice of its
2 meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules
3 establishing the public notice requirements for holding emergency meetings on less than thirty day's
4 notice. The governing board may meet electronically.

5
6 The governing board is responsible for the administration and operation of the Agreement, including the
7 appointment of all manner of committees. The governing board may employ staff, advisors, consultants
8 or agents. The governing board may promulgate rules and procedures it deems necessary to carry out its
9 responsibilities. The governing board may take any action that is necessary and proper to fulfill the
10 purposes of the Agreement. The governing board may allocate the cost of administration of the
11 Agreement among the member states.

12
13 The governing board may assign committees certain duties, including, but not limited to:

- 14 A. Responding to questions regarding the administration of the Agreement;
- 15 B. Preparing certification requirements and coordinating the certification process for CSPs;
- 16 C. Coordinating joint audits;
- 17 D. Issuing requests for proposals;
- 18 E. Coordinating contracts with member states and providers; and
- 19 F. Maintaining records for the governing board.

20
21 **Section 807: OPEN MEETINGS**

22 Each meeting of the governing board and the minutes thereof shall be open to the public except as
23 provided herein. Meetings of the governing board may be closed only for one or more of the following:

- 24 A. Personnel issues.
- 25 B. Information required by the laws of any member state to be protected from public disclosure. In
26 the meeting, the governing board shall excuse any attendee to whom confidential taxpayer
27 information cannot be disclosed under the law of any member state.
- 28 C. Proprietary information requested by any business to be protected from disclosure.

- 1 D. The consideration of issues incident to competitive bidding, requests for information, or
2 certification, the disclosure of which would defeat the public interest in a fair and competitive
3 process.
- 4 E. The consideration of pending litigation in a member state the discussion of which in a public
5 session would, in the judgment of the member state engaged in the litigation, adversely affect its
6 interests. In the meeting, the governing board shall excuse any attendee to whom confidential
7 taxpayer information cannot be disclosed under the law of any member state.

8 A closed session of the governing board may be convened by the chair or by a majority vote of the
9 governing board. When a closed session is convened, the reason for the closed session shall be noted in
10 a public session. Any actions taken in the closed session shall be reported immediately upon the
11 reconvening of a public session.

12

13 **Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER**

14 With respect to each member state, the Agreement shall continue in full force and effect until a member
15 state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be
16 effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state
17 shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief
18 executive of each member state's tax agency. The member state shall provide public notice of its intent
19 to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of
20 a state does not affect the validity of the Agreement among other member states. A state that withdraws
21 or is expelled from the Agreement remains liable for its share of any financial or contractual obligations
22 that were incurred by the governing board prior to the effective date of that state's withdrawal or
23 expulsion. The appropriate share of any financial or contractual obligation shall be determined by the
24 state and the governing board in good faith based on the relative benefits received and burdens incurred
25 by the parties.

26

27 **Section 809: SANCTION OF MEMBER STATES**

28 If a member state is found to be out of compliance with the Agreement, the governing board may
29 consider sanctions against the state. The sanctions that the governing board may impose include

1 expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of
2 a resolution to sanction a member state for noncompliance with the Agreement shall require the
3 affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of
4 the resolution. The member state that is the subject of the resolution shall not vote on such resolution.
5 Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of
6 time as set forth in the governing board's rules. The governing board shall provide an opportunity for
7 public comment prior to action on a proposed sanction.

8
9 **Section 810: STATE AND LOCAL ADVISORY COUNCIL**

10 The governing board shall create a State and Local Government Advisory Council to advise the
11 governing board on matters pertaining to the administration of the Agreement. The membership shall
12 include at least one representative from each state that is a participating member of the Streamlined
13 Sales Tax Project pursuant to the Operating Rules of the Project as designated by that state. In addition,
14 the governing board shall appoint local government officials to the State and Local Government
15 Advisory Council. The governing board may appoint other state officials as it deems appropriate.
16 Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission
17 of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement.
18 The State and Local Government Advisory Council shall advise and assist the Business and Taxpayer
19 Advisory Council in the functions noted in Section 811.

