

Southwest Border Anti-Money Laundering Alliance

Governing Agreement

This Governing Agreement (“Governing Agreement”) is entered into by and among the States of Arizona, California and New Mexico, by and through their respective Attorneys General, and the Office of Attorney General for the State of Texas (the “Parties”) for the purposes of establishing, and creating effective governance of, a Southwest Border Anti-Money Laundering Alliance (the “Alliance”) to provide expertise and executive services to the State Center for State Enforcement of Antitrust and Consumer Protection Laws, a Wisconsin nonprofit corporation (the “State Center”) to guide the State Center in distributing contributions made to the State Center by Western Union Financial Services, Inc. (“Western Union”), and possibly other entities, for the purposes set forth in Section 2.1.

WHEREAS, the member States of the Alliance recognize that violence along the United States-Mexico border presents a challenge for law enforcement that requires concerted action among the Alliance members; and

WHEREAS, Western Union, recognizing the problems of safety and security along the border and that the State Center could assemble the experience and expertise necessary to effectuate the purposes set forth in Section 2.1, has agreed to contribute \$50,000,000 to the State Center (the “Contributed Funds”) to fund projects that will further those purposes; and

WHEREAS, the Parties wish to use this Governing Agreement to govern the terms of their Alliance.

NOW THEREFORE, in consideration of the mutual promises and undertakings set forth herein, including the right to participate in the Alliance pursuant to the terms of this Governing Agreement, the Parties agree as follows:

ARTICLE ONE: Southwest Border Anti-Money Laundering Alliance.

Section 1. Establishment of Alliance. The Parties hereby establish a Southwest Border Anti-Money Laundering Alliance (the “Alliance”) consisting of: the Arizona Attorney General, the California Attorney General, the New Mexico Attorney General, and the Texas Attorney General. The Alliance shall be governed pursuant to this Governing Agreement, through an Executive Board consisting of the Arizona Attorney General, the California Attorney General, the New Mexico Attorney General, the Texas Attorney General, the Director of the Arizona Department of Public Safety, the Chief of the Police Department of Phoenix, Arizona, and the Superintendent of the Arizona Department of Financial Institutions (the “Executive Board”), for a total of seven voting members. The Executive Board shall have the discretion to add one or more non-voting members as it so chooses.

ARTICLE TWO: Purposes

Section 2.1 Purposes. The purposes of the Alliance are to: enhance and better coordinate investigations and prosecutions of money laundering in the Southwest Border Area (that area within 200 miles of the United States/Mexico border on either side of the border and including all of Arizona) (“SWBA”) and other areas affected by money laundering in the SWBA, with the goal of reducing money laundering and thereby reducing violence associated with smuggling organizations operating in the SWBA and in other areas affected by money laundering in the SWBA; enhance coordination of the States’ anti-money laundering (“AML”) efforts; and fund related training, information sharing, and related expenses in the Alliance States and in Mexico (collectively, the “SWBA AML Purposes”).

Section 2.2 Authority to Act Under the State Center Agreement and the Deposit Account Control Agreement. The Executive Board shall select one of its member states to serve as its Authorized Representative State (“Authorized Representative State”) to enter agreements with the State Center (the “State Center Agreement”) and the State Center’s Financial Institution (the Deposit Account Control Agreement or “Control Agreement”). The Parties agree that they will act with regard to the State Center Agreement and the Control Agreement only pursuant to the direction of the Executive Board and subject to the terms of this Governing Agreement.

ARTICLE THREE: Office

Section 3.1 Office. The street address of the office of the Alliance for purposes of notice to the Executive Board is as follows:

Southwest Border Anti-Money Laundering Alliance
c/o Criminal Division Chief
Arizona Attorney General’s Office
1275 W. Washington
Phoenix, AZ 85007

Section 3.2 Notice Requirements. The State of Arizona agrees that any notice sent to the Alliance at the address set forth in Section 3.1 above shall be promptly conveyed upon receipt to all other Executive Board members.

