

PRE-CLOSING TAX INDEMNITY AGREEMENT

This **PRE-CLOSING TAX INDEMNITY AGREEMENT** (the "Agreement") is entered into as of _____, by and among _____ ("Seller"), and _____ ("Buyer").

RECITALS

WHEREAS, Seller and Buyer have entered into that certain _____, dated as of _____ (the "Purchase Agreement"), pursuant to which Buyer will acquire from Seller all of the issued and outstanding equity interests of _____ (the "Company"); and

WHEREAS, as a condition and inducement to Buyer's willingness to enter into the Purchase Agreement and consummate the transactions contemplated thereby, Seller has agreed to provide certain indemnities, covenants, and agreements with respect to Pre-Closing Taxes of the Company.

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 hereto agree as follows:

ARTICLE I DEFINITIONS

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

"**Closing Date**" means _____.

"**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.

"**Pre-Closing Taxes**" means any and all Taxes of, or imposed on, the Company for any Pre-Closing Tax Period.

"**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, severity, 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

1. **Seller's Indemnification Obligation.** From and after the Closing Date, Seller shall defend, indemnify, and hold harmless Buyer, the Company, and their respective affiliates, successors, and assigns (collectively, the "Buyer Indemnified Parties") from and against, and shall compensate and reimburse the Buyer Indemnified Parties for, any and all losses, liabilities, damages, claims, costs, and expenses (including reasonable attorneys' and accountants' fees) arising out of, resulting from, or in connection with:
 - a. Any and all Pre-Closing Taxes of the Company;
 - b. Any and all Taxes of any person imposed on the Company as a transferee or successor, by contract, or pursuant to any law, rule, or regulation, which Taxes relate to an event, transaction, or relationship occurring on or before the Closing Date; and
 - c. Any breach of or inaccuracy in any representation or warranty made by Seller regarding Taxes in this Agreement or the Purchase Agreement, or any breach of any covenant or agreement of Seller contained in this Agreement.

2. **Allocation of Straddle Period Taxes.** 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 tax period as follows:
 - a. In the case of Taxes based upon or related to income, receipts, activities, events, sales, payments, or wages, such Taxes shall be allocated based on an interim closing of the books as of the close of business on the Closing Date; and
 - b. In the case of real property, personal property, ad valorem, and other similar periodic Taxes, such Taxes shall be allocated on a daily pro-rata basis based on the number of days in the Straddle Period ending on the Closing Date relative to the total number of days in the entire Straddle Period.

**ARTICLE III
TAX RETURNS AND COOPERATION**

1. **Preparation and Filing 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 all 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 its review and comment at least _____ days prior to the due date for filing such Tax Return.
 - b. Buyer shall prepare or cause to be prepared, and timely file or cause to be timely filed, any Tax Returns of the Company for Straddle Periods. To the extent any such Tax Return shows an amount of Pre-Closing Taxes, Seller shall pay to Buyer the amount of such Pre-Closing Taxes at least _____ days prior to the date on which such Tax Return is required to be filed.
2. **Cooperation.** Buyer and Seller shall reasonably cooperate, and shall cause their respective affiliates to cooperate, in connection with the preparation and filing of any Tax Returns of the Company, and any audit, litigation, or other proceeding with respect to Taxes of the Company. Such cooperation shall include the retention and provision of records and information reasonably relevant to any such Tax Return or proceeding.

**ARTICLE IV
TAX CONTESTS**

1. **Notice of Tax Claims.** If Buyer or the Company receives notice of any inquiry, assessment, audit, or other administrative or judicial proceeding involving Taxes or Tax Returns of the Company for a Pre-Closing Tax Period (a "Tax Claim"), Buyer shall promptly notify Seller in writing of such Tax Claim.
2. **Control of Tax Claims.** 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 taxable period ending on or before the Closing Date; provided, however, that (a) Seller shall keep Buyer fully informed of the progress of such Tax Claim, (b) Buyer shall have the right to participate in the defense of such Tax Claim at its own expense, and (c) Seller shall not settle, compromise, or abandon any such Tax Claim without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.

**ARTICLE V
MISCELLANEOUS PROVISIONS**

1. **Survival.** The representations, warranties, covenants, and indemnification obligations set forth in this Agreement shall survive the Closing and remain in full force and effect until _____ calendar days after the expiration of the applicable statute of limitations.
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 choice of law or conflict of law rules or provisions.
3. **Amendments and Waivers.** This Agreement may not be amended, modified, or supplemented except by a written instrument executed by each of the parties hereto.
4. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

5. **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.

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

SELLER:

By: _____
Name: _____
Title: _____

BUYER:

By: _____
Name: _____
Title: _____