

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Agreement”) is entered into this 5th day of October, 2004, by and between the State of New York through the Attorney General of the State of New York, (“New York”), the State of Maryland through the Attorney General of the State of Maryland (“Maryland”), the People of the State of Illinois through the Attorney General of the State of Illinois (“Illinois”), R.J. Reynolds Tobacco Company and Brown & Williamson Tobacco Corporation (now known as Brown & Williamson Holdings, Inc.) (“Brown & Williamson”) (all above-referenced entities are collectively referred to herein as “the Parties”).

WHEREAS, New York, Maryland and Illinois have brought the following motions against Brown & Williamson for an injunction, sanctions, and other relief alleging that Brown & Williamson’s 2004 KOOL MIXX Promotion violated the November 23, 1998 Master Settlement Agreement (“MSA”) and/or the related Consent Decrees: June 15, 2004 Order to Show Cause in *State of New York v. Philip Morris, Inc., et al.*, No. 400361/97, pending in the Supreme Court of the State of New York; June 29, 2004 Motion to Enforce the Master Settlement Agreement in *State of Maryland v. Philip Morris, Inc., et al.*, No. 96122017/CL211487, pending in the Circuit Court for Baltimore City; and the July 22, 2004 Motion to Enforce in *People of State of Illinois v. Philip Morris, Inc., et al.*, No. 96 L 13146 (subsequently re-numbered No. 02 L 423), pending in the Circuit Court of Cook County, Illinois (each described separately herein as an “Action” and collectively as “the Actions”); and

WHEREAS, Brown & Williamson has denied any violation of the Master Settlement Agreement and disputes the allegations made in the Actions; and

WHEREAS, on July 30, 2004, Brown & Williamson's U.S. tobacco business was combined with R.J. Reynolds Tobacco Company and is now owned by a new corporation that is also named R.J. Reynolds Tobacco Company; and

WHEREAS, New York, Maryland and Illinois, and Brown & Williamson and R.J. Reynolds Tobacco Company, wish to completely settle, release, and discharge all claims that were or could have been asserted in the Actions relating to Brown & Williamson's 2004 KOOL MIXX Promotion; and

NOW, THEREFORE, in consideration of their mutual agreement to the terms of this Agreement, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties, acting by and through their authorized agents, stipulate and agree as follows:

#### **I. Definitions**

Unless otherwise indicated, all capitalized terms shall have the same meaning as in the MSA. In addition, the following terms shall have the following definitions:

1. "Consent Decrees" shall mean the Consent Decrees and Final Judgments entered by (i) the Supreme Court of New York in *State of New York v. Philip Morris, Inc., et al.*, No. 400361/97, on December 23, 1998; (ii) the Circuit Court for the City of Baltimore in *State of Maryland v. Philip Morris, Inc., et al.*, No. 96122017/CL211487, on December 1, 1998; and (iii) the Circuit Court of Cook County, Illinois, in *People of State of Illinois v. Philip Morris, Inc., et al.*, No. 96 L 13146, on December 8, 1998.

2. "Reynolds" shall mean Brown & Williamson and R.J. Reynolds Tobacco Company.

3. "2004 KOOL MIXX Promotion" shall mean Brown & Williamson's 2004 KOOL MIXX marketing campaign, including but not limited to the DJ mixing competitions held in Adult-Only Facilities, and the supporting advertising, marketing and promotional elements at retail (the Special Edition packs, retail displays and stick radio retail gift with purchase), on the Internet (through the House of Menthol website), direct mail, magazine advertisements, radio advertisements, "goody" bags, toll-free telephone numbers, "go" cards and promotional CD/CD-ROMs.

4. "Future KOOL MIXX Promotion" shall mean any future promotion and/or marketing campaign for the KOOL Brand that refers to "mixing" or "MIXX" or that involves in any way competitions with respect to Hip Hop music, dance or art, including without limitation DJ, MC, rap, break dancing or graffiti competitions, and any promotion or campaign that is substantially the same as the 2004 KOOL MIXX Promotion.

5. "Plaintiffs" shall mean the State of New York and Eliot Spitzer, the State of Maryland through the Attorney General of the State of Maryland, J. Joseph Curran, Jr., and the People of the State of Illinois through the Attorney General of the State of Illinois, Lisa Madigan.