20
21 **Section 811: BUSINESS AND TAXPAYER ADVISORY COUNCIL**

22 The governing board shall create a Business and Taxpayer Advisory Council from the private sector to
23 advise the governing board on matters pertaining to the administration of the Agreement. These matters
24 shall include, but not be limited to, admission of states into membership, noncompliance, and
25 interpretations, revisions or additions to the Agreement. The Business and Taxpayer Advisory Council
26 shall advise and assist the State and Local Government Advisory Council in the functions noted in
27 Section 810.

1 ARTICLE IX

2 AMENDMENTS AND INTERPRETATIONS

3
4 **Section 901: AMENDMENTS TO AGREEMENT**

5 Amendments to the Agreement may be brought before the governing board by any member state. The
6 Agreement may be amended by a three-fourths vote of the entire governing board. The governing board
7 shall give the Governor and presiding officer of each house of each member state notice of proposed
8 amendments to the Agreement at least sixty days prior to consideration. The governing board shall give
9 public notice of proposed amendments to the Agreement at least sixty days prior to consideration. The
10 governing board shall provide an opportunity for public comment prior to action on an amendment to
11 the Agreement.
12

13 **Section 902: INTERPRETATIONS OF AGREEMENT**

14 Matters involving interpretation of the Agreement may be brought before the governing board by any
15 member state or by any other person. All interpretations shall require a three-fourths vote of the entire
16 governing board. The governing board shall publish all interpretations issued under this section.
17 Interpretations shall be considered part of the Agreement and shall have the same effect as the
18 Agreement. The governing board shall act on requests for interpretation of the Agreement within a
19 reasonable period of time and under guidelines and procedures as set forth in the governing board's
20 rules. The governing board may determine that it will not issue an interpretation. The governing board
21 shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement.
22

23 **Section 903: DEFINITION REQUESTS**

24 Any member state or any other person may make requests for additional definitions or for
25 interpretations on how an individual product or service fits within a definition. Requests shall be
26 submitted in writing as determined by the governing board. Such requests shall be referred to
27 the Advisory Council created in Section 810 or other group under guidelines and procedures as
28 set forth in the governing board's rules. The entity to which the request was referred shall post
29 notice of the request and provide for input from the public and the member states as directed by

1 the governing board. Within one hundred eighty days after receiving the request, they shall
2 report to the governing board one of the following recommendations:

- 3 A. That no action be taken on the request;
- 4 B. That a proposed amendment to the Library be submitted;
- 5 C. That an interpretation request be submitted; or
- 6 D. That additional time is needed to review the request.

7

8 If either an amendment or an interpretation is recommended, the entity to which the request was
9 referred shall provide the appropriate language as required by the governing board. The
10 governing board shall take action on the recommendation of the entity to which the request was
11 referred at the next meeting of the governing board pursuant to the notice requirements of
12 Section 806. Action by the governing board to approve a recommendation for no action shall be
13 considered the final disposition of the request. Nothing in this paragraph shall prohibit a state
14 from directly submitting a proposed amendment or an interpretation request to the governing
15 board pursuant to Section 901 or Section 902.

1 **ARTICLE X**
2 **ISSUE RESOLUTION PROCESS**
3

4 **Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION**

5 The governing board shall promulgate rules creating an issue resolution process. The rules shall govern
6 the conduct of the process, including the participation by any petitioner, affected state, and other
7 interested party, the disposition of a petition to invoke the process, the allocation of costs for
8 participating in the process, the possible involvement of a neutral third party or non-binding arbitration,
9 and such further details as the governing board determines necessary and appropriate.
10

11 **Section 1002: PETITION FOR RESOLUTION**

12 Any member state or person may petition the governing board to invoke the issue resolution process to
13 resolve matters of:

- 14 A. Membership of a state under Article VIII;
15 B. Matters of compliance under Section 805;
16 C. Possibilities of sanctions of a member state under Section 809;
17 D. Amendments to the Agreement under Section 901;
18 E. Interpretation issues, including differing interpretations among the member states, under Section
19 902; or
20 F. Other matters at the discretion of the governing board.
21

22 **Section 1003: FINAL DECISION OF GOVERNING BOARD**

23 The governing board shall consider any recommendations resulting from the issue resolution process
24 before making its decision, which decision shall, as with all other matters under the Agreement, be final
25 and not subject to further review.
26

27 **Section 1004: LIMITED SCOPE OF THIS ARTICLE**

28 Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or
29 otherwise affect, in any manner, any right or duty that any person or governmental body has
30 under the laws of any member state or local government body. This Article is specifically

- 1 subject to the terms of Article XI and shall not be construed as taking precedence over Article
- 2 XI.

