

PRE-CLOSING TAX MATTERS INDEMNITY AGREEMENT

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

RECITALS

WHEREAS, Seller and Buyer have entered into that certain Securities Purchase Agreement, dated as of _____ (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 equity interests of the Company;

WHEREAS, as a condition to the closing of the transactions contemplated by the Purchase Agreement, the Parties have agreed to enter into this Agreement to allocate responsibilities, liabilities, and procedures with respect to certain tax matters and to provide for indemnification for certain tax liabilities.

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

AGREEMENT

SECTION 1. DEFINITIONS

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

1. **"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.
2. **"Straddle Period"** means any taxable period that begins on or before the Closing Date and ends after the Closing Date.
3. **"Tax"** or **"Taxes"** means any and all federal, state, local, or foreign taxes, charges, fees, imposts, levies, or other assessments, including income, gross receipts, excise, real or personal property, sales, use, transfer, withholding, social security, occupation, use, service, license, net worth, payroll, franchise, severance, stamp, environmental, or other taxes, together with any interest, penalties, or additions to tax imposed by any Taxing Authority.
4. **"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.
5. **"Taxing Authority"** means any government or subdivision, agency, commission or authority thereof, or any quasi-governmental body, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax.

SECTION 2. TAX INDEMNIFICATION

1. **Indemnification by Seller.** Seller hereby covenants and agrees to defend, indemnify, and hold harmless Buyer, the Company, and their respective affiliates, successors, and assigns from and against any and all liability for, or loss arising out of, or directly or indirectly relating to:
 - a. All Taxes of the Company for any Pre-Closing Tax Period;
 - b. All Taxes 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. All transfer, documentary, sales, use, stamp, registration, and other such