

Voluntary Disclosure Agreement
MTC 00-00 and [Signatory State]
Sales/Use Tax and Income/Franchise Tax
Application Date:

[DRAFT]

VOLUNTARY DISCLOSURE AGREEMENT

PROSPECTIVE

MTC 00-00 & [Signatory State]

Sales/Use Tax and Income/Franchise Tax

In exchange for the mutual promises herein, the State of [Signatory State], MTC 00-00, and the Multistate Tax Commission (“Commission”) agree as follows:

1. Parties

The parties to this Voluntary Disclosure Agreement (“Agreement”) are the State of [Signatory State], MTC 00-00, and the Commission.

2. Purpose

This Agreement is for prospective compliance by MTC 00-00 only, with no back tax, interest, and penalty proposed to be paid, except for any collected and unremitted Sales/Use Tax or withholding tax. The parties agree to resolve MTC 00-00’s potential back Sales/Use Tax and Income/Franchise Tax liability through compromise as set forth herein.

3. Scope

The parties acknowledge that this Agreement concerns only Sales/Use Tax, Income/Franchise Tax, interest, and penalty thereon, if any.

4. Procedures of Multistate Voluntary Disclosure

The [Procedures of Multistate Voluntary Disclosure](#) (“Procedures”) are incorporated herein by reference and, where applicable, govern this Agreement to the extent not inconsistent with the provisions herein. The text of the Procedures is available at www.mtc.gov or by request from the staff of the National Nexus Program.

5. Duties of MTC 00-00

5.1 Unless [Signatory State] or the Commission grants a written extension, MTC 00-00 shall send to the Commission the following within 30 days of written notice that [Signatory State] has approved MTC 00-00’s Agreement:

5.1.1. the complete Agreement signed and dated by MTC 00-00; and

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- 5.1.2. the completed registration forms or confirmation receipts from online registration, for Sales/Use Tax registration, and if required, Income/Franchise Tax registration; and
- 5.1.3. spreadsheets or returns as required by [Signatory State] for any collected but unremitted Sales/Use Tax or withholding tax and payment of such tax by check or money order payable to the taxing authority of [Signatory State].
- 5.2. MTC 00-00 shall remit directly to [Signatory State] the penalty and interest due for any collected and unremitted Sales/Use Tax or withholding tax, not later than 30 days after receipt of notice from [Signatory State] of the amount due.
- 5.3. MTC 00-00 shall timely collect, report and remit any and all applicable Sales/Use Taxes, including those of local jurisdictions, commencing with the first calendar monthly tax period that includes the Effective Date, which is defined as December 1, 2017, or the date not later than 30 days after MTC 00-00 has received notice from the Commission that [Signatory State] has signed the Agreement, if such date is after December 1, 2017, and including sales transactions occurring on and after such date. MTC 00-00 shall timely file returns and pay Income/Franchise taxes due commencing with the tax year including the Effective Date.
- 5.4. This Agreement is void, if MTC 00-00 fails to send to the Commission all of the items listed in Subsections 5.1.1, 5.1.2 and 5.1.3 of this Agreement within 30 days after the date that the Commission sent written notice to MTC 00-00 that the Agreement has been signed by [Signatory State] to MTC 00-00, unless [Signatory State] or the Commission has granted a written extension of time.
- 5.5. MTC 00-00 waives lack of nexus or jurisdiction to tax for any tax, interest, or penalty owed under this Agreement from and after the Effective Date.
- 5.6. MTC 00-00 shall make its books and records available to [Signatory State] upon reasonable notice for the purpose of:
 - 5.6.1. verifying the accuracy of MTC 00-00's factual representations in this Agreement; and
 - 5.6.2. verifying the amount of tax due pursuant to returns provided under Subsections 5.1.3 or 5.2 of this Agreement and MTC 00-00's compliance with [Signatory State] Sales/Use Tax and Income/Franchise Tax laws.

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6. Duties of [Signatory State]

6.1. [Signatory State] shall:

- 6.1.1. except for interest on any collected and unremitted Sales/Use Tax or withholding tax, not assess Sales/Use Tax, and interest thereon, attributable to any time period prior to the Effective Date; not assess Income/Franchise Tax, and interest thereon, attributable to any tax year prior to the tax year that includes the Effective Date; and
- 6.1.2. except for penalty on any collected and unremitted Sales/Use Tax or withholding tax, waive all penalty arising from MTC 00-00's failure to register and file Sales/Use Tax returns, make tax payments on Sales/Use Tax for all time periods prior to the Effective Date of this Agreement, file Income/Franchise Tax returns, and make tax payments on Income/Franchise Tax for all tax years prior to the tax year that includes the Effective Date.

