

# 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 and utilize resources more efficiently. In the CAP, the Parties work contemporaneously to achieve federal tax compliance by resolving tax positions prior to the 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 substantially shorten the time for a post-filing examination. Please note, tax positions will not be reviewed or resolved, and no assurances will be provided for Taxpayers in the Bridge phase.

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 replacement. 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 eligibility and suitability criteria and fulfill all the CAP expectations. The Parties must adhere to this MOU until all the 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. Scope of the CAP review**

The IRS and the Taxpayer will work together on a cooperative, transparent and 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 separate post-filing examinations.

For all new CAP taxpayers, any unexamined return with an open statute will be risk assessed as part of the required compliance check for the first CAP year. If the examination team determines that a material issue should be examined, the return with that issue may be placed under examination. Any unexamined returns that are placed under examination will be treated as 'one filed' return for purposes of the return criterion. These returns must be closed by the end of the second CAP year or the applicant may not be eligible to participate in the third CAP year.

## **2. Issue Disclosures**

The Taxpayer will make open, comprehensive, and contemporaneous disclosures of its material issues. A material issue is defined as any recurring or repeating issue that has a change exceeding the materiality thresholds, or any new issue that exceeds the materiality thresholds, or any other issue that is required to be reserved or reported on Schedule UTP. An issue is defined as a completed business transaction, a change in accounting method, or any other item that impacts the federal income tax liability.

Each issue disclosure must be in writing and must include a full description of each step in the process, including: the historical facts, surrounding circumstances, Taxpayer's proposed reporting position, and the tax law relied upon to determine this position.

To be considered contemporaneous, an issue must be fully disclosed within thirty (30) days of the transaction being completed or the issue having an impact on the federal income tax liability. To allow sufficient time for issue resolution in pre-filing, the latest date for the Taxpayer to submit disclosures is 90 days after the end of the tax year covered in this MOU. Disclosures received after this date will be accepted but may not be reviewed in pre-filing.

The AC will maintain an Issues List, which contains the material issues disclosed by the Taxpayer or identified by the IRS that both Parties have discussed and that will be reviewed. The Taxpayer is required to submit an initial Issues List with the CAP application. By the date of the Opening Conference, the parties will jointly determine which issues will be included on the Initial Issues List. Any disputes regarding which issues will be included on the Issues List will be elevated to the Territory Manager. However, the ultimate decision regarding which issues will be reviewed remains within the discretion of the IRS.

Not all material issues may be known at the time the Initial Issues List is completed. Additional material issues may be added to the Issues List during the CAP year by Taxpayer disclosure or IRS identification, but may only be added with the approval of the Territory Manager. If issues are added to the Issues List without consultation with the Taxpayer, the Taxpayer should elevate this situation to the Director of Field Operations (DFO).

Once an issue has been fully disclosed by the Taxpayer, the IRS will ordinarily have 90 days to complete the review and determine agreement or disagreement with the tax treatment. If additional time is required beyond 90 days to complete review of the issue, the Territory Manager in collaboration with the Issue Territory Manager (if applicable) may approve additional time. The IRS will promptly inform the Taxpayer of any approved time extensions.

If the tax treatment of an issue is unagreed between the Parties after 90 days from the date of full disclosure, or different period if an extension is approved, an application to Fast Track Settlement (FTS) may be made. If the IRS offers FTS, the Taxpayer must agree to FTS and both Parties will make a good faith attempt to resolve the disagreement. If an issue is still unagreed after FTS, the Taxpayer and IRS

may use other applicable issue resolution processes (For example, full submission to Appeals).

The Taxpayer will provide information proactively and as requested by the AC. In addition to the disclosures described above, the Taxpayer will provide the IRS with: industry overviews, 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 (as needed), and necessary resources for disclosure of requested information.

Returning CAP taxpayers that are non-U.S. publicly traded corporations and are not required to prepare and submit Forms 10-K, 10-Q, and 8-K to the Securities & Exchange Commission must provide the IRS with quarterly financial statements and audited annual financial statements for the entity that was accepted into the Program. These financial statements must be prepared in accordance with US GAAP.

Ordinarily, formal Information Documents Requests (IDRs) should not be required in CAP. Informal document requests should be sufficient and should help expedite the flow of information. If any IDRs are necessary, the Parties will discuss the scope 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 to meet the CAP program (the Program) objectives. With respect to IDRs, the Internal Revenue Manual (IRM) 4.46.4.6, "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 will provide these initial disclosures by the date of the 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.

The Taxpayer will provide an Initial Prior Year Material Intercompany Transactions Template (MITT) and a Global Tax Organization Chart (GTOC) by the 90<sup>th</sup> day after the end of the prior tax year using information for that year. For example, a MITT using information for calendar year 2019 will be due by March 31, 2020. If a new material transaction or a material change to an existing transaction occurs after the Initial Prior Year MITT is provided, the Taxpayer will provide an Interim Current Year MITT disclosing that transaction within 30 days of the change.

