**Attachment A**

**AGREED STATEMENT OF FACTS**

1. United Parcel Service, Inc. ("UPS") is a corporation organized under the laws of Ohio and headquartered in Atlanta, Georgia. UPS operates as a common carrier.

2. The provision of UPS's services is governed by the UPS Tariff/Terms and Conditions of Service for Package Shipments in the United States which constitutes part of the shipping contract between UPS and shippers. In relevant part, the UPS Tariff/Terms and Conditions of Service currently states:

> 3.14 Pharmaceuticals
> The shipper shall comply with and shall ensure that each shipment containing pharmaceutical products complies with all applicable federal, state, provincial, and local laws and regulations governing the shipment or tender of shipment of pharmaceutical products.
>
> 3.3 Prohibited by Law
> No service shall be rendered by UPS in the transportation of any shipment that is prohibited by applicable law or regulation of any federal, state, provincial, or local government in the origin or destination country. It is the responsibility of the shipper to ensure that a shipment tendered to UPS, and any UPS Shipping System entry that the shipper prepares for that shipment, does not violate any federal, state, provincial, or local laws or regulations applicable to the shipment.

3. Beginning in approximately 1999, companies began offering consumers controlled substances and prescription drugs based on the provision of information over the Internet. These companies came to be known as Internet pharmacies. Some Internet pharmacies illegally distribute controlled substances and prescription drugs because customers are allowed to obtain these drugs without a valid prescription authorized by a licensed physician acting within the usual scope of professional medical practice who is providing the drugs for a valid medical purpose. UPS provided transportation and related services to some of those entities.

4. By approximately January 2004, UPS was on notice that many Internet pharmacies operated outside the law. Some of those illegally-operating Internet pharmacies were UPS customers.

5. On five occasions in January 2004 through May 2006, UPS's Corporate Security Manager and a UPS Public Affairs Vice President met with the DEA and other law enforcement agencies to discuss the parcel carrier industry's and UPS's role in assisting federal authorities in

curtailing illegal Internet pharmacies. In one such meeting on June 23, 2005, law enforcement discussed the problem of illicit pharmaceutical sales over the Internet and the traffickers' reliance on key business sectors, especially the express parcel carriers for delivery of packages to customers. The agents further discussed relevant laws controlling the legitimate sales of controlled substances in the United States and possible actions to prevent the illicit use of shipping services by Internet pharmacies.

6. On two occasions, UPS's Corporate Security Manager testified before Congress regarding the illegal sale of controlled substances over the Internet and UPS's efforts to ensure that UPS was not transporting illegally-sold controlled substances and prescription drugs. The first testimony occurred on July 22, 2004, before the Senate's Governmental Affairs Permanent Subcommittee on Investigations and the second on December 13, 2005, before the House of Representatives' Oversight and Investigations Committee on Energy and Commerce. During both sessions, the Corporate Security Manager testified: "It is the clear policy of UPS, as stated in our tariff, that illegal products of any type are prohibited from being transported through our system."

7. On December 13, 2005, the Corporate Security Manager testified before the House Subcommittee on Oversight and Investigations Committee on Energy and Commerce and stated, "We support legislation that would establish clear standards for internet pharmacies. In particular, we support requiring internet pharmacies to be licensed .... In addition, we support provisions that would prohibit Internet sales of pharmaceuticals to individuals without a prescription obtained from a practitioner with a qualifying medical relationship, which requires at least one in-person medical evaluation .... As a carrier, we can take actions such as those I have described in conjunction with law enforcement agencies, but we do not have the independent ability to judge the validity of a prescription or the legitimacy of a particular drug."

8. A group of five UPS marketing employees within the Southeast Region, one of eight UPS regions, began in approximately 2002 to research business opportunities within the healthcare industry. They identified five distinct sectors that included medical and hospital equipment, laboratories/research, healthcare providers, pharmaceuticals, and hospitals as opportunities for growth in the southeast part of the United States. In 2003, these marketing employees created a dedicated sales team of approximately twelve sales employees, and launched a Southeast Region healthcare marketing initiative to target and win this healthcare business. This team consisted of nine Account Executives and five National Account Executives (collectively "HCAEs"), as well as a marketing supervisor ("Marketing Supervisor"). This group identified Internet pharmacies as a sub-sector within the healthcare industry.