1 ARTICLE XI

2 RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

3
4 **Section 1101: COOPERATING SOVEREIGNS**

5 This Agreement is among individual cooperating sovereigns in furtherance of their governmental
6 functions. The Agreement provides a mechanism among the member states to establish and
7 maintain a cooperative, simplified system for the application and administration of sales and use
8 taxes under the duly adopted law of each member state.
9

10 **Section 1102: RELATIONSHIP TO STATE LAW**

11 No provision of the Agreement in whole or part invalidates or amends any provision of the law
12 of a member state. Adoption of the Agreement by a member state does not amend or modify any
13 law of the state. Implementation of any condition of the Agreement in a member state, whether
14 adopted before, at, or after membership of a state, must be by the action of the member state. All
15 member states remain subject to Article VIII.
16

17 **Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT**

- 18 A. This Agreement binds and inures only to the benefit of the member states. No person,
19 other than a member state, is an intended beneficiary of this Agreement. Any benefit to a
20 person other than a state is established by the laws of the member states and not by the
21 terms of this Agreement.
- 22 B. Consistent with subsection (A), no person shall have any cause of action or defense under
23 the Agreement or by virtue of a member state's approval of the Agreement. No person
24 may challenge, in any action brought under any provision of law, any action or inaction
25 by any department, agency, or other instrumentality of any member state, or any political
26 subdivision of a member state on the ground that the action or inaction is inconsistent
27 with the Agreement.
- 28 C. No law of a member state, or the application thereof, may be declared invalid as to any
29 person or circumstance on the ground that the provision or application is inconsistent
30 with the Agreement.

1

2 **Section 1104: FINAL DETERMINATIONS**

3 The determinations pertaining to the Agreement that are made by the member states are final
4 when rendered and are not subject to any protest, appeal, or review.

1 ARTICLE XII

2 REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

3
4 **Section 1201: REVIEW OF COSTS AND BENEFITS**

5 The governing board will review costs and benefits of administration and collection of sales and
6 use taxes incurred by states and sellers under the existing sales and use tax laws at the time of
7 adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

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APPENDIX A
STREAMLINED SALES AND USE TAX AGREEMENT
PETITION FOR MEMBERSHIP

WHEREAS, it is in the interest of the private sector and of state and local governments to simplify and modernize sales and use tax administration;

WHEREAS, such simplification and modernization will result in a substantial reduction in the costs and complexity for sellers of personal property and services in conducting their commercial enterprises;

WHEREAS, such simplification and modernization will also result in additional voluntary compliance with the sales and use tax laws;

WHEREAS, such simplification and modernization of sales and use tax administration is best conducted in cooperation and coordination with other states; and

WHEREAS, the State of _____ levies a sales tax and levies a use tax. “Sales tax” means the tax levied under (CITE SPECIFIC STATUTE) and “use tax” means the tax levied under (CITE SPECIFIC STATUTE).

NOW, the undersigned representative hereby petitions the governing board of the Streamlined Sales and Use Tax Agreement (or Co-Chairs of the Streamlined Sales Tax Implementing States) for membership into the Agreement.

NAME

TITLE

STATE OF _____

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Appendix B
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1 Appendix C

2 LIBRARY OF DEFINITIONS

3
4 **Part I** Administrative definitions including tangible personal property. Terms included
5 in this Part are core terms that apply in imposing and administering sales and use taxes.

6
7 **Part II** Product definitions. Terms included in this Part are used to exempt items from
8 sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes
9 these items.

10
11 **Part III** Reserved for sales tax holiday definitions.