6. "Brand Name" shall have the same meaning as in the Master Settlement Agreement. The Parties disagree on whether "MIXX" and "House of Menthol" (including any non-capitalized versions thereof) are Brand Names. By separately listing "MIXX" and "House of Menthol" herein, Plaintiffs do not waive and expressly reserve their position that "MIXX" and "House of Menthol" are Brand Names, and by agreeing to certain restrictions on the use of the words "MIXX" and "House of Menthol" herein, Reynolds does not waive and expressly reserves its position that "MIXX" and "House of Menthol" are not Brand Names.

7. “Master Settlement Agreement” and “MSA” shall mean the tobacco Master Settlement Agreement agreed to on November 23, 1998, as amended.

## **II. Agreements with Respect to the Actions**

1. New York, Maryland and Illinois have determined that it is in the public interest of their respective States to enter into this Agreement rather than continue with additional discovery and/or litigation. Reynolds also has determined that it is in its interest to enter into this Agreement rather than continue with additional discovery and/or litigation. New York, Maryland and Illinois have kept the NAAG Tobacco Enforcement Committee (the “Committee”) informed of the discussions and correspondence between the Parties. If a member of the Committee expresses to New York, Maryland or Illinois any objection to this Agreement’s content or provisions prior to execution of this Agreement, New York, Maryland or Illinois will promptly so notify Reynolds.

2. The Parties believe that this Agreement constitutes a good faith settlement of said disputes and disagreements between the Parties relating to the application of the MSA and the Consent Decrees to Brown & Williamson’s 2004 KOOL MIXX Promotion. This Agreement is for settlement purposes only and does not constitute an admission by Reynolds that either the MSA or the Consent Decrees have been violated or that the facts as alleged or asserted by New York, Maryland or Illinois or any other state are true.

3. At the time of or immediately following execution of this Agreement by the Parties, New York, Maryland and Illinois will promptly submit this Agreement to the NAAG Tobacco Enforcement Committee and will request that the Committee endorse the Agreement as a fair and reasonable resolution of the disputed issues and recommend the Agreement to the other Settling States as a fair and reasonable resolution of issues raised by the practices referred to

herein.

4. Within ten (10) business days following execution of this Agreement by the Parties:
  - a. New York and Reynolds will submit this Agreement to the New York Supreme Court in action No. 400301/97 for approval of its terms and seek dismissal with prejudice of the New York Action; and,
  - b. Maryland and Reynolds will submit this Agreement to the Circuit Court for the City of Baltimore in action No. 96122017/CL211487 for approval of its terms and seek dismissal with prejudice of the Maryland Action; and,
  - c. Illinois and Reynolds will submit this Agreement to the Circuit Court of Cook County, Illinois in action No. 02 L 423 for approval of its terms and seek dismissal with prejudice of the Illinois Action.

5. The Parties agree that Court approval of this Agreement is a material consideration for entering into this Agreement, and any failure of the respective Courts overseeing the pending Actions in New York, Maryland and Illinois to approve the settlement and dismissal with prejudice of the Actions will constitute grounds for termination of this Agreement.

6. The Parties agree to discuss in good faith any disputes or other issues that may arise with respect to this Agreement. In the event that New York, Maryland or Illinois believes that Reynolds has acted or is acting contrary to any provision of this Agreement and the Parties are unable to resolve said dispute through discussion, New York, Maryland or Illinois can exercise their rights to enforce this Agreement. The Court in each of these states that has jurisdiction to implement and enforce the MSA and the Consent Decrees shall likewise retain exclusive jurisdiction over all disputes which may arise between that state and Reynolds with respect to this Agreement.

7. With respect to Reynolds' obligations under this Agreement, New York, Maryland and Illinois will have the discovery rights contained in Section VII(g) of the MSA, and whatever discovery rights might be provided by state law.

### **III. Promotional Restrictions on Future KOOL MIXX Promotions**

In the event that Reynolds conducts any Future KOOL MIXX Promotion, Reynolds shall comply with the following restrictions:

#### **1. Competitions**

In the event that Reynolds conducts any DJ mixing and/or MC competitions as part of any Future KOOL MIXX Promotion, all such competitions shall only be conducted in Adult Only Facilities, and Reynolds shall not cause any such competition to be broadcast outside of the Adult Only Facility where such competition is held, including live or recorded broadcasts on radio, on television, through loudspeakers, on the Internet or through any other medium.