In addition, a Final Prior Year MITT will be provided when any prior year tax return has been filed. For example, a Final 2018 MITT will be provided by the filing date of the 2018 return and a Final 2019 MITT will be provided by the filing date of the 2019 return.

The MITT and the GTOC will be used by a Transfer Pricing Risk Team to help the CAP team determine the most appropriate treatment of Transfer Pricing issues for the Taxpayer. If it is deemed that the most appropriate treatment is an Advance Pricing Agreement (APA), the AC will schedule a meeting between the Taxpayer and the Advance Pricing and Mutual Agreement (APMA) Team to discuss the benefits of entering into an APA.

Taxpayers in the CAP Program that have already submitted a request for an APA under Revenue Procedure 2015-41 (or successor thereto) and/or a request for assistance from the U.S. Competent Authority under Revenue Procedure 2015-40 (or successor thereto) should notify their AC of the existence of such requests. The AC will then contact the appropriate APMA Team or the Treaty Assistance and Interpretation Team (TAIT) lead or analyst to ensure ongoing coordination between the CAP and APMA/TAIT Programs.

The Taxpayer is required to provide the CAP Research Credit Questionnaire (CRCQ) with the CAP application. The CRCQ will be updated by the Taxpayer on a contemporaneous basis during the CAP year to reflect any material changes. The CRCQ will be reviewed by the Research Credit Risk Review Team to assist the CAP team with selecting or deselecting Research Credit issues to review.

The Taxpayer will provide notice and documentation of any subsequent resolution(s) of 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 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.

### **3. Establishing and Adhering to Materiality Thresholds and Identifying Issues for Review**

The Taxpayer and IRS will jointly determine the scope of the CAP review, including materiality thresholds. Materiality thresholds are used as a guide by both Parties in determining issues to review. The Parties will openly discuss situations where exceptions to the materiality threshold may be warranted. However, the ultimate decision of identifying 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, LB&I Directives, 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 issues should be disclosed. Materiality thresholds are not relevant to the adjustments that may be made regarding the tax consequences of such issues. Adjustments to the amounts to be reported on the return for issues 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.

### **4. 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. There should be no communication barrier or filter between the IRS and the Taxpayer and a Taxpayer employee should be designated as the primary point of contact for the CAP review. Simultaneously with the execution and delivery of this

MOU by the Taxpayer, the Taxpayer will attach Form 2848 – Power of Attorney and Declaration of Representative to this MOU designating personnel to act as points of contact for gathering information and resolving questions or issues.

To aid communications and the flow of information, the Parties will agree to the exchange of secure email and will execute the Memorandum of Understanding Agreement to Use Secure Email, unless there are technical issues and/or prohibitive costs that do not allow the Taxpayer to enter into such agreement. If this is the case, the Taxpayer will provide the IRS with a written explanation detailing why they are unable to enter into this agreement.

During the 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, Specialist Revenue Agents, the Team Manager, the Territory Manager and the Director, Field Operations (DFO).

The Parties will interact on a regular basis. Regular interaction is critical to the success of the CAP and can take many forms including telephone, email, and in-person meetings. Meetings should be held as needed to discuss and provide relevant information, documentation and interviews, and to discuss the status of the CAP and resolve any concerns that arise. At the meetings, 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 for new CAP taxpayers, and as needed for returning taxpayers but should normally attend at least one meeting per year. The IRS DFO is not required to attend meetings (unless specific issues occur that need to be resolved) but should normally communicate with the Taxpayer at least two times in each CAP cycle.

Cooperation and Transparency from both Parties is a critical element in the success of the CAP. When there is an issue with cooperation and/or transparency or when the terms of this MOU are not being adhered to by either the Taxpayer or the IRS, the Parties will meet to discuss how to resolve such issues. These meetings should be held contemporaneously and documented using the Assessment of Cooperation and Transparency Form.

## **5. 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 these circumstances, the Taxpayer will remain in the CAP and will receive the appropriate assurance letter at the conclusion of the post-filing review.

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 material issues, and the Taxpayer's history of compliance, cooperation and transparency in the CAP. In the CM phase, the Taxpayer must continue making the same open, comprehensive, and contemporaneous disclosures as they would in the CAP phase. 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.

In addition, the IRS, at its discretion, may determine that the Taxpayer should be in the Bridge phase. In this phase, the IRS will not accept any disclosures, will not conduct any reviews, and will not provide any letters of assurance for the Bridge year. If the Taxpayer wants assurance on an issue while in the Bridge phase, they may apply for a Pre-Filing Agreement (PFA), if the issue is eligible for a PFA.