12
13 PART I

14
15 Administrative Definitions

16
17 1. **“Delivery charges”** means charges by the seller of personal property or services for
18 preparation and delivery to a location designated by the purchaser of personal property or
19 services including, but not limited to, transportation, shipping, postage, handling, crating, and
20 packing.

21 A member state may exclude from “delivery charges” the charges for delivery of “direct
22 mail” if the charges are separately stated on an invoice or similar billing document given to
23 the purchaser.

24
25 2. **“Direct mail”** means printed material delivered or distributed by United States mail or other
26 delivery service to a mass audience or to addressees on a mailing list provided by the
27 purchaser or at the direction of the purchaser when the cost of the items are not billed directly
28 to the recipients. “Direct mail” includes tangible personal property supplied directly or
29 indirectly by the purchaser to the direct mail seller for inclusion in the package containing the

1 printed material. "Direct mail" does not include multiple items of printed material delivered
2 to a single address.

3
4 3. **"Lease or rental"** means any transfer of possession or control of tangible personal property
5 for a fixed or indeterminate term for consideration. A lease or rental may include future
6 options to purchase or extend.

7 A. Lease or rental does not include:

8 1. A transfer of possession or control of property under a security agreement or deferred
9 payment plan that requires the transfer of title upon completion of the required
10 payments;

11 2. A transfer or possession or control of property under an agreement that requires the
12 transfer of title upon completion of required payments and payment of an option price
13 does not exceed the greater of one hundred dollars or one percent of the total required
14 payments; or

15 3. Providing tangible personal property along with an operator for a fixed or
16 indeterminate period of time. A condition of this exclusion is that the operator is
17 necessary for the equipment to perform as designed. For the purpose of this
18 subsection, an operator must do more than maintain, inspect, or set-up the tangible
19 personal property.

20 B. Lease or rental does include agreements covering motor vehicles and trailers where the
21 amount of consideration may be increased or decreased by reference to the amount
22 realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).

23 C. This definition shall be used for sales and use tax purposes regardless if a transaction is
24 characterized as a lease or rental under generally accepted accounting principles, the
25 Internal Revenue Code, the [state commercial code], or other provisions of federal, state
26 or local law.

27 D. This definition will be applied only prospectively from the date of adoption and will
28 have no retroactive impact on existing leases or rentals. This definition shall neither
29 impact any existing sale-leaseback exemption or exclusions that a state may have, nor

1 preclude a state from adopting a sale-leaseback exemption or exclusion after the
2 effective date of the Agreement.

3
4 4. **“Purchase price”** applies to the measure subject to use tax and has the same meaning as
5 sales price.

6
7 5. **“Retail sale or Sale at retail”** means any sale, lease, or rental for any purpose other than for
8 resale, sublease, or subrent.

9
10 6. **“Sales price”** applies to the measure subject to sales tax and means the total amount of
11 consideration, including cash, credit, property, and services, for which personal property or
12 services are sold, leased, or rented, valued in money, whether received in money or
13 otherwise, without any deduction for the following:

14 A. The seller's cost of the property sold;

15 B. The cost of materials used, labor or service cost, interest, losses, all costs of
16 transportation to the seller, all taxes imposed on the seller, and any other expense
17 of the seller;

18 C. Charges by the seller for any services necessary to complete the sale, other than
19 delivery and installation charges;

20 D. Delivery charges;

21 E. Installation charges;

22 F. The value of exempt personal property given to the purchaser where taxable and
23 exempt personal property have been bundled together and sold by the seller as a
24 single product or piece of merchandise; and

25 G. Credit for any trade-in, as determined by state law.

26 States may exclude from “sales price” the amounts received for charges included in paragraphs
27 (C) through (G) above, if they are separately stated on the invoice, billing, or similar document
28 given to the purchaser.

29 “Sales price” shall not include:

- 1 A. Discounts, including cash, term, or coupons that are not reimbursed by a third
2 party that are allowed by a seller and taken by a purchaser on a sale;
- 3 B. Interest, financing, and carrying charges from credit extended on the sale of
4 personal property or services, if the amount is separately stated on the invoice,
5 bill of sale or similar document given to the purchaser; and
- 6 C. Any taxes legally imposed directly on the consumer that are separately stated on
7 the invoice, bill of sale or similar document given to the purchaser.
- 8
- 9 7. **“Tangible personal property”** means personal property that can be seen, weighed,
10 measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible
11 personal property” includes electricity, water, gas, steam, and prewritten computer software.

