

TAX INDEMNITY AGREEMENT

BY AND AMONG

AND

AND

DATED AS OF _____, 20____

This **TAX INDEMNITY AGREEMENT** (this "Agreement") is entered into as of _____, 20____, by and among _____, a _____ corporation ("Seller"), _____, a _____ corporation ("Buyer"), and _____, a _____ corporation (the "Company"). Seller, Buyer, and the Company are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Seller and Buyer have entered into that certain Stock Purchase Agreement dated as of _____, 20____ (the "Purchase Agreement"), pursuant to which Buyer has agreed to purchase from Seller, and Seller has agreed to sell to Buyer, all of the issued and outstanding capital stock of the Company; and

WHEREAS, as a condition and material inducement to Buyer's willingness to enter into the Purchase Agreement, the Parties have agreed to enter into this Agreement to allocate responsibilities, liabilities, and procedures with respect to certain Tax matters;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Defined Terms. For purposes of this Agreement, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. The following terms shall have the meanings set forth below:

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on the Closing Date.

"Straddle Period" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

"Tax" or "Taxes" means any and all federal, state, local, or foreign taxes, charges, fees, levies, or other assessments, including income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

ARTICLE II

TAX INDEMNIFICATION

Section 2.01. Seller's Indemnification. From and after the Closing, Seller shall defend, indemnify, and hold harmless Buyer, the Company, and their respective affiliates, officers, directors, employees, and agents (each, a "Buyer Indemnified Party") from and against, and shall compensate and reimburse each Buyer Indemnified Party for, any and all Taxes:

- a. Imposed on or with respect to the Company for any Pre-Closing Tax Period;
- b. Arising out of or resulting from a breach of any representation or warranty made by Seller in the Purchase Agreement or this Agreement relating to Taxes;
- c. Resulting from a breach of any covenant or agreement of Seller contained in this Agreement or the Purchase Agreement; and
- d. Imposed on the Company as a result of transferee, successor, or joint and several liability under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law) as a result of being a member of an affiliated, consolidated, combined, or unitary group on or prior to the Closing Date.

Section 2.02. Buyer's Indemnification. From and after the Closing, Buyer shall defend, indemnify, and hold harmless Seller and its affiliates (each, a "Seller Indemnified Party") from and against, and shall compensate and reimburse each Seller Indemnified Party for, any and all Taxes:

- a. Imposed on or with respect to the Company for any Post-Closing Tax Period (excluding any portion of a Straddle Period allocated to the Pre-Closing Tax Period); and
- b. Resulting from a breach of any covenant or agreement of Buyer contained in this Agreement or the Purchase Agreement.

ARTICLE III

ALLOCATION OF STRADDLE PERIOD TAXES

Section 3.01. Straddle Period Allocation. In the case of any Straddle Period, the Taxes of the Company shall be allocated between the Pre-Closing Tax Period and the portion of the Straddle Period beginning after the Closing Date (the "Post-Closing Straddle Period") as follows:

- a. In the case of any real property, personal property, or other ad valorem Taxes, the amount allocated to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date, and the denominator of which is the total number of days in the entire Straddle Period; and
- b. In the case of all other Taxes (including income, franchise, sales, use, withholding, and payroll Taxes), the amount allocated to the Pre-Closing Tax Period shall be determined based on an interim closing of the books of the Company as of the close of business on the Closing Date.

ARTICLE IV

TAX RETURNS AND PROCEDURES

Section 4.01. Preparation of Tax Returns.

- a. Seller shall, at its sole cost and expense, prepare or cause to be prepared, and timely file or cause to be timely filed, all Tax Returns of the Company for any taxable period ending on or before the Closing Date that are required to be filed after the Closing Date. All such Tax Returns shall be prepared in a manner consistent with past practices of the Company unless otherwise required by applicable Law.
- b. Buyer shall prepare or cause to be prepared, and timely file or cause to be timely filed, all Tax Returns of the Company for any Straddle Period. Buyer shall submit each such Straddle Period Tax Return to Seller for its review and comment at least _____ days prior to the due date (including extensions) for filing such Tax Return and shall incorporate all reasonable comments provided by Seller in writing.

ARTICLE V

TAX CONTESTS

Section 5.01. Notice of Tax Contests. Each Party shall notify the other Party in writing within _____ days of receipt by such Party

or any of its affiliates of any written notice of any Tax audit, assessment, examination, or other administrative or judicial proceeding (a "Tax Contest") that could give rise to an indemnification obligation under this Agreement.

Section 5.02. Control of Tax Contests.

- a. Seller shall have the right, at its own expense, to control the defense, compromise, or settlement of any Tax Contest relating solely to a Pre-Closing Tax Period; provided, however, that Seller shall not settle, compromise, or abandon any such Tax Contest without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- b. Buyer shall control the defense, compromise, or settlement of any Straddle Period Tax Contest or any Tax Contest that Seller elects not to control; provided, however, that Seller shall have the right to participate in any such Tax Contest at its own expense, and Buyer shall not settle, compromise, or abandon any such Tax Contest that would affect Seller's tax liability or indemnification obligations under this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

**ARTICLE VI
MISCELLANEOUS**

Section 6.01. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of _____, without giving effect to any choice of law or conflict of law provision thereof.

Section 6.02. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 6.03. Entire Agreement. This Agreement, together with the Purchase Agreement, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

IN WITNESS WHEREOF the Parties hereto have caused this Tax Indemnity Agreement to be executed as of the date first written above.

SELLER:

BUYER:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COMPANY:

By: _____
Name: _____
Title: _____