7. Duties of the Commission

- 7.1. The Commission shall maintain the original of this Agreement when fully executed and shall provide a certified copy to [Signatory State] and, if requested, MTC 00-00.
- 7.2. The Commission agrees to assist [Signatory State] or MTC 00-00 to address any issues pertaining to this Agreement, if either party requests.

8. Confidentiality and Disclosure

[Signatory State], MTC 00-00, and the Commission agree not to disclose to any others the contents of this Agreement except in response to an inter-government exchange of information agreement in which the requesting entity provides the taxpayer's name and taxpayer identification number, pursuant to a statutory requirement or lawful order, or as the other parties authorize in writing. [Signatory State] and the Commission agree not to honor any blanket requests from other jurisdictions for the identity of taxpayers filing returns pursuant to voluntary disclosure agreements or nexus provisions of any statutes, or existing or proposed regulations.

9. MTC 00-00 Representations

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- 9.1. The representations in MTC 00-00's application for multi-state voluntary disclosure are true and accurate, and such application is attached to this Agreement as Exhibit 1 and incorporated herein.
- 9.2. To the extent not already disclosed in MT 00-00's application for voluntary disclosure included in Exhibit 1, MTC 00-00 further represents that:
 - 9.2.1. It has not received notice of audit from either [Signatory State] or the Commission on behalf of [Signatory State] with respect to any type of [Signatory State] tax for which voluntary disclosure relief is provided herein;
 - 9.2.2. It has not received an inquiry from [Signatory State] or the Commission on behalf of the state regarding potential liability for any type of [Signatory State] tax for which voluntary disclosure relief is provided herein; and
 - 9.2.3. It has not filed a tax return or an extension request with [Signatory State], made a tax payment to [Signatory State], or taken any similar action with [Signatory State] concerning any type of [Signatory State] tax for which voluntary disclosure relief is provided herein (requests for information and other communications with [Signatory State] or the Commission in which MTC 00-00 remains anonymous are permitted).
 - 9.2.4. It has nexus in [Signatory State] as a result of having inventory stored in a third-party warehouse or fulfillment center located in [Signatory State] or through other nexus-creating activities conducted by the marketplace provider/facilitator on behalf of MTC 00-00 in [Signatory State].
- 9.3. [Signatory State] is relying on MTC 00-00's representations made herein in entering into this Agreement. If MTC 00-00 has made a material misrepresentation in this Agreement, [Signatory State] may, within 90 days of the discovery thereof, void this Agreement, retain all tax, interest, and penalty (if any) already paid and enforce its tax laws.
- 9.4. A misrepresentation by MTC 00-00 is material if [Signatory State] reasonably would not have entered into this Agreement, or would have done so on terms significantly more favorable to itself had it not relied upon such misrepresentation or omission.
- 9.5. Any misrepresentation or omission of fact by MTC 00-00 in Subsection 9.2.1, 9.2.2, 9.2.3, or 9.2.4 of this Agreement shall be deemed material.

10. Miscellaneous

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- 10.1. Each party to this Agreement warrants that the person executing it on that party's behalf is authorized to do so.
- 10.2. This Agreement may be signed in counterparts, each one of which is considered an original, and all of which constitute one and the same instrument. No provision of this Agreement shall be waived or modified except in writing signed by all parties to this Agreement.
- 10.3. The law of [Signatory State] governs this Agreement. Jurisdiction and venue of any administrative or judicial action with respect to this Agreement lies exclusively in the appropriate administrative or judicial body of [Signatory State].
- 10.4. This Agreement is fully executed on the date after MTC 00-00 has performed all duties required in Subsection 5.1 of this Agreement and after [Signatory State] and the Commission and MTC 00-00 have signed it, but in no event later than the Effective Date. However, failure of the Commission to sign the Agreement does not affect its validity with respect to the mutual obligations of [Signatory State] and MTC 00-00.

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STATE SIGNATURE PAGE

[Signatory State] enters into this Agreement:

By: _____

Name: _____

Title: _____

Date: _____

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MULTISTATE TAX COMMISSION SIGNATURE PAGE

The Commission enters into this Agreement:

Multistate Tax Commission

By: _____
Gregory S. Matson
Executive Director
Multistate Tax Commission

Date: _____

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MTC 00-00 SIGNATURE PAGE

MTC 00-00 Name: _____

Mailing Address: _____

FEIN: _____

MTC 00-00 enters into this Agreement:

By: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT 1

MTC 00-00 REPRESENTATIONS