1 **PART II**

2 **Product Definitions**

3

4 **CLOTHING**

5 **“Clothing”** means all human wearing apparel suitable for general use. The following list
6 contains examples and is not intended to be an all-inclusive list.

7 A. “Clothing” shall include:

- 8 1. Aprons, household and shop;
- 9 2. Athletic supporters;
- 10 3. Baby receiving blankets;
- 11 4. Bathing suits and caps;
- 12 5. Beach capes and coats;
- 13 6. Belts and suspenders;
- 14 7. Boots;
- 15 8. Coats and jackets;
- 16 9. Costumes;
- 17 10. Diapers, children and adult, including disposable diapers;
- 18 11. Ear muffs;
- 19 12. Footlets;
- 20 13. Formal wear;
- 21 14. Garters and garter belts;
- 22 15. Girdles;
- 23 16. Gloves and mittens for general use;
- 24 17. Hats and caps;
- 25 18. Hosiery;
- 26 19. Insoles for shoes;
- 27 20. Lab coats;
- 28 21. Neckties;
- 29 22. Overshoes;
- 30 23. Pantyhose;

- 1 24. Rainwear;
- 2 25. Rubber pants;
- 3 26. Sandals;
- 4 27. Scarves;
- 5 28. Shoes and shoe laces;
- 6 29. Slippers;
- 7 30. Sneakers;
- 8 31. Socks and stockings;
- 9 32. Steel toed shoes;
- 10 33. Underwear;
- 11 34. Uniforms, athletic and non-athletic; and
- 12 35. Wedding apparel.

13 B. "Clothing" shall not include:

- 14 1. Belt buckles sold separately;
- 15 2. Costume masks sold separately;
- 16 3. Patches and emblems sold separately;
- 17 4. Sewing equipment and supplies including, but not limited to, knitting needles,
18 patterns, pins, scissors, sewing machines, sewing needles, tape measures, and
19 thimbles; and
- 20 5. Sewing materials that become part of "clothing" including, but not limited to, buttons,
21 fabric, lace, thread, yarn, and zippers.

22 **"Clothing accessories or equipment"** means incidental items worn on the person or in
23 conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and
24 may be taxed differently than apparel within the definition of "clothing," "sport or recreational
25 equipment," and "protective equipment." The following list contains examples and is not
26 intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

- 27 A. Briefcases;
- 28 B. Cosmetics;
- 29 C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- 30 D. Handbags;

- 1 E. Handkerchiefs;
- 2 F. Jewelry;
- 3 G. Sun glasses, non-prescription;
- 4 H. Umbrellas;
- 5 I. Wallets;
- 6 J. Watches; and
- 7 K. Wigs and hair pieces.

8 **"Protective equipment"** means items for human wear and designed as protection of the wearer
9 against injury or disease or as protections against damage or injury of other persons or property
10 but not suitable for general use. "Protective equipment" are mutually exclusive of and may be
11 taxed differently than apparel within the definition of "clothing," "clothing accessories or
12 equipment," and "sport or recreational equipment." The following list contains examples and is
13 not intended to be an all-inclusive list. "Protective equipment" shall include:

- 14 A. Breathing masks;
- 15 B. Clean room apparel and equipment;
- 16 C. Ear and hearing protectors;
- 17 D. Face shields;
- 18 E. Hard hats;
- 19 F. Helmets;
- 20 G. Paint or dust respirators;
- 21 H. Protective gloves;
- 22 I. Safety glasses and goggles;
- 23 J. Safety belts;
- 24 K. Tool belts; and
- 25 L. Welders gloves and masks.

26 **"Sport or recreational equipment"** means items designed for human use and worn in
27 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport
28 or recreational equipment" are mutually exclusive of and may be taxed differently than apparel
29 within the definition of "clothing," "clothing accessories or equipment," and "protective

1 equipment.” The following list contains examples and is not intended to be an all-inclusive list.