#### **2. Merchandise**

In the event that Reynolds distributes any merchandise in connection with any Future KOOL MIXX Promotion, the following restrictions shall apply:

- a. Reynolds shall not include any Brand Name or the words "MIXX" or "House of Menthol" on any such merchandise, including but not limited to lighters, CDs, "stick radios" and "goody bags" or on any removable sticker attached to any such merchandise.
- b. The provisions of this Paragraph III(2) shall not prevent Reynolds from providing "gifts with purchase" that do not contain a Brand Name or the words "MIXX" or "House of Menthol" in connection with any Future KOOL MIXX Promotion. Such "gifts with purchase" may be placed in cellophane or other packaging which

contains a Brand Name or the words “MIXX” or “House of Menthol,” provided that: (i) the gift with purchase cannot be used without removing the packaging; (ii) the packaging is immediately disposable; (iii) the packaging cannot be useable for any other purpose; and (iv) the packaging is not a “collectible” item. In addition, no Brand Name or the words “MIXX” or “House of Menthol” shall be placed on any instruction booklet or other materials intended to accompany the “gift with purchase.”

### 3. CD-ROMs

In the event that Reynolds uses CD-ROMs to advertise any Future KOOL MIXX Promotion, the following restrictions shall apply:

- a. No Brand Name or the words “MIXX” or “House of Menthol” shall appear on the CD-ROM cover or on the outside of the CD-ROM itself.
- b. The CD-ROMs may be distributed only: (i) in Adult Only Facilities; or (b) by direct mail to individuals whom Reynolds previously has determined to be Adult smokers who have agreed to receive promotional materials.
- c. The CD-ROMs may not contain the music mixing program, the human beat box feature, or the graffiti art painting program included in the 2004 MIXX CD-ROM, or other “interactive” components.
- d. The CD-ROMs may not include the performance of any songs by Hip Hop recording artists (other than specially commissioned advertising songs). This provision of this sub-paragraph would not prevent Reynolds from distributing non-branded music CDs with songs by Hip Hop recording artists as “gift with purchase” items or as promotions at Adult Only Facilities.

- e. Plaintiffs reserve the right to seek injunctive, monetary or other relief if Plaintiffs believe that any CD-ROM distributed by Reynolds in connection with any Future KOOL MIXX Promotion violates the MSA, including but not limited to the prohibitions against Brand Name merchandise, tobacco product placement in media, and Youth targeting. This includes, but is not limited to, Plaintiffs' position that CD-ROMs that refer to a Brand Name and are not limited to purely advertising and promotional content violate the MSA's Brand Name merchandise and/or tobacco product placement in media provisions (with which position Reynolds disagrees).

4. Special edition packs

In the event that Reynolds distributes "special edition" KOOL cigarette packs as part of any Future KOOL MIXX Promotion, the following restrictions shall apply:

- a. "Special edition" packs shall be distributed only in Adult Only Facilities and shall not be sold in any retail stores or by direct sales through the mail, telephone or over the Internet.
- b. "Special edition" packs shall not have multi-pack "mural" designs or be designed or marketed in a way that is likely to make them "collectible" items.
- c. "Special edition" packs shall not have designs that are particularly attractive to Youth (e.g., characters such as those found in cartoons).

#### 5. Retail Displays

Reynolds shall not use counter or other retail displays in connection with any Future KOOL MIXX Promotion except for counter or other retail displays advertising “gifts with purchase” that comply with Paragraph 2(b) above or “buy some, get some free” offers. Such counter or other retail displays shall not contain any flashing or colored lights or holograms, or be particularly attractive to Youth. This subparagraph shall not prevent Reynolds from advertising Future KOOL MIXX Promotions at retail with posters or other forms of retail signage. Plaintiffs reserve the right to seek injunctive, monetary or other relief if Plaintiffs believe that any counter display, retail display, or poster or any other form of retail signage used by Reynolds in connection with any Future KOOL MIXX Promotion violates the MSA, including but not limited to the prohibitions against Brand Name merchandise and Youth targeting.

#### 6. Website

Reynolds shall not create a separate website as part of any Future KOOL MIXX Promotion, and shall not authorize any third party to create a separate website or webpage as part of any Future KOOL MIXX Promotion, or to provide information about any Future KOOL MIXX Promotion on any website or webpage. Reynolds may place information about Future KOOL MIXX Promotions only on Reynolds’ KOOL brand website and provide links to such webpages from other Reynolds or third party websites, provided that: (1) such information is accessible to the public only after an age-verification screening process; and (2) such webpages do not include the program allowing visitors to “mix” songs that was included on the 2004 House of Menthol website or other “interactive” components. In addition, because Reynolds shall not sell KOOL MIXX “special edition” packs in retail stores, such webpages shall not

contain any “retail locator.”