ARTICLE FOUR: Executive Board

Section 4.1 Number and Qualification. The voting members of the Executive Board shall consist of the seven representatives listed in Section 1.

Section 4.2 Alteration of Number or Identity. The number or identity of the Executive Board may be altered from time to time by amendment to this Governing Agreement, as

limited in Section 5.

Section 4.3 Representatives. Each Executive Board member shall serve for the duration of the Alliance unless the Executive Board member resigns in writing and withdraws the entity that the Executive Board member represents from membership in the Executive Board pursuant to Section 10.1, or ceases to hold the position which he or she holds on the date of this Agreement. Each Executive Board member may, if the Executive Board member perceives, in his or her sole discretion, that participation in a vote may have even an appearance of impropriety, or for any other reason, at his or her discretion, designate the head of a different law enforcement agency to serve as that Member's designee for any vote, for any meeting, or until the end of the Member's tenure in the position by which he or she became an Executive Board member, so long as the agency designated has investigative or prosecutorial authority relating to money laundering in the SWBA. Each Executive Board member may from time to time name a designee from that Member's agency to serve on the Executive Board in his or her place; provided, however, that any such designee must be a senior policy-making official within the Member's organization.

Section 4.4 Automatic Succession. If a particular Executive Board member no longer holds the position by which he or she became an Executive Board member, the successor to that office shall automatically replace the departing person as an Executive Board member, and any designee designations made by the departing Executive Board member shall lapse.

Section 4.5 Meeting Schedules. The Executive Board members shall meet quarterly or at such other times as they set. Meetings may be held or attended in person, by conference call, or by such other method as the Executive Board members may set.

Section 4.6 Meeting Process. The Executive Board members shall designate a Chair who shall conduct meetings in accordance with Robert's Rules of Order. Votes shall be open to the Executive Board members and recorded by the Secretary. Prior to each meeting, the Chair shall set an agenda and cause it to be circulated to the Executive Board members no fewer than ten days prior to a regularly scheduled meeting, and three days prior to a specially called meeting. All meetings of the Executive Board shall be held at a time and place that is accessible to the public, to the extent consistent with Section 6.4.

Section 4.7 Quorum for Meetings. A quorum shall consist of five of the Executive Board members; provided, however, that a quorum shall not be present unless Executive Board members from at least two different states are in attendance.

Section 4.8 Majority Action as Board Action. Every act or decision done or made by a majority of the votes cast by each of the Executive Board members either present, present by designation, or voting through votes communicated to the Chair in writing by paper vote or electronically by facsimile or electronic mail, at a meeting duly held at which a quorum is present or is present by such designation or written vote, is the act of the

Alliance and of the Executive Board, unless this Governing Agreement requires a greater percentage.

Section 4.9 Responsibilities. It shall be the duty of the Executive Board members to:

4.9.1 Review grant applications and make recommendations for awards of monies from the Alliance Fund to law enforcement projects that will reduce money laundering within the Alliance States pursuant to the Strategy and distribution method in Section 6.2 and the distribution criteria in Section 6.3;

4.9.2 Appoint, remove, employ, engage, supervise, discharge, prescribe the duties, and fix the compensation, if any, of all officers, agents, and professional staff of the Executive Board;

4.9.3 Where practicable, meet at such times and places as required by this Governing Agreement; and

4.9.4 Assure that Alliance Funds are not subject to waste, fraud, or abuse and that information related to the expenditure of all such funds is made public subject to Section 6.4.

Section 4.10 Officers. There shall be four Officers of the Executive Board consisting of a Chair, a Vice-Chair, a Secretary, and a Treasurer. No more than one officer at a single time shall be from any one state. Their duties shall be as follows:

4.10.1 Chair. The Chair shall convene regularly scheduled and special Executive Board meetings, and shall preside or arrange for other members of the Executive Board to preside at each meeting in the following order: Vice-Chair, Secretary and Treasurer. The Chair shall serve as the Executive Board's representative as one of the two authorized signers on the Southwest Border Anti-Money Laundering Alliance Fund Account, the other being a representative of the State Center pursuant to the State Center Agreement. The Chair shall sign only such checks as the Executive Board directs by Resolution.