2 “Sport or recreational equipment” shall include:

3 A. Ballet and tap shoes;

4 B. Cleated or spiked athletic shoes;

5 C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;

6 D. Goggles;

7 E. Hand and elbow guards;

8 F. Life preservers and vests;

9 G. Mouth guards;

10 H. Roller and ice skates;

11 I. Shin guards;

12 J. Shoulder pads;

13 K. Ski boots;

14 L. Waders; and

15 M. Wetsuits and fins.

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COMPUTER RELATED

18 “**Computer**” means an electronic device that accepts information in digital or similar form and

19 manipulates it for a result based on a sequence of instructions.

20 “**Computer software**” means a set of coded instructions designed to cause a “computer” or

21 automatic data processing equipment to perform a task.

22 “**Delivered electronically**” means delivered to the purchaser by means other than tangible

23 storage media.

24 “**Electronic**” means relating to technology having electrical, digital, magnetic, wireless, optical,

25 electromagnetic, or similar capabilities.

26 “**Load and leave**” means delivery to the purchaser by use of a tangible storage media where the

27 tangible storage media is not physically transferred to the purchaser.

28 “**Prewritten computer software**” means “computer software,” including prewritten upgrades,

29 which is not designed and developed by the author or other creator to the specifications of a

30 specific purchaser. The combining of two or more “prewritten computer software” programs or

1 prewritten portions thereof does not cause the combination to be other than “prewritten computer
2 software.” “Prewritten computer software” includes software designed and developed by the
3 author or other creator to the specifications of a specific purchaser when it is sold to a person
4 other than the specific purchaser. Where a person modifies or enhances “computer software” of
5 which the person is not the author or creator, the person shall be deemed to be the author or
6 creator only of such person’s modifications or enhancements. “Prewritten computer software” or
7 a prewritten portion thereof that is modified or enhanced to any degree, where such modification
8 or enhancement is designed and developed to the specifications of a specific purchaser, remains
9 “prewritten computer software;” provided, however, that where there is a reasonable, separately
10 stated charge or an invoice or other statement of the price given to the purchaser for such
11 modification or enhancement, such modification or enhancement shall not constitute “prewritten
12 computer software.”

13 A member state may exempt “prewritten computer software” “delivered electronically” or by
14 “load and leave.”

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16 **FOOD AND FOOD PRODUCTS**

17 “**Alcoholic Beverages**” means beverages that are suitable for human consumption and contain
18 one-half of one percent or more of alcohol by volume.

19 “**Candy**” means a preparation of sugar, honey, or other natural or artificial sweeteners in
20 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
21 drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no
22 refrigeration.

23 “**Dietary supplement**” means any product, other than “tobacco,” intended to supplement the
24 diet that:

25 A. Contains one or more of the following dietary ingredients:

- 26 1. A vitamin;
- 27 2. A mineral;
- 28 3. An herb or other botanical;
- 29 4. An amino acid;
- 30 5. A dietary substance for use by humans to supplement the diet by increasing the total
31 dietary intake; or

1 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
2 described in above; and

3 B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not
4 intended for ingestion in such a form, is not represented as conventional food and is not
5 represented for use as a sole item of a meal or of the diet; and

6 C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts"
7 box found on the label and as required pursuant to 21 C.F.R § 101.36.

8 **“Food and food ingredients”** means substances, whether in liquid, concentrated, solid, frozen,
9 dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed
10 for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic
11 beverages” or “tobacco.” A member state may exclude “candy,” “dietary supplements” and
12 “soft drinks” from this definition, which items are mutually exclusive of each other.

13 Notwithstanding the foregoing requirements of this definition or any other provision of the
14 Agreement, a member state may maintain its tax treatment of food in a manner that differs from
15 the definitions provided herein, provided its taxation or exemption of food is based on a
16 prohibition or requirement of that state’s Constitution that exists on the effective date of the
17 Agreement.

18 **“Food sold through vending machines”** means food dispensed from a machine or other
19 mechanical device that accepts payment.