9. In a September 4, 2003 e-mail, a HCAE described opportunities in the Internet pharmaceutical sector, how Internet pharmacies operated, and the high shipping volume and revenue potential present with these accounts. The HCAE noted the importance of winning these accounts from the customer's current carrier.

10. In an email dated December 10, 2003, the Marketing Supervisor received from a Florida marketing and sales employee a copy of a December 4, 2003 Miami Herald news article describing the indictment of a South Florida owner of an Internet pharmacy that sold controlled substances "illegally by not requiring customers to be physically examined by doctors." The employee advised the Marketing Supervisor that if online pharmacies were in violation of state or federal laws, UPS may want to discontinue pursuing the business.

11. On December 16, 2003, an Internet pharmacy owner informed a HCAE that its business was closing "due to the recent policies enacted by the Federal Government", and that "this industry has been flooded with companies that offer easy access to narcotics and other dangerous medications." In response to this email, a marketing manager in the Southeast Region ("Marketing Manager") wrote to the Marketing Supervisor and a HCAE that "it appears that we are making the right decision to remove the on-line pharmacies from the Critical Customer targets."

12. In a December 19, 2003 email, the Marketing Supervisor wrote to the Marketing Manager, "[t]his issue [about illegally operating Internet pharmacies] has also heated up in the press - I heard the end of a report on NPR this week - both UPS and FedEx were brought into question on this issue in the report." The Marketing Supervisor further stated that the Southeast Region healthcare marketing initiative needed to make sure it was only targeting legitimate Internet pharmacies. The Marketing Supervisor also stated in the email that he had learned that the National Association of Boards of Pharmacies ("NABP") had developed a Verified Internet Pharmacy Practice Sites ("VIPPS") program, and that through this program, the NABP certified Internet pharmacies as legitimate, but that the process was new and only 14 Internet pharmacies had been certified. The Marketing Supervisor further stated that NABP also lists "rules of thumb" for identifying whether or not an internet pharmacy is legitimate. The Marketing Supervisor wrote that they would probably want to do their own research on their current customers, and ones UPS planned to target, to determine whether they seemed to be doing anything illicit.

13. In January of 2004, marketing employees in the Southeast Region involved in the healthcare marketing initiative developed a Southeast Region Healthcare Reference Guide (the "Guide") that provided an overview of the healthcare industry based on publicly available information. The Guide stated that illegitimate Internet pharmacies were being shut down by the federal government where no doctor visit was required and/or the drugs were imported illegally.

14. In January of 2004, marketing employees in the Southeast Region provided training about the Southeast Region Healthcare Initiative to Southeast Region Area Sales Managers who supervised HCAEs. This training identified suspiciously-operated Internet pharmacies as those for which there was no valid doctor patient relationship and required only an online or phone consultation with a doctor, the sole means of communication with the consumer was by e-mail, the site did not provide toll-free numbers, the consumer could not contact the pharmacist with questions, and noted that many pharmacies that sold a limited number of

medications (particularly "lifestyle" drugs) were not legitimate. The talking points to the training materials stated that there must be a valid pre-existing doctor-patient relationship, that HCAEs should not target any Internet pharmacy that violated this rule, and that UPS did not want to be targeted as "an enabler of illegal activity."

15. After the training, on January 9, 2004, the Marketing Supervisor forwarded a January 9, 2004 Wall Street Journal article to the HCAEs and their Area Sales Managers stating that, as discussed in the training, the Southeast Region Healthcare Initiative needed to make sure that it was not targeting any online pharmacies that did not require a prescription resulting from a valid doctor-patient examination. The email stated that online pharmacies that fulfilled prescriptions based on a questionnaire only, or a questionnaire and phone consultation with an online pharmacy supplied doctor were not considered legal. This email was forwarded to a UPS Vice President of Sales and several Southeast Region district sales directors.