4.10.2 Vice Chair. The Vice-Chair shall serve as Chair in the Chair's absence, but shall not have signature authority over the Southwest Border Anti-Money Laundering Alliance Fund Account unless specifically directed by Resolution of the Executive Board.

4.10.3 Secretary. The Secretary shall be responsible for keeping records of Executive Board actions, including overseeing the taking of minutes at all Executive Board meetings, sending out meeting announcements, distributing copies of the minutes of the immediate past meeting and the agenda to each Executive Board member prior to each Executive Board meeting, and assuring that Executive Board records are maintained, made available to the State Center consistent with Section 3.4 of the State Center Agreement, and made available to the public upon request subject to Section 6.4.

4.10.4 Treasurer. The Treasurer shall make a financial report at each quarterly Executive Board meeting and make financial information available to the Executive Board members. The Treasurer shall also advise the Executive Board on whether an Event of Default as described in the Control Agreement has occurred. The Alliance's Authorized Representative State shall not unilaterally make any Notice of Exclusive Control pursuant to the Control Agreement, but shall do so promptly upon being directed to do so by Executive Board Resolution.

Section 4.11 Tenure of Officers. The Chair shall serve at the pleasure of the Executive Board. All other officers shall serve terms of one year.

Section 4.12 Compensation. Executive Board members shall serve without compensation. Travel and per diem expenses at the customary rate for the Executive Board member's agency shall be reimbursed from the Alliance Fund to the agency that the Executive Board member represents for expenses relating to attendance at meetings of the Executive Board or conferences or training conducted by the Executive Board.

ARTICLE FIVE: Amendment of Governing Agreement and Limitations on Actions

Section 5.1 Amendment of Governing Agreement. Subject to Sections 5.2, 5.3, and 5.4, the Executive Board shall have the power to make, alter, amend, or repeal the Governing Agreement.

Section 5.2 Super-majority Actions. Alterations, amendments, or repeals are subject to the restriction that a supermajority is required to amend this Governing Agreement to the effect of, or to otherwise take, any of the following actions:

5.2.1 Alteration of Section 2.2.

5.2.2 Alteration of the number or identity of the Executive Board members or this Article.

5.2.3 Declaration of an Event of Default as described in Section 8 of the State Center Agreement.

5.2.4 Exercise of a Notice of Exclusive Control pursuant to the Control Agreement.

5.2.5 Replacement of the Chair or the Executive Board's representative as the signer on the Southwest Border Anti-Money Laundering Alliance Fund Account.

5.2.6 Termination or dissolution of the Alliance; provided, however, that this Section does not impair a State's ability to terminate this Governing Agreement with respect to that State pursuant to Section 10.1.

A super-majority shall be one fewer than the total number of Executive Board members, whether actually present at a meeting or not.

Section 5.3. Executive Board member Consent Necessary. The Executive Board may not

make, alter, amend, or repeal any provision of this Governing Agreement if the effect of the alteration, amendment, or repeal would be to dilute the respective voting power of any of the Executive Board members without that Executive Board member's express consent.

Section 5.4. Unanimity Required. Notwithstanding any other provision of this Governing Agreement to the contrary, a unanimous vote of each of the members of the Executive Board shall be necessary to amend Section 2.1, Section 5.3, Section 6.3, or Section 7.4.

ARTICLE SIX: Activities

Section 6.1 Distribution of State Center Funds. The Executive Board shall recommend to the State Center that it distribute the monies in the Alliance Fund consistent with the purposes set forth in Section 2.1.

