

CAP Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING between the INTERNAL REVENUE SERVICE and

Name of Corporation

TIN

For Tax Year Ending

_____ hereinafter referred to as "the Taxpayer," and the Internal Revenue Service (IRS) (collectively referred to as the "Parties") desire to enter into this Memorandum of Understanding (MOU) for the Compliance Assurance Process (the CAP). By executing this MOU, the Parties agree to work diligently and in good faith toward the successful completion of the CAP.

(A) Objectives

The CAP employs real-time issue resolution to improve federal tax compliance. In the CAP, the Parties work contemporaneously to achieve federal tax compliance by resolving all or most tax positions prior to filing of a tax return. Successful conclusion of the CAP allows the IRS to achieve an acceptable level of assurance regarding the accuracy of the Taxpayer's filed tax return and to eliminate or substantially reduce the need for a traditional examination.

The IRS' participation in the pre-filing review during the CAP does not constitute an examination or inspection of the Taxpayer's books of account for purposes of IRC section 7605(b).

(B) Account Coordinator

At the outset of the CAP, the IRS will assign an Account Coordinator (AC) to the Taxpayer. The AC serves as the primary IRS representative, facilitates compliance, and provides a single point of contact for all federal tax matters. If the AC is unable to continue to act in the role of the AC or the IRS determines the need to replace the AC, the IRS will notify the Taxpayer and promptly assign a successor. Changes in IRS personnel will not alter or void this MOU.

(C) Duration of the Memorandum of Understanding in the CAP

This MOU is applicable to the tax year ending _____ (hereinafter known as "the CAP Year") and becomes effective immediately upon its execution by both Parties. Once selected into the CAP, the Taxpayer must continue to meet the CAP criteria and fulfill all the CAP expectations. The Parties must adhere to this MOU until all of the items or issues raised during the CAP pre-filing review and the post-filing examination are concluded in Large Business & International (LB&I), the Taxpayer is terminated from the CAP, or the Taxpayer elects to discontinue participation in the CAP. The Parties must enter into a new MOU for each CAP Year.

(D) Roles, Responsibilities and Communication

1. Taxpayer Disclosures

The IRS and the Taxpayer will work together on a contemporaneous basis toward the goal of achieving an acceptable level of tax compliance prior to the filing of the federal income tax return. Non-income tax returns, such as, Forms 940, 941, 5500, 720, 1042 are not included in the CAP and may be the subject of

traditional post-filing examinations. Complex transfer pricing issues may require additional time beyond the typical CAP timeframe to reach an agreement, and may result in a partial acceptance letter. The Taxpayer will make open, comprehensive, and contemporaneous disclosures of its completed business transactions, including material transfer pricing issues. In addition to disclosing the existence of a transaction, the taxpayer will provide its proposed return reporting position and a description of the steps that have a material effect on its federal income tax liability. Further, the Taxpayer must disclose any other item that could have a material effect on its federal income tax liability and its proposed return reporting position with regard to those items that meet the materiality thresholds agreed as described in Section D2 of this MOU.

In addition to transactions and other material items or description of steps within the transactions described above, the Taxpayer will provide the IRS with: the industry overview, current legal, accounting and tax organizational charts reflecting all related entities and the flow of relevant information involving those entities, financial performance information, information on any anticipated significant events that will affect reporting for the tax year, access to accounting records and systems, and necessary resources for disclosure of requested information.

For purposes of the CAP, a matter that has a material effect includes, but is not limited to, (1) those items the Taxpayer will or would be required to reserve for purposes of any financial statement for the CAP Year and (2) those items the Taxpayer anticipates that it will or would be required to reserve for purposes of any financial statement for any period subsequent to the CAP Year.

The Taxpayer will provide information and documentation proactively and as requested by the AC. The AC will promptly review all relevant information provided and will communicate to the Taxpayer whether (1) additional information is required; (2) the IRS disagrees with the Taxpayer's proposed tax treatment; or (3) the proposed tax treatment is appropriate. On a quarterly basis, the AC will prepare a list of disclosures made by the Taxpayer in accordance with Section D1 of this MOU during that quarter. This list will be submitted to the Taxpayer for signature (by an officer authorized to sign the tax return or an individual authorized by the Taxpayer in its letter per Section D3 of this MOU) to verify that all material disclosures have been made as required under this MOU.

