

# ASSET PURCHASE TAX REPRESENTATION AND INDEMNIFICATION AGREEMENT

This ASSET PURCHASE TAX REPRESENTATION AND INDEMNIFICATION AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_ ("Seller"), and \_\_\_\_\_ ("Buyer"). Seller and Buyer may collectively be referred to herein as the "Parties" and individually as a "Party."

## RECITALS

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement dated as of \_\_\_\_\_, 20\_\_\_\_\_, (the "Purchase Agreement"), pursuant to which Buyer has agreed to acquire substantially all of the assets of Seller used in connection with its business; and

WHEREAS, as a condition and material inducement to Buyer's willingness to enter into the Purchase Agreement and consummate the transactions contemplated thereby, Seller has agreed to make certain tax representations and warranties and to provide certain indemnities in respect of Tax matters as set forth herein.

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

## ARTICLE I DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings specified below:

"Code" means the Internal Revenue Code of 1986, as amended.

"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 taxable period ending on and including 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, imposts, duties, or other assessments, including income, gross receipts, excise, real or personal property, sales, use, transfer, withholding, social security, occupation, use, service, license, net worth, franchise, payroll, employment, environmental, customs, capital stock, or other taxes of any kind whatsoever, imposed by any Tax Authority, including any interest, penalties, or additions to tax imposed with respect thereto.

"Tax Authority" means any government, board, bureau, agency, commission, department, or authority, whether federal, state, local, or foreign, having jurisdiction over the assessment, determination, collection, or imposition of any Tax.

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

## ARTICLE II TAX REPRESENTATIONS AND WARRANTIES

Seller hereby represents and warrants to Buyer, as of the date hereof and as of the Closing Date, that:

1. **Filing of Tax Returns.** Seller has timely filed, or caused to be timely filed, taking into account any valid extensions of time, all Tax Returns required to be filed by it under applicable laws with respect to the Purchased Assets and the business operations of Seller. All such Tax Returns are true, complete, and correct in all material respects.
2. **Payment of Taxes.** Seller has fully and timely paid all Taxes due and payable by Seller (whether or not shown on any Tax Return), the non-payment of which could result in a lien on the Purchased Assets or create any successor liability for Buyer.

3. **No Tax Liens.** There are no Tax liens upon any of the Purchased Assets, other than liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established.
4. **Audits and Proceedings.** No federal, state, local, or foreign Tax audits, examinations, investigations, or administrative or judicial Tax proceedings are currently pending, ongoing, or, to the knowledge of Seller, threatened against or with respect to Seller or the Purchased Assets. Seller has not received from any Tax Authority any written notice of proposed adjustment, deficiency, or underpayment of Taxes that remains unresolved.
5. **Withholding.** Seller has complied in all material respects with all applicable laws relating to the withholding of Taxes and has, within the time and in the manner prescribed by law, withheld and paid over to the proper Tax Authorities all required amounts.
6. **Foreign Person Status.** Seller is not a "foreign person" within the meaning of Section 1445 of the Code, and Seller will deliver an affidavit to such effect to Buyer on or prior to the Closing Date.

### ARTICLE III TAX INDEMNIFICATION

**1. Indemnification by Seller.** Seller hereby covenants and agrees to indemnify, defend, and hold harmless Buyer, its affiliates, and their respective officers, directors, employees, and agents from and against, and shall compensate and reimburse them for, any and all losses, damages, liabilities, claims, deficiencies, interest, penalties, costs, and expenses (including reasonable attorneys' and accountants' fees) arising out of, resulting from, or relating to:

- a. Any inaccuracy in or breach of any representation or warranty of Seller contained in Article II of this Agreement;
- b. Any breach of or failure by Seller to perform any covenant or agreement contained in this Agreement;
- c. Any and all Taxes of Seller (including any liability of Seller for Taxes of multiple corporations or other entities) for any Pre-Closing Tax Period; and
- d. Any and all Taxes imposed on or with respect to the Purchased Assets or the operations of the business of Seller for all Pre-Closing Tax Periods.

**2. Procedures for Indemnification.**

- a. If Buyer receives notice of any claim, audit, examination, or proceeding with respect to Taxes of Seller or the Purchased Assets for a Pre-Closing Tax Period (a "Tax Claim"), Buyer shall promptly notify Seller in writing of such Tax Claim.
- b. Seller shall have the right, at its own expense, to control the defense, compromise, or settlement of any Tax Claim that relates solely to a Pre-Closing Tax Period, provided that Seller shall keep Buyer fully informed of all developments and shall not settle any such Tax Claim without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed if such settlement would have a material adverse effect on Buyer or the Purchased Assets for any period after the Closing Date.

### ARTICLE IV COOPERATION AND TAX MATTERS

**1. Cooperation.** Buyer and Seller shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the preparation and filing of any Tax Returns, any audit, litigation, or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon request) the provision of records and information reasonably relevant to any such Tax Return, audit, litigation, or other proceeding.

**2. Transfer Taxes.** All excise, sales, use, value-added, transfer (including real property transfer), stamp, documentary, filing, recordation, and other similar Taxes and fees incurred in connection with the transactions contemplated by the Purchase Agreement shall be paid \_\_\_\_\_ when due. The Party required by law to file any Tax Returns with respect to such transfer Taxes shall file the same and the other Party shall cooperate in respect of such filing.

**ARTICLE V**  
**MISCELLANEOUS**

**1. Survival.** All representations, warranties, covenants, and indemnification obligations under this Agreement shall survive the Closing and shall remain in full force and effect until the expiration of the applicable statute of limitations plus a period of \_\_\_\_\_ days.

**2. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_, without giving effect to any principles of conflicts of law.

**3. Entire Agreement.** This Agreement, together with the Purchase Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

**SELLER:**

**BUYER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_