Section 6.2 Distribution Method. The Executive Board shall develop an Anti-Money Laundering Strategy ("Strategy") and communicate it to Alliance and other law enforcement agencies seeking funding. It shall solicit grant applications for cases and initiatives that exhibit the highest potential to further the Strategy. The Executive Board shall agree upon and disseminate grant application procedures similar to those used in federal grants to law enforcement agencies such as the Byrne Memorial Justice Assistance Grant ("Byrne/JAG") program or the High Intensity Drug Trafficking Area ("HIDTA") program, keeping administrative requirements as simple as possible consistent with fiscal responsibility.

Section 6.3 Distribution Criteria. The Executive Board shall consider recommending funding AML investigations or initiatives on a case-by-case and initiative-by-initiative basis in accordance with this Governing Agreement. The Executive Board shall give priority to cases and initiatives that involve multi-state and international money laundering mechanisms, that involve the movement of money to smuggling organizations with a record of violence, that involve the movement of weapons from the United States into Mexico or the use of such weapons in Mexico, that involve multi-state information or data sharing or analysis, or that involve training or coordination conferences relating to money laundering and related criminal activity. The Executive Board shall only recommend funding of initiatives that have potential to further the Alliance Strategy, which shall concentrate on a high-level financial AML approach, or cases that directly impact substantial smuggling organizations or ongoing facilitators of such organizations. To assure adequate minimum distributions of funds to each of the four member States, the Executive Board shall recommend that the State Center issue grants totaling a minimum of \$7 million to law enforcement organizations in each of the four member States of the Alliance for purposes compliant with Section 2.1, so that under no circumstances will the Alliance Fund be depleted without law enforcement in every Alliance member state receiving at least \$7 million in aggregate grants from the Alliance Fund for purposes compliant with Section 2.1. In those instances where the applicant for a grant from Alliance funds is a party to this Governing Agreement, then the Executive Board member

that represents that party on the Executive Board may not vote on that party's grant application.

Section 6.4 Information Sharing. The Executive Board shall take responsible measures to maximize the sharing and exchange of data acquired through the SWBA AML program and cooperation with other law enforcement agencies in the SWBA and other areas with regard to AML efforts. Notwithstanding any other provision of this Agreement:

6.4.1 All transaction data or investigative information that is received pursuant to this Governing Agreement by an agency represented on the Executive Board may be shared with another law enforcement or prosecutive agency, provided that such other law enforcement or prosecutive agency agrees to keep such transaction data or investigative information confidential to the maximum extent permissible under law.

6.4.2 No agency represented on the Executive Board shall disclose such transaction data or investigative information pursuant to a request by a non-law enforcement person or entity other than the Monitor if that agency obtained the information or material pursuant to an agreement that it would be kept in confidence to the extent permissible by the applicable state laws or unless disclosure is required by a court of competent jurisdiction.

6.4.3 To the extent permitted by the respective public records laws applicable to any agency represented on the Executive Board, information exchanged between the Monitor and such agencies or among such agencies will be considered by the Monitor and by the agencies to be law enforcement investigatory materials and/or otherwise confidential and exempt from disclosure under the applicable public records laws.

6.4.4 Subject to the above, however, information about the finances of the Executive Board shall be made public to the maximum extent permitted by law, unless release of the information could compromise ongoing law enforcement investigations, law enforcement sources, law enforcement methods, or the safety of law enforcement personnel.

Section 6.5 Professional Staff. The Alliance shall assemble a professional staff from the constituent agencies, through temporary duty assignments or through contract engagements, to assist the Executive Board in executing the above activities ("Alliance-Assigned Staff"). The Alliance Fund may also be used to pay back-filling of the positions of any staff temporarily assigned to the Executive Board's staff by reimbursing the assigning agency the full salary and benefits of each assigned person for the duration of their assignment, on the condition that assignment shall qualify for such reimbursement only if the assignment is for at least one year.

