

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**

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**Section 801: ENTRY INTO AGREEMENT**

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

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

17  
18

**Section 802: CERTIFICATE OF COMPLIANCE**

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

22  
23

**Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES**

24 Each member state shall annually re-certify that such state is in compliance with the Agreement. Each  
25 member state shall make a re-certification to the governing board on or before August 1 of each year  
26 after the year of the state's entry. In its annual re-certification, the state shall include any changes in its  
27 statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the  
28 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.

28

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.

ARTICLE X  
ISSUE RESOLUTION PROCESS

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

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

**Section 1002: PETITION FOR RESOLUTION**

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

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

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

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

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

Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has 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.

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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.

APPENDIX A  
STREAMLINED SALES AND USE TAX AGREEMENT  
PETITION FOR MEMBERSHIP

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

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

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

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

14 **WHEREAS**, the State of \_\_\_\_\_ levies a sales tax and levies a use tax. "Sales  
15 tax" means the tax levied under (CITE SPECIFIC STATUTE) and "use tax" means the tax  
16 levied under (CITE SPECIFIC STATUTE).

17 **NOW**, the undersigned representative hereby petitions the governing board of the Streamlined  
18 Sales and Use Tax Agreement (or Co-Chairs of the Streamlined Sales Tax Implementing States)  
19 for membership into the Agreement.  
20  
21

22 \_\_\_\_\_  
23 NAME

24 \_\_\_\_\_  
25 TITLE

26 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.

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

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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.

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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.

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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.

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**PART II**  
**Product Definitions**

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**CLOTHING**

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

A. “Clothing” shall include:

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

16  
17 **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.”

15

## 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.

1  
2 The following items may be taxed differently than “prepared food” and each other, if sold  
3 without eating utensils provided by the seller, but may not be taxed differently than the same  
4 item when classified under “food and food ingredients.”

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

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

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

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

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#### HEALTH-CARE

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

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

28  
29 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**