The Parties will discuss the scope of any necessary Information Document Requests (IDRs) in an open and honest manner and reach mutually agreed upon due dates for the responses. If for any reason the Taxpayer is unable to comply with the due date of an IDR, the Taxpayer will notify the IRS immediately and explain the circumstances for the delay, and the Parties will agree to a revised due date. The IRS will promptly evaluate the IDR responses for completeness and, after a thorough analysis of the responses, will discuss the results of the review with the Taxpayer. The Parties should strive for expediency and urgency during this real-time compliance review process in order to meet the CAP program (the Program) objectives. With respect to IDRs, the Internal Revenue Manual (IRM) Part 4.46.4.4, "Information Document Request Management Process" applies.

The Taxpayer will provide the AC with tax schedules and computations for all rollover and recurring adjustments from any previously examined and closed tax period(s) that impact the CAP Year return, including the impact of any closing agreements or Appeals settlements. The Taxpayer shall provide these initial disclosures within 15 business days of the CAP Opening Conference. The Parties will discuss the effect of such resolutions on any unexamined tax year(s) and on the CAP Year and incorporate the changes as appropriate.

Taxpayers in the CAP Program that have already submitted a request for an Advance Pricing Agreement under Revenue Procedure 2006-9 (or successor thereto) and/or a request for assistance from the U.S. Competent Authority under Revenue Procedure 2006-54 (or successor thereto) should notify their AC or CAP Team Coordinator of the existence of such requests. The AC or CAP Team Coordinator will then contact the appropriate Advance Pricing and Mutual Agreement (APMA) Team or the Treaty Assistance and Interpretation Team (TAIT) lead or analyst to ensure ongoing coordination between the CAP and APMA/TAIT Programs.

CAP taxpayers are encouraged to seek Advance Pricing Agreements to cover recurring controlled transactions. Taxpayers with ongoing transfer pricing issues may contact the AC to request a meeting with APMA to discuss the benefits of entering into an APA.

The Taxpayer will provide notice and documentation of any subsequent resolution(s) of items or issues in prior exam cycles within 15 business days of the agreed determination(s). The Parties will discuss the effect of such resolutions on any unexamined tax year(s) and on the CAP Year and incorporate the changes as appropriate.

The Taxpayer will immediately notify the AC of any investigation initiated on the Taxpayer by a federal or state agency. The notification should include: a detailed explanation of the investigation, an evaluation of whether access to corporate books and records could be limited, and any material tax item(s) that could result from the investigation.

The Taxpayer will notify the AC or CAP Team Coordinator of any foreign initiated examinations, pending adjustments, or assessments that may impact income, expenses and/or credits reported in the United States, for the CAP year or any prior tax years, and will update such information on a quarterly basis as the information becomes available.

All information provided to the IRS in connection with the CAP is return information protected from disclosure by the confidentiality provisions of IRC section 6103.

2. Establishing and Adhering to Materiality Thresholds and Identifying Items for Review

The Parties will jointly determine the scope of the CAP review, including materiality thresholds. Materiality thresholds are used as a guide by both Parties in determining the transactions to review. The Parties will openly discuss situations where exceptions to the materiality threshold may be warranted. However, the ultimate decision of identifying transactions, items and issues for the compliance review remains within the discretion of the IRS.

Further, materiality thresholds may be reconsidered during the CAP. The materiality thresholds will be documented in the CAP Plan and apply only to the relevant CAP Year. The CAP Plan will be discussed with and provided to the Taxpayer.

Notwithstanding the materiality thresholds and issue identification procedures discussed above, the IRS may consider for a compliance review the following items regardless of when or how they are identified: tax shelters, listed transactions, transactions of interest, fraudulent items, LB&I compliance initiatives, Industry Director and Operating Division Directives, coordinated issues, and emerging issues. The Parties reserve the right to correct obvious computational/mathematical or accounting errors/omissions that are not technical or legal in nature.