20 **“Prepared food”** means:

21 A. Food sold in a heated state or heated by the seller;

22 B. Two or more food ingredients mixed or combined by the seller for sale as a single item;
23 or

24 C. Food sold with eating utensils provided by the seller, including plates, knives, forks,
25 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
26 packaging used to transport the food.

27 “Prepared food” in B does not include food that is only cut, repackaged, or pasteurized by the
28 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring
29 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,
30 part 401.11 of its Food Code so as to prevent food borne illnesses.

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The following items may be taxed differently than “prepared food” and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under “food and food ingredients.”

1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
2. Food sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

Substances within “food and food ingredients” may be taxed differently if sold as “prepared food.” A state shall tax or exempt from taxation “candy,” dietary supplements,” and “soft drinks” that are sold as “prepared food” in the same manner as it treats other substances that are sold as “prepared food.”

“**Soft drinks**” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

“**Tobacco**” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

HEALTH-CARE

“**Drug**” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

- A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- C. Intended to affect the structure or any function of the body.

A member state may independently:

- 1 A. Limit the definition of “drug” to human use (as opposed to both human and animal use)
- 2 in the administration of its exemption;
- 3 B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that
- 4 no prescription is required, even if a state requires a prescription under its exemption for
- 5 drugs;
- 6 C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and
- 7 other medical facilities;
- 8 D. Determine the taxability of free samples of drugs; and
- 9 E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment
- 10 of bundled transactions is not otherwise defined in the Agreement.

11 **“Durable medical equipment”** means equipment including repair and replacement parts for
12 same, but does not include “mobility enhancing equipment,” which:

- 13 A. Can withstand repeated use; and
- 14 B. Is primarily and customarily used to serve a medical purpose; and
- 15 C. Generally is not useful to a person in the absence of illness or injury; and
- 16 D. Is not worn in or on the body.

17 A member state may limit its exemption to “durable medical equipment” used for home use only.
18 A member state may limit the application of this definition by requiring a “prescription,” or limit
19 an exemption based on Medicare or Medicaid payments or reimbursements.

20 **“Grooming and hygiene products”** are soaps and cleaning solutions, shampoo, toothpaste,
21 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items
22 meet the definition of “over-the-counter-drugs.”

23 **“Mobility enhancing equipment”** means equipment including repair and replacement parts to
24 same, but does not include “durable medical equipment,” which:

- 25 A. Is primarily and customarily used to provide or increase the ability to move from one
- 26 place to another and which is appropriate for use either in a home or a motor vehicle;
- 27 and
- 28 B. Is not generally used by persons with normal mobility; and
- 29 C. Does not include any motor vehicle or equipment on a motor vehicle normally provided
- 30 by a motor vehicle manufacturer.

1 A member state may limit the application of this definition by requiring a “prescription,” or limit
2 an exemption based on Medicare or Medicaid payments or reimbursements.

3 **“Over-the-counter-drug”** means a drug that contains a label that identifies the product as a drug
4 as required by 21 C.F.R. § 201.66. A member state may exclude “grooming and hygiene
5 products” from this definition. The “over-the-counter-drug” label includes:

- 6 A. A “Drug Facts” panel; or
- 7 B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the
8 compound, substance or preparation.

9 **“Prescription”** means an order, formula or recipe issued in any form of oral, written, electronic,
10 or other means of transmission by a duly licensed practitioner authorized by the laws of the
11 member state.

12 **“Prosthetic device”** means a replacement, corrective, or supportive device including repair and
13 replacement parts for same worn on or in the body to:

- 14 A. Artificially replace a missing portion of the body;
- 15 B. Prevent or correct physical deformity or malfunction; or
- 16 C. Support a weak or deformed portion of the body.

17 A member state may exclude any or all of the following from the definition of “prosthetic
18 device:”

- 19 A. Corrective eyeglasses;
- 20 B. Contact lenses;
- 21 C. Hearing aids; and
- 22 D. Dental prosthesis.

23 A member state may limit the application of this definition by requiring a “prescription,” or limit
24 an exemption based on Medicare or Medicaid payments or reimbursements.

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PART III

Reserved for Sales Tax Holiday Definitions