

PRE-CLOSING TAX INDEMNIFICATION AGREEMENT

This PRE-CLOSING TAX INDEMNIFICATION AGREEMENT (Agreement) is entered into as of _____, 20____, by and among:

SELLER: _____, a _____ organized under the laws of _____ (“Seller”);

BUYER: _____, a _____ organized under the laws of _____ (“Buyer”); and

COMPANY: _____, a _____ organized under the laws of _____ (the “Company”).

Seller, Buyer, and the Company are collectively referred to herein as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, Seller owns all of the issued and outstanding equity interests of the Company;

WHEREAS, pursuant to that certain Purchase Agreement dated as of _____, 20____ (the “Purchase Agreement”), Buyer has agreed to acquire from Seller, and Seller has agreed to sell to Buyer, all of the outstanding equity interests of the Company (the “Acquisition”); and

WHEREAS, to induce Buyer to enter into the Purchase Agreement, Seller has agreed to indemnify Buyer and the Company against certain Tax liabilities attributable to taxable periods (or portions thereof) ending on or before the Closing Date.

NOW, THEREFORE, in consideration of the mutual covenants, representations, and warranties 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

Section 1.01. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement. As used in this Agreement, the following terms shall have the meanings set forth below:

“Closing Date” means the date on which the closing of the Acquisition occurs.

“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.

“Pre-Closing Taxes” means any and all Taxes of the Company (a) for any Pre-Closing Tax Period, (b) of any member of an affiliated, consolidated, combined, or unitary group of which the Company is or was a member on or prior to the Closing Date, and (c) as a transferee or successor, by contract or otherwise, which Taxes relate to an event or transaction occurring on or before 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 federal, state, local, or foreign 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 INDEMNIFICATION

Section 2.01. Tax Indemnification by Seller. From and after the Closing Date, 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 pay and reimburse each Buyer Indemnified Party for, any and all:

- a. Pre-Closing Taxes;
- b. Taxes arising from a breach of any representation, warranty, or covenant of Seller contained in this Agreement or the Purchase Agreement relating to Taxes; and
- c. Reasonable out-of-pocket legal, accounting, and consulting fees and expenses incident to any of the foregoing.

Section 2.02. Calculation of Taxes for Straddle Periods. For purposes of determining the portion of Taxes that are Pre-Closing Taxes for any Straddle Period, the Parties agree as follows:

- a. In the case of property Taxes, ad valorem Taxes, and other flat or periodic Taxes, the portion attributable to the Pre-Closing Tax Period shall be deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on and including the Closing Date, and the denominator of which is the total number of calendar days in the entire Straddle Period.
- b. In the case of all other Taxes (including income Taxes, sales Taxes, and withholding Taxes), the portion attributable to the Pre-Closing Tax Period shall be determined on a "closing of the books" basis as of the close of business on the Closing Date.

ARTICLE III TAX RETURNS AND CONTESTS

Section 3.01. Preparation and Filing of Tax Returns.

- a. Pre-Closing Tax Returns. Seller shall, at its sole cost and expense, prepare or cause to be prepared all Tax Returns of the Company for taxable periods 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 the past practices of the Company unless otherwise required by applicable Law. Seller shall submit each such Tax Return to Buyer for review and comment at least _____ days prior to the due date thereof. Seller shall incorporate any reasonable comments provided by Buyer.
- b. Straddle Period Tax Returns. Buyer shall prepare or cause to be prepared and filed all Tax Returns of the Company for Straddle Periods. Buyer shall submit each such Tax Return to Seller for review and comment at least _____ days prior to the due date thereof. Seller shall pay to Buyer the portion of the Taxes shown on such Tax Return that constitute Pre-Closing Taxes within _____ days after receiving a request for payment from Buyer, but in no event later than _____ days before the due date of such Tax Return.

Section 3.02. Tax Contests.

- a. Buyer shall promptly notify Seller in writing upon receipt by Buyer or the Company of any notice of audit, assessment, suit, proposed adjustment, or other claim by any governmental authority relating to Pre-Closing Taxes (a “Tax Contest”).
- b. Seller shall have the right, at its own expense, to control the conduct and resolution of any Tax Contest that relates solely to a taxable period ending on or before the Closing Date; *provided, however*, that (i) Seller shall keep Buyer reasonably informed of the progress of such Tax Contest, (ii) Buyer shall have the right to participate in such Tax Contest at its own expense, and (iii) Seller shall not settle or compromise any such Tax Contest without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.
- c. Buyer shall control the conduct and resolution of any Tax Contest relating to a Straddle Period; *provided, however*, that (i) Buyer shall keep Seller reasonably informed of the progress of such Tax Contest, (ii) Seller shall have the right to participate in such Tax Contest at its own expense, and (iii) Buyer shall not settle or compromise any such Tax Contest without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE IV COOPERATION

Section 4.01. Mutual Cooperation. The Parties shall cooperate fully, as and to the extent reasonably requested by any other Party, in connection with the preparation and filing of any Tax Return, any Tax Contest, or any audit or proceeding. Such

cooperation shall include the retention and (upon another Party's request) the provision of records and information reasonably relevant to any such Tax Return, Tax Contest, or audit, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

**ARTICLE V
MISCELLANEOUS**

Section 5.01. Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this Agreement that cannot be resolved by mutual agreement of the Parties shall be submitted to _____ (the "Tax Referee") for resolution. The decision of the Tax Referee shall be final and binding on the Parties, and the fees and expenses of the Tax Referee shall be shared equally by Buyer and Seller.

Section 5.02. 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 rules or provisions.

Section 5.03. Entire Agreement; Amendments. This 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, with respect to such subject matter. This Agreement may be amended or modified only by a written instrument executed by each of the Parties.

Section 5.04. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

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

SELLER:

By:

Name: _____

Title: _____

BUYER:

By:

Name: _____

Title: _____

COMPANY:

By:

Name: _____

Title: _____