Materiality thresholds are used in the CAP so that the Taxpayer knows which completed business transactions should be disclosed. Materiality thresholds are not relevant to the adjustments that may be made with regard to the tax consequences of such transactions. Adjustments to the amounts to be reported on the return for completed transactions that are reviewed as part of the CAP, may be made that are below the materiality thresholds. If the issues are not resolved before the return is filed, these adjustments may be made to the return after it is filed.

3. Communication between Taxpayer and the IRS

Honest and open communication is critical to the success of the CAP. In addition, collaborative interaction combined with a sense of urgency is necessary to meet the objective of reaching resolution on the federal income tax liability prior to the filing of the tax return. Simultaneously with the execution and delivery of this MOU by the Taxpayer, the Taxpayer will attach a letter of authorization to this MOU designating personnel to act as points of contact for gathering information and resolving questions or issues. The IRS Territory Manager will attend the CAP Opening Conference. During the CAP Opening

Conference, the IRS will provide a list of IRS participants on the CAP Team to the Taxpayer. The IRS team will include but may not be limited to the AC, the Team Manager, the Territory Manager and the Director, Field Operations (DFO).

The Parties will interact on a regular basis. Regular periodic (weekly, monthly, or, at a minimum, quarterly) meetings should be held to discuss and provide relevant information, documentation and interviews, and, as needed, to discuss the status of the CAP and resolve concerns as they arise during the course of the CAP. Each Party will have in attendance representatives with authority to resolve any problems, issues or concerns being addressed. The IRS Territory Manager will participate in the opening conference and one status meeting per quarter. In addition, the Parties will collectively discuss and provide feedback on level of cooperation and transparency from each Parties perspective.

4. Level of Review by the IRS

During the CAP, the IRS, at its discretion, may reduce the level of review based on the complexity and number of issues, and the Taxpayer's history of compliance, cooperation and transparency in the CAP. In those circumstances, the Taxpayer would remain in the CAP and would receive the appropriate letter of acceptance before filing its tax return.

In addition, the IRS, at its discretion, may determine that the Taxpayer should be in the Compliance Maintenance (CM) phase. In this phase, the IRS will reduce the level of review based on the complexity and number of issues, and the Taxpayer's history of compliance, cooperation and transparency in the CAP. In the CM phase, the Taxpayer must continue making open, comprehensive, and contemporaneous disclosures of its completed business transactions. The Taxpayer must also provide a description of the steps within the transactions that have a material effect on its federal income tax liability and other material items and pertinent facts regarding such items that occur during the CAP Year that meet the materiality thresholds agreed to in this MOU. Further, the Taxpayer must disclose its proposed tax positions with regard to these disclosures. The IRS may move the Taxpayer between the CAP phase and the CM phase on a yearly basis depending on the complexity and/or volume of transactions or other factors.

(E) Issue Resolution Agreement

The Parties will work together during the CAP to identify and resolve issues. The Parties will regularly engage in discussions for the purpose of resolving factual or technical differences. After the Parties have completely addressed an item or issue, the IRS will draft an Issue Resolution Agreement (IRA) for each item or issue that is resolved in the CAP, except in the case of items or issues that are resolved through simple factual clarification. Upon the issuance of each IRA, the Parties will mutually agree to a timely response date. In its response, the Taxpayer will indicate its agreement or disagreement with the IRA. If the Taxpayer is in disagreement with the IRA, it will state all relevant facts and legal arguments for its position(s). If for any reason the Taxpayer is unable to comply with the due date of an IRA, the Taxpayer will notify the IRS immediately and explain the circumstances for the delay, and the Parties will agree to a revised due date. At the end of the CAP Year, and as deemed appropriate by the IRS, the AC should incorporate the resolution of the agreed upon issues in Form(s) 906, Closing Agreement(s), based on the completed IRA(s). Issues that are resolved through requests for simple factual clarification or that merely require the Taxpayer to expand or elaborate on information that was previously provided by the Taxpayer do not require an IRA or a Form 906, Closing Agreement.

