

# PRE-CLOSING TAX LIABILITY INDEMNIFICATION AGREEMENT

This Pre-Closing Tax Liability Indemnification Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_\_, by and among:

**INDEMNITOR(S):** \_\_\_\_\_, residing at/having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnitor"); and

**INDEMNITEE(S):** \_\_\_\_\_, residing at/having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnitee").

Indemnitor and Indemnitee may collectively be referred to herein as the "Parties" or individually as a "Party."

## RECITALS

WHEREAS, pursuant to that certain \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_\_\_\_ (the "Purchase Agreement"), Indemnitee is acquiring certain assets, stock, or business interests of \_\_\_\_\_ (the "Company"); and

WHEREAS, as a material inducement for Indemnitee to enter into and perform its obligations under the Purchase Agreement, Indemnitor has agreed to provide indemnification for certain Tax liabilities of the Company attributable to periods prior to the Closing Date (as defined in the Purchase Agreement).

NOW, THEREFORE, in consideration of 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 agree as follows:

## 1. DEFINITIONS

- a. **"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 and including the Closing Date.
- b. **"Pre-Closing Taxes"** means any and all Taxes of, or imposed on, the Company or for which the Company may be liable (i) for any Pre-Closing Tax Period, (ii) resulting from a breach of any representation, warranty, or covenant of the Indemnitor regarding Tax matters, or (iii) as a transferee or successor, by contract or pursuant to any law, which Taxes relate to an event or transaction occurring on or before the Closing Date.
- c. **"Straddle Period"** means any taxable period that begins on or before the Closing Date and ends after the Closing Date.
- d. **"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.

## 2. INDEMNIFICATION

- a. **Indemnification Obligation.** Indemnitor hereby agrees to defend, indemnify, and hold harmless Indemnitee, its affiliates, and their respective officers, directors, employees, and agents from and against any and all losses, liabilities, claims, damages, deficiencies, costs, and expenses (including reasonable attorneys' and Tax professionals' fees) arising out of, resulting from, or relating to any Pre-Closing Taxes.
- b. **Payment of Indemnity Claims.** Any indemnification payment required to be made under this Agreement shall be paid by Indemnitor to Indemnitee within \_\_\_\_\_ business days after written demand therefor is made by Indemnitee, accompanied by reasonable documentation setting forth the basis for and calculation of the amount of Pre-Closing Taxes due.

**3. TAX RETURNS AND AUDITS**

- a. **Filing of Pre-Closing Tax Returns.** Indemnitor shall, at its sole cost and expense, prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Company for all taxable periods ending on or before 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. **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 post-closing portion of the Straddle Period based on an interim closing of the books as of the close of business on the Closing Date; provided, however, that property Taxes and other periodic Taxes shall be allocated on a daily pro-rata basis.
- c. **Control of Tax Contests.** Indemnitee shall promptly notify Indemnitor in writing of any audit, examination, assessment, or other proceeding (a "Tax Contest") initiated by any governmental authority with respect to Pre-Closing Taxes. Indemnitor shall have the right, at its own expense, to control the defense and settlement of any Tax Contest that relates solely to a Pre-Closing Tax Period; provided, however, that Indemnitor shall keep Indemnitee fully informed and shall not settle any such Tax Contest without the prior written consent of Indemnitee, which consent shall not be unreasonably withheld, conditioned, or delayed.

**4. TAX REFUNDS**

Any Tax refund (including any interest paid or credited with respect thereto) received by Indemnitee or the Company that is attributable to Pre-Closing Taxes paid by Indemnitor prior to the Closing Date shall be for the account of Indemnitor, and Indemnitee shall pay over the amount of such refund to Indemnitor within \_\_\_\_\_ days of receipt, net of any reasonable out-of-pocket costs and Taxes incurred by Indemnitee or the Company in recovering or receiving such refund.

**5. MISCELLANEOUS**

- a. **Survival.** The representations, warranties, covenants, and indemnification obligations set forth in this Agreement shall survive the Closing and shall remain in full force and effect until \_\_\_\_\_ calendar days after the expiration of the applicable statute of limitations.
- b. **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 principles.
- c. **Amendments and Waivers.** This Agreement may not be amended, modified, or supplemented except by a written instrument executed by all Parties hereto.
- d. **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 thereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Pre-Closing Tax Liability Indemnification Agreement as of the date first written above.

**INDEMNITOR:**

**INDEMNITEE:**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