7. Magazine advertising

Reynolds shall not distribute CDs, CD-ROMs or any other KOOL MIXX promotional items in magazines sent to magazine subscribers or sold at retail. Any print advertising relating to any Future KOOL MIXX Promotion:

- a. shall not be placed on the outside back cover of any publication;
- b. shall not be placed adjacent to articles or publication content that is intended for Youth; and
- c. to the extent the advertising is placed in print mass media publications, such advertising shall be placed only in mass media publications that meet the following qualifications:
  - (i) the 12-17 year-old readership measured by Mediamark Research Inc. (“MRI”) or another mutually agreed upon, reliable source is less than 15%, and the number of youth who read the publication constitutes less than 10% of all youth in the United States; or
  - (ii) if the qualifications set forth above are unavailable, the circulation/subscriber data of the publication indicate the under-21 readership is less than 15%; or
  - (iii) in the alternative, if each of the qualifications above is unavailable, then the intended audience, as stated by its editorial policy or the publication, is age 21 and over; and the editorial content or advertising is intended for individuals age 21 and over; or

(iv) in the alternative, the publication maintains a list of its subscribers that are 21 years of age or older, and such advertising is included only in copies of the publication mailed to such subscribers; provided, however, that advertising will not be placed pursuant to this clause (iv) in any magazine where the 12-17 year-old readership measured by MRI or another mutually agreed upon, reliable source is more than 25% or the number of youth who read the publication constitutes more than 10% of all youth in the United States.

8. Radio advertising

Reynolds shall not advertise any Future KOOL MIXX Promotion on college radio stations. This prohibition shall not be deemed to waive the right of Plaintiffs to assert that any radio advertising conducted by Reynolds violates the prohibitions set forth in MSA § III(a), based upon the content of that advertising and/or the audience of the particular radio station on which such advertising occurs.

9. Toll free telephone number

In the event that Reynolds uses a toll-free telephone number as part of any Future KOOL MIXX Promotion, no information, music or any other promotional message may be provided unless and until callers to that number have been screened through an age verification system at the beginning of the call.

10. “Go” cards

In the event that Reynolds distributes advertisements by hand as part of any Future KOOL MIXX Promotion, including but not limited to flyers and “go cards,” no Brand Name or the words “MIXX” or “House of Menthol” shall be included on such advertisements distributed outside an Adult Only Facility.

#### 11. Third Party Contractors

In the event that Reynolds contracts with any third party in connection with any Future KOOL MIXX Promotion, the following restrictions shall apply:

- a. Such third-party contractor shall be informed in writing of the advertising, marketing and promotional restrictions set forth in MSA § III and this Agreement.
- b. The contract shall provide that: (i) the contractor shall not violate or facilitate the violation of any of such restrictions; and (ii) any such violation shall be good cause for immediate termination of the contract by Reynolds.

#### **IV. Monetary Payment in Support of Youth Smoking Prevention**

1. Within ten business days after the entry of the last Order approving this Agreement and dismissing with prejudice the last of the Actions, Reynolds shall pay a total of \$1,460,000 to the CDC Foundation, the National African American Tobacco Prevention Network, the American Lung Association of Metropolitan Chicago, and the Bobby E. Wright Community Health Center, in amounts to be specified by Plaintiffs.

2. The funds paid pursuant to Paragraph IV(1) above shall be used only for youth smoking reduction and prevention purposes, with a focus on programs providing youth smoking reduction and prevention services in urban communities, particularly in those states where the 2004 KOOL MIXX DJ Competitions were held. The entities receiving such funds may retain reasonable and necessary costs of administering such funds for such purposes. The entities receiving such funds shall provide a report describing the use of such funds to Plaintiffs and Reynolds on October 1, 2005, and every year thereafter until such funds are fully expended.

Such report shall include a written certification: (a) that the funds have been used solely for youth smoking reduction and prevention purposes; and (b) that the funds have been used to supplement, and not supplant, amounts that the organization otherwise would have expended for youth smoking reduction and prevention purposes.

3. The funds paid pursuant to this Section IV shall supplement, and not supplant, amounts that Reynolds otherwise would expend for youth smoking reduction and prevention purposes, including but not limited to funds expended by Reynolds in support of the “Right Decisions, Right Now” program, the “Jaycees Against Youth Smoking” program, the “Wake Up. Live Big. Be Smoke-Free” program, and the Coalition for Responsible Tobacco Retailing, Inc.