16. In February of 2004, the Marketing Supervisor requested help in quantifying the sales opportunity from online pharmacies in the Southeast Region, "both legit and not legit," to find out how much revenue UPS would be walking away from if the company decided not to target these businesses. Notes from a March 19, 2004 Southeast Region Healthcare Initiative conference call indicated that the HCAEs were told that they could continue to sell UPS services to Internet pharmacies as long as they did not actively target these businesses. According to the notes of the call, the Southeast Region Healthcare Initiative did not want the HCAEs to target Internet pharmacies in part because they were being shut down by law enforcement and it would be a waste of time and resources to win a customer that would soon go out of business.

17. On June 11, 2004, the Marketing Supervisor conducted background research on two Internet pharmacies for a HCAE in connection with attempting to win their business. The Marketing Supervisor identified one as prescribing drugs based on a phone consultation with a doctor provided by the Internet pharmacy and stated "Our stance has been that if the online pharmacy does not require you to have seen the prescribing doctor in person, we will not support any special [discount] pricing to get the business. If you can win it through regular district pricing or POS, [Point of Sale] that is fine. But, Marketing will not support any pricing appeals."

18. On that same date, a UPS marketing analyst sent an internal memorandum to the South Florida district sales director, an Area Sales Manager and a Southeast Region Marketing Director discussing the Internet pharmacy industry in South Florida and how UPS's revenue had been impacted by law enforcement and competitive activity. According to the analyst, "Most accounts, if not all of the accounts we had have gone out of business due to illegal practice within the pharmaceutical industry." The memorandum listed four Internet pharmacies that were closed due to illegal dispensing of prescription medication and concluded that South Florida's business plan results for 2004 were impacted by these events. When a HCAE attempted to reestablish a shipping account for one of the illegal Internet pharmacies identified in this memorandum, a marketing specialist reminded the HCAE that he could attempt to win the business but could not provide discounted pricing.

19. In February 2005, marketing employees in the Southeast Region provided training to HCAEs. The training materials identified pharmacies that require face-to-face visits as a "best practice." Nevertheless, accounts were established for Internet pharmacies that did not meet this best practice. The training materials instructed the HCAEs that they could expect minimal region and corporate pricing support for Internet pharmacies that did not require face-to-face visits.

20. On May 18, 2005, a marketing analyst sent an email to a HCAE and a marketing employee listing questions for the HCAE to ask a potential Internet pharmacy customer. The email stated that a Florida-based Internet pharmacy was required to have an Internet Pharmacy Permit from the Florida Board of Pharmacy, and that Florida, Kentucky and Nevada had laws specifically regulating internet pharmacies shipping or operating in their states. The email included a suggestion to call the Board of Pharmacy to verify a customer but that "this could however lead to us being a whistle blower on a customer."

21. Appropriate due diligence was not conducted on all accounts UPS employees knew or should have known were being used to ship pharmaceuticals ordered online to determine whether the businesses were operating legally. For example, on August 18, 2005, a UPS sales employee received a sales lead regarding United Care Pharmacy ("UCP"), a customer that had requested a meeting with a UPS representative. Subsequently, the sales employee secured UCP's business after meeting with the customer at the customer's location, and receiving information from the customer about UCP's business model. UCP was a fulfillment pharmacy that filled orders exclusively for Internet pharmacies. This account was established in late September 2005. Although the sales employee knew that UCP was shipping pharmaceuticals for Internet pharmacies, neither the sales employee nor others at UPS conducted research into UCP's business practices. Had UPS employees conducted due diligence on UCP, they would have learned that UCP was not VIPPS certified, was not registered in all states to which it shipped controlled substances and prescription drugs, and would be filling orders for Internet pharmacies based solely upon those pharmacies' customers' completion of an online questionnaire.

22. On September 30, 2005, the Kentucky Bureau of Investigations Drug Unit sent to a UPS district security manager and others a list of illegal pharmacies that shipped to their state. An affiliate of UCP was one of the illegal Internet pharmacies included on this list. UPS shipped packages from this entity into Kentucky after September 30, 2005.

23. In November of 2005, a UPS sales employee for UCP and his immediate supervisor traveled with the owner of UCP to Costa Rica. This trip was approved and paid for by UPS. While in Costa Rica, the sales employee and his immediate supervisor learned about the business model used by Internet pharmacies, including those for which UCP shipped pharmaceuticals. This business model was based on the fulfillment of prescriptions based upon either an online questionnaire or a telephone call where no valid doctor-patient relationship existed. The sales employee and his immediate supervisor established subaccounts under UCP's master account for Internet pharmacies that were located outside of the United States. At least

one of the Internet pharmacies established as a subaccount under UCP shipped from three different locations in the state of Florida.