The Bridge phase is intended for Taxpayers with a low risk of non-compliance who are cooperative and transparent with few, if any, material issues that require resolution. When in the Bridge phase, the Taxpayer is expected to exhibit the same level of compliance they would if in the CAP or CM phases.

When in the Bridge phase, the Taxpayer remains in the CAP program and will be considered a returning taxpayer if applying for the subsequent CAP year. Bridge years will not be considered as open years

under the CAP open year eligibility criteria.

### **(E) Issue Resolution Agreement**

The Parties will work together during the CAP to identify and resolve issues. The Parties will regularly engage in discussions to resolve factual or technical differences. After the Parties have completely addressed an issue, the IRS may draft an Issue Resolution Agreement (IRA) for that issue. IRAs are only required to be drafted for issues where the IRS does not agree with the Taxpayer's position, or when a Closing Agreement is necessary. The issuance of an IRA when the IRS agrees with the Taxpayer's position is optional, and no IRA will be issued for 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 disagrees 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. Ordinarily, Closing Agreements are not necessary for resolving CAP issues. However, 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).

### **(F) The CAP Conclusion and Post-Filing Review**

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.

If, after the receipt and review of the Post-Filing Representation, the IRS determines that the taxpayer has fully complied with the terms of the MOU and all material issues have been disclosed and resolved through simple factual clarification, IRA, or closing agreement, the IRS will provide the Taxpayer with a Full Acceptance Letter. The Full Acceptance Letter constitutes written confirmation that, subject to the completion of the post-filing review of the return, the IRS will accept the Taxpayer's return if it is filed consistent with the resolutions of the resolved issues and no additional material issues or correlative adjustments are discovered during the post-filing review that were not previously disclosed.

If, after the receipt and review of the Post-Filing Representation, the IRS determines that the Taxpayer did not disclose all material issues or that the IRS and the Taxpayer did not resolve all identified material issues, the IRS will provide the Taxpayer with a Partial Acceptance Letter. The Partial Acceptance Letter constitutes written confirmation that, subject to the completion of the post-filing review of the return, the IRS will accept the Taxpayer's return but for the undisclosed and unresolved material issues and correlative adjustments, if the return is filed consistent with the resolutions of the resolved issues and no additional material issues and correlative adjustments are discovered during the post-filing review that were not previously disclosed.

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 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 sixty (60) days of the filing of the return.

If the return is not consistent with simple factual clarification, IRA(s) or closing agreement(s), there are identified issues that are not resolved prior to filing the tax return, or there are material issues on the return that were not adequately disclosed, the IRS will examine any such issues through the traditional post-filing examination process. If the IRS decides not to review an adequately disclosed issue 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 post-filing examination that is conducted.

If the post-filing review indicates that all material 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).

## **(G) Termination or Withdrawal from the CAP**

If the Taxpayer or the IRS is unable or has failed to comply with the responsibilities and obligations contained in this MOU, the parties will attempt to resolve their concerns. If the concerns cannot be resolved and the IRS determines that the Taxpayer continues to fail 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 may then conduct a traditional post-filing examination of the Taxpayer's return after it is filed.

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 D2 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; (6) frequently filing claims or requesting Appeals; and (7) 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 may then conduct a traditional post-filing examination of the Taxpayer's return after it is filed.

## **(H) 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 states that if a Taxpayer is required to file a claim for refund or credit using a particular form, then the claim, together with appropriate supporting evidence, will be filed in a manner consistent with such form, form instructions, publications, or other guidance found on the IRS.gov Website.

### **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, any 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 8.13.1.4.4.1, 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 and the post-filing review confirms that the return was filed consistent with the pre-filing resolutions, and there were no additional 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, any closing agreements will be executed by the IRS. For a return in which a Partial Acceptance Letter was issued, once all the remaining 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, any closing agreements will be executed by the IRS.

**Agreement of MOU**

The undersigned representatives of the Parties hereby indicate their 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**

In accordance with Section F of the CAP Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and \_\_\_\_\_ (Taxpayer) dated \_\_\_\_\_, the undersigned represents for the tax year ended \_\_\_\_\_ that:

- a. all material issues [except those (if any) described in attachment 1a] were fully disclosed and resolved on the filed return
  
- b. all resolved issues [except those (if any) described in attachment 1b] were reported as agreed on the filed return

Under penalties of perjury, I declare that I have examined this letter and accompanying documents, if any, and that, to the best of my knowledge and belief, this letter contains all relevant information, and that the representations in this letter are true, correct, and complete.

Signature and Date:  
(Corporate Officer authorized to sign taxpayer's U.S. federal income tax return)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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



**ATTACHMENT 1b**

List any resolved issues that were not reported on the filed return as agreed in pre-filing through factual clarification, IRA(s) or Closing Agreement(s)