4. Within ten business days after entry of the last Order approving this Agreement and dismissing with prejudice the last of the Actions, Reynolds also shall pay a total of \$40,000 to cover the total costs incurred by Plaintiffs in investigating the 2004 KOOL MIXX Promotion and in litigating the Actions.

5. Plaintiffs and Reynolds agree that the amounts set forth in Paragraphs IV(1) and IV(4) are intended to satisfy all monetary obligations in all Actions.

6. In the event that Reynolds at any time issues any public statement (including without limitation a press release, annual report, newsletter, sign, or written or oral presentation to a community group or governmental agency or official) regarding the payments made pursuant to Paragraph IV(1) above, Reynolds shall include the statement that the funding was provided as part of the resolution of litigation commenced by the Attorneys General of New York, Illinois and Maryland.

**V. Release and Discharge**

1. New York, Maryland and Illinois now and forever release and discharge Reynolds and Brown & Williamson and their respective past and present affiliates, parents, predecessors, subsidiaries, employees, officers, directors, attorneys, representatives, agents, successors and assigns of and from any and all claims (including without limitation, claims for attorneys' fees, costs, damages or restitution), debts, liabilities, demands, obligations, costs, fees, expenses, charges, grievances, damages, actions and causes of action whatsoever, known, unknown, discovered, undiscovered, suspected or unsuspected, which New York, Maryland and Illinois owns, holds or has owned or held, based upon the allegations of the Actions.

**VI. Miscellaneous Provisions**

1. Plaintiffs and Reynolds expressly acknowledge and agree that this Agreement is voluntarily entered into as a result of arm's-length negotiations, and all Parties hereto were represented by counsel in deciding to enter into this Agreement.

2. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. This Agreement is not intended to be, and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of Reynolds.

3. The provisions of this Agreement shall apply to Reynolds and Brown & Williamson and their respective past and present affiliates, parents, predecessors, subsidiaries, employees, officers, directors, attorneys, representatives, agents, successors and assigns.

4. In any proceeding which results in a finding that Reynolds violated this Agreement, Reynolds shall pay Plaintiffs' costs and attorneys' fees incurred in such proceeding.

5. The rights and remedies in this Agreement are cumulative and in addition to any other rights and remedies that Plaintiffs may have at law or equity, including under the MSA and Consent Decrees. This Agreement does not waive or limit any rights or remedies that Plaintiffs have under the MSA and the Consent Decrees, and Plaintiffs may seek relief for any violations of this Agreement, the MSA or the Consent Decrees relating to any Future KOOL MIXX Promotion.

6. This Agreement shall be governed by and construed in each of New York, Maryland and Illinois in accordance with the laws of the States of New York, Maryland and Illinois, respectively, without reference to their conflict of laws rules.

7. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements, representations, and undertakings, other than the MSA and the Consent Decrees. The Parties, and each of them, understand that this Agreement is made without reliance upon any inducement, statement, promise, or representation other than those contained within this Agreement. This Agreement may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by the Parties to this Agreement or their authorized representatives. The Parties acknowledge and agree that this Agreement shall not become final and binding until finally approved by the New York Supreme Court, the Circuit Court for Baltimore City, and the Circuit Court of Cook County, Illinois, and until the entry of orders dismissing with prejudice all the Actions.

8. This Agreement may be executed in telecopied counterparts, each of which will constitute an original but all of which taken together shall constitute one and the same document.

DATED: October 5, 2004

R. J. REYNOLDS TOBACCO COMPANY

By: \_\_\_\_\_  
Name: Charles A. Blixt  
Title: Executive Vice President and General  
Counsel

BROWN & WILLIAMSON TOBACCO  
CORPORATION (n/k/a BROWN &  
WILLIAMSON HOLDINGS, INC.)

By: \_\_\_\_\_  
Name: Timothy Hazlett  
Title: President

THE STATE OF NEW YORK and  
ELIOT SPITZER

By: \_\_\_\_\_  
Name: Christine Morrison  
Title: Assistant Attorney General

THE STATE OF MARYLAND by  
J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

By: \_\_\_\_\_  
Name: Marlene Trestman  
Title: Special Assistant to the Attorney General

THE PEOPLE OF THE STATE OF ILLINOIS by  
LISA MADIGAN  
Attorney General of Illinois

By: \_\_\_\_\_  
Name: Benjamin C. Weinberg  
Title: Assistant Attorney General