(F) Unagreed Issues

If the Taxpayer does not agree with the proposed resolution, the Taxpayer and the IRS may use existing issue resolution processes. These processes will be available on an expedited basis. The IRS will participate in Fast Track Settlement (see Revenue Procedure 2003-40) if requested by the Taxpayer and not otherwise precluded.

(G) The CAP Conclusion and Post-filing Review

If, at the conclusion of the pre-filing stage of the CAP, the Taxpayer has fully complied with the terms of the MOU and all identified items and issues have been resolved through closing agreement(s) and/or IRA(s), the IRS will provide the Taxpayer with a Full Acceptance Letter. A Full Acceptance Letter constitutes written confirmation that, subject to the completion of a post-filing review of the return, the IRS will accept the Taxpayer's return if it is filed consistent with those resolutions and no additional items or issues are discovered during the post-filing review that were not previously disclosed.

If, at the conclusion of the pre-filing stage of the CAP, the Taxpayer has fully complied with the terms of the MOU, but the IRS and the Taxpayer cannot resolve all identified items and issues prior to filing the tax return, the IRS will provide the Taxpayer with a Partial Acceptance Letter. A Partial Acceptance Letter constitutes written confirmation that, subject to the completion of a post-filing review of the return, the IRS will accept the Taxpayer's return as to the resolved items and issues if the return is filed consistent with those closing agreement(s) and IRA(s).

After the Taxpayer files its tax return, the AC will secure a copy of the return and initiate the post-filing review. During the post-filing review, the Parties will jointly review the filed return to verify that all resolved items and issues were reported as agreed and that all disclosures were made in accordance with this MOU. In cases where a Full Acceptance Letter is issued, the goal for completing the post-filing review of the filed return is within 90 days of the filing of the return. If the return is not consistent with the terms of the closing agreement(s) and/or IRA(s), there are identified items or issues that are not resolved prior to filing the tax return, or there are material items on the return that were not adequately disclosed, the IRS will examine any such issues through the traditional examination process. If the IRS makes a decision not to review an adequately disclosed transaction during the pre-filing stage and the filed return reports the transaction as disclosed by the Taxpayer, the IRS will generally not review the transaction during the post-filing review. The Taxpayer will retain access to consideration by the Office of Appeals with respect to any traditional examination that is conducted.

If the post-filing review indicates that all material items and issues were disclosed and resolved, the IRS will issue a No Change Letter concluding the examination of the Taxpayer's books of account for purposes of IRC section 7605(b).

Within 30 days of the date the return is filed, the Taxpayer will provide to the AC a Post-filing Representation executed by an officer of the Taxpayer with authority to sign the Taxpayer's U.S. income tax returns. The Post-filing Representation should be in the form attached hereto as Attachment 1.

(H) Termination or Withdrawal from the CAP

If the taxpayer or the IRS is unable, or has failed to comply with responsibilities and obligations contained in this MOU, the parties will resolve their disputes by following procedures in IRM 4.51.1 These procedures will be available on an expedited basis. If the IRS determines that the Taxpayer failed to adhere to the terms of this MOU, the Territory Manager assigned to the case will issue a written notice of the IRS' concerns. If the concerns are not resolved within 30 days after receiving such notification, the DFO assigned to the case will issue a Termination Letter to the Taxpayer and the Taxpayer's participation in the Program will cease. The IRS will then conduct a traditional post-filing examination of the Taxpayer's return after it is filed.

Quarterly, the CAP Team Manager (with input from the other members of the CAP Team) and the Taxpayer and/or its representative will assess and document transparency and cooperation. Meetings will be held to discuss the results of these assessments so any potential concerns can be addressed.