24. UCP was closed by state law enforcement in March 2006 for illegally distributing controlled substances for Internet pharmacies. UPS shipped packages for various offshore Internet pharmacies under UCP's master UPS shipping account after March 2006. UPS continued to ship packages under UCP's account until April 20, 2007, when a UPS District Controller for the North Carolina District advised the UPS sales employee and his immediate supervisor that UCP's leadership had been arrested and that the account needed to be suspended immediately.

25. On or about August 30, 2005, a UPS Southeast Region security manager received a fax from a group called the Southwest Drug Task Force in Big Stone Gap, Virginia. It stated in relevant part:

> We the members of the Southwest Virginia Drug Task Force and other Wise County Virginia law enforcement officials feel a problem exist in our area and in other areas that your company has been made aware of the problem. Our area has been overwhelmed in the past year with pharmaceutical drugs being ordered over the Internet or by phone. Companies such as yours and other companies are in the delivery service business are delivering these drugs into our area.
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> One problem, which concerns us, is delivery drivers are delivering packages to the same person who is using several different names. Delivery drivers are allowing these packages to be picked up in parking lots, and beside the highway and not making deliveries to the address listed on the package.
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> We are concerned as to the health and safety of the citizens in this area. We are concerned that these drugs many of which are mind altering pain medication and nerve medication are being misused, and abused by citizens. These citizens then may drive vehicles, and cause accidents.
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> They may become so addicted these medications they commit property crimes such as larceny, burglary, and robbery to obtain money to pay for these drugs, which are delivered COD by delivery companies.
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> For that reason we respectful request steps be taken by your company to help correct this problem. We request your company

> suspend all shipments of drugs to subjects, or residences that are suspicious in nature. Your drivers and managers already know who these people and locations are. That drugs be shipped in separate and distinctive packaging. That your company requires proof of identity of any recipient of packages containing drugs. That packages containing drugs not be delivered to any location other than a residence or place of business.
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> Most of all we request officials of your company join local law enforcement in joint announcements in newspapers, radio and television making the public aware of the fact obtaining drugs over the internet or by phone is not legal. That local law enforcement and your company are joining forces to make sure the public safety is watched after. And anyone who is caught obtaining these drugs will be arrested and prosecuted to the fullest extent of the law. We hope your company will join us in this effort and we can have your company beside us, talking with us as a partner and not being identified as part of the problem.

This fax was circulated to, among others, UPS's Corporate Security Manager and a Vice President of Public Affairs. UPS delivered packages in Virginia shipped by Internet pharmacies after receiving this request from the Southwest Virginia Drug Task Force.

26. UPS offered certain Internet pharmacies C.O.D. Enhancement Services. Through these services, C.O.D. ("Collect On Delivery") payments for thousands of packages shipped to individual Internet pharmacy customers were consolidated and deposited into a UPS bank account and then available funds were electronically transferred to the bank accounts of the Internet pharmacy shippers. In a June 8, 2005 email, the Marketing Supervisor wrote to a Vice President of Sales, a Marketing Manager, and a Business Development Manager at UPS Capital, in relevant part:

> UPS Capital did in fact withdraw COD Automatic from three online pharmacy accounts in SFL. They were concerned about the financial risk of serving these pharmacies due to the history of these types of businesses getting shut down by the government. When UPS Capital withdrew the COD Automatic, these accounts withdrew their small package business from UPS. These accounts were producing an average of $3.5K - $5K per day before their accounts were closed in May.
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> [Name Redacted] does not feel that UPS Capital is exposing themselves to a high degree of risk by serving online pharmacy accounts, and he is in favor of continuing to do business with them.

27. UPS, through some of its employees, was on notice that Internet pharmacies violated the law when distributing controlled substances and prescription drugs without a valid prescription. Despite being on notice that such Internet pharmacies were using its services, UPS did not implement procedures to close the accounts of those pharmacies, permitting them to ship controlled substances and prescription drugs from 2003 to 2010.