Section 6.6 Audit and Accounting Function. The Alliance-Assigned Staff shall take responsible and reasonable measures to ensure not only that grant recipients spend grant funds as intended and within the terms of any grant made from the Alliance Fund, but also

that such recipients keep thorough and accurate records of their expenditures. The Executive Board shall agree upon and circulate reporting and accounting conventions similar to those used under federal grants to law enforcement agencies such as the Byrne/JAG or HIDTA programs. To the extent allowed by law, the Executive Board will make its expenditures and activities accessible to the public, subject to Section 6.4. The Alliance shall be further responsible for acting to recover funds that constitute waste, fraud or abuse including, where appropriate, by referring for prosecution any violations of law.

Section 6.7 Transaction Data Analysis. The Alliance shall assemble, as part of the Alliance-Assigned Staff, experienced analysts from each of the member states that elect to participate. These analysts shall, in conjunction with analysts from the Monitor's staff, analyze transaction data provided by Western Union to the Alliance States, using Western Union's trend analysis and educational cooperation on newer methods for domestic and cross-border value transfer, such as mobile phones, stored value cards, ATMs, and other emergent technology. The Alliance shall promptly provide any work product that is developed by the Alliance-Assigned Staff as a result of these efforts to any member of the Executive Board or his or her designee that requests a copy of such work product in writing.

Section 6.8 Committees. The Executive Board may have such committees as may from time to time be designated by Resolution. These committees may consist of persons who are not also members of the Executive Board, but such committees shall act only in an advisory capacity to the Executive Board.

Section 6.9 Meetings and Action of Committees. Meetings and action of committees shall be governed by and held in accordance with the provisions of this Governing Agreement concerning meetings of the Executive Board unless otherwise directed by the Executive Board.

Section 6.10 Alternative Repository for Alliance Funds. In the event that the Executive Board directs the Alliance's Authorized Representative State to declare an Event of Default, the Executive Board shall also direct the Alliance's Authorized Representative State to instruct the Financial Institution to transfer to an institution of the Executive Board's choosing any monies remaining in the Alliance Fund so that such monies can be held in trust for the continuation of the tax exempt SWBA AML Purposes.

ARTICLE SEVEN: Limitations on Activities

Section 7.1 Prohibited Payments. Except as provided by Section 4.12, no part of the Alliance Fund, any earnings thereon, or any other earnings of the Alliance shall inure to the benefit of, or be distributable to its Executive Board members, trustees, officers, or other private persons, except that the Executive Board shall be authorized and empowered to pay reasonable compensation for services rendered by the Alliance's staff and to make payments and distributions in furtherance of the purposes set forth in the purposes clause hereof, including expenses described in Section 4.12 .

Section 7.2 Prohibited Political Activity. The Executive Board shall not use or permit to be used the Alliance Fund to promote or oppose candidates for elected office, legislative proposals, or other initiatives, nor shall the Executive Board or any official or member of the Executive Board endorse or oppose any such candidate, proposal, or initiative in his or her capacity as an official of the Alliance or of the Executive Board; nor shall the Executive Board or any official or member of the Executive Board attempt to influence legislation or participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office or any political party in his or her capacity as an official of the Alliance or its Executive Board. This Section shall not be construed to prohibit any Executive Board member from participating in any political activity in a capacity unrelated to his or her capacity as an official of the Alliance or its Executive Board.

Section 7.3 Other Prohibitions. Notwithstanding any other provision of this Agreement, the Alliance shall not conduct any other activities not permitted to be conducted by:

- 1) an entity exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or
- 2) an entity, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Section 7.4 Effect of Dissolution or Termination. Upon the dissolution or termination of the Alliance, the Alliance has the continuing duty to inform the State Center of an acceptable entity to make recommendations to effect the SWBA AML Purposes and the disbursement of the funds in a manner consistent with this Governing Agreement, including the allocations set forth in Section 6.3.

ARTICLE EIGHT: Liability and Indemnification

Section 8.1 Non-Liability of Executive Board members, Officers and Staff. Except in case of fraud or willful misconduct, the Executive Board members, officers and staff shall not be personally liable for the debts, liabilities, or other obligations of the Alliance.

Section 8.2 Indemnification by Alliance of Authorized Representative State, Executive Board members, Officers, and Staff. Consistent with Section 8.1, the Authorized Representative State, Executive Board members, Officers, and staff of the Alliance or the Executive Board shall be indemnified by the Alliance Fund to the fullest extent permissible under the law. The Alliance Fund shall be responsible for providing funds to indemnify and hold harmless Alliance members, Officers, and staff, as well as the Attorneys General of Arizona, California, New Mexico and Texas and their representatives, employees, or staff (collectively "the Indemnitees") to the fullest extent permitted by law and to save and hold them harmless from and in respect of all (a) fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with or resulting from any claim, action or demand against the Indemnitees that arises out of or in any way relates to this Agreement, and (b) claims, actions and demands and any losses or damages

resulting from such claims, actions and demands, including amounts paid in settlement or compromise of any such claim, action or demand, provided, however, that this indemnification shall apply only to the extent that such act or failure to act does not constitute, or is not result of, fraud or willful misfeasance. An Indemnatee shall be indemnified pursuant to this Section 8.2 for acts taken, or failures to act, during the time the Indemnatee served in any capacity that gave the right to be so indemnified even after such Indemnatee shall cease to serve in such position.

ARTICLE NINE: Records

Section 9.1 Maintenance of Executive Board Records. The Executive Board shall keep at its principal office:

9.1.1 Minutes of all meetings of Executive Board members and committees of the Executive Board;

9.1.2 A conformed copy of the Executive Board's Governing Agreement and Resolutions; and

9.1.3 Adequate and correct books and records of the Alliance Fund account(s).

ARTICLE TEN: Miscellaneous Provisions

Section 10.1 Termination. This Alliance is to terminate upon the depletion of the Alliance Fund or upon termination by the Executive Board. Unless additional monies are obtained, the Executive Board shall endeavor to distribute all monies in the Alliance Fund by the end of the forty-first month after this Governing Agreement is fully executed. An individual State may elect to terminate this Governing Agreement with respect to that State by providing thirty days written notice to the Alliance.

Section 10.2 Severability. Should any of the provisions or portions of this Governing Agreement be held unenforceable or invalid for any reason, the remaining provisions and portions shall be unaffected by such holding.

Section 10.3 Mediation and Arbitration. All disputes among or between members of the Executive Board shall be resolved by the Executive Board. Prior to litigation against the Executive Board, the Alliance, or any State or agency represented on the Executive Board, any person purporting to act under the authority of this Agreement or to enforce the terms of this Agreement shall first refer the dispute for mediation to the National Association of Attorneys General, or to an impartial private mediator or program providing such service in the State of Arizona, as selected by such person. All claims that have not been resolved by mediation or otherwise shall be submitted to final and binding private arbitration in accordance with Arizona law. No Alliance Funds shall be expended for attorney fees or litigation expenses without the unanimous approval of the Executive Board.

Section 10.4 Counterparts. This Governing Agreement may be executed in identical

counterparts, each of which upon execution shall be deemed an original, but all of which together shall constitute one document. Partially executed signature or acknowledgment pages of any one counterpart may be combined with any other partially executed counterpart to constitute the fully executed Governing Agreement. Facsimiles of executed signature pages are effective as original signatures.

We, the undersigned, consent to, and hereby adopt the foregoing Governing Agreement as the Governing Agreement of this Alliance.

On Behalf of the STATE OF ARIZONA

| | |
|--------------------------|------|
| Terry Goddard | DATE |
| Arizona Attorney General | |

On Behalf of the STATE OF CALIFORNIA

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|-----------------------------|------|
| Edmund G. Brown, Jr. | DATE |
| California Attorney General | |

On Behalf of the STATE OF NEW MEXICO

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|-----------------------------|------|
| Gary K. King | DATE |
| New Mexico Attorney General | |

On Behalf of the OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS

| | |
|------------------------|------|
| Greg Abbott | DATE |
| Texas Attorney General | |