Examples of significant or consistent failures to adhere to the terms set forth in this MOU that will result in a Termination Letter include: (1) not adhering to IDR response times or providing non-responsive or incomplete responses to IDRs; (2) not engaging in meaningful or good faith item or issue resolution discussions; (3) failing to thoroughly disclose business transactions and material steps within the transactions required to be disclosed under Section D1 of this MOU; (4) failing to disclose a tax shelter or listed transaction; (5) failing to disclose an investigation or litigation that limits the IRS' access to current corporate records; and (6) not adhering to any other commitment included in this MOU.

If at any time the Taxpayer determines it cannot or will not comply with the expectations of this MOU, the Taxpayer may provide a written request to withdraw from the CAP. Upon receipt of such a request, the IRS will issue a Termination Letter to the Taxpayer and the Taxpayer's participation in the Program will terminate. The IRS will then conduct a traditional post-filing examination of the Taxpayer's return after it is filed.

(I) Claims and Joint Committee on Taxation Review

1. Claims

All potential refund claims must be brought to the attention of the AC as soon as the Taxpayer becomes aware that it has potential refund claims. All claims or requests for tentative refunds affecting federal income tax liability must be filed using Form 1120X or Form 1139. Claims should meet the standards of Treasury Regulation section 301.6402-2, which provides that a valid claim must:

- Have appropriate supporting evidence;
- Set forth in detail each ground upon which credit or refund is claimed;
- Present facts sufficient to apprise the IRS of the exact basis for the claim; and;
- Contain a written declaration that it is made under penalties of perjury.

2. Joint Committee on Taxation

If it is determined prior to the filing of the CAP Year return that the tax return, when filed, will result in a refund claim subject to review by the Joint Committee on Taxation (JCT), IRC section 6405 will apply. If IRC section 6405 applies, closing agreements cannot be executed on behalf of the government until they have been reviewed and approved by the JCT. See IRM 4.36.3.6.2. Pursuant to IRM 8.13.1.4.6.1, closing agreements signed by the Taxpayer will be submitted as part of the original Joint Committee report. If the JCT takes no exception to the report and the proposed closing agreements, the appropriate operating division official may sign the closing agreements.

If a Full Acceptance Letter was issued prior to filing the return and the post-filing review confirms that the return was filed consistent with the pre-filing resolutions, and there were no additional items or issues discovered on the return as filed, the AC will prepare the documents necessary for a Joint Committee Specialist to perform a review, prepare the Joint Committee report and submit such report to the JCT. When the JCT has completed its review and sent clearance notification to the IRS, the closing agreements will be executed by the IRS. For a return in which a Partial Acceptance Letter was issued prior to filing the return, once all of the remaining items or issues have been fully resolved, the Joint Committee report will be forwarded to the JCT. When the JCT has completed its review and sent clearance notification to the IRS, the closing agreements will be executed by the IRS.

Agreement of MOU

The undersigned representatives of the Parties hereby indicate their mutual agreement to these objectives, responsibilities and procedural guidelines. It is understood by the Parties that this document is intended to govern the conduct of the CAP, but is not a legally enforceable agreement.

Signatures and dates:

For the Taxpayer (Corporate Officer authorized to sign Taxpayer's U.S. federal income tax return):

Title: _____

Date: _____

For the Internal Revenue Service:

LB&I Director, Field Operations

Date: _____

ATTACHMENT 1

Post-filing Representation by Taxpayer

Post-filing Representation by Taxpayer

To the best of the undersigned's knowledge and belief, and in accordance with Section G of the CAP Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and _____ (Taxpayer) dated _____, the undersigned represents that all completed transactions, including transfer pricing issues, and items that have a material effect on the Taxpayer's U.S. federal income tax liability for the tax year ended _____ have been disclosed. In addition, as of the date of this representation there are no remaining undisclosed transactions or tax positions for the tax year ended _____ related to the Taxpayer's U.S. federal income tax liability that would require the Taxpayer to report reserves for purposes of any financial statement for the CAP Year or any period subsequent to the CAP Year.

Signature and date:

(Corporate Officer authorized to sign Taxpayer's U.S. federal income tax return):

Title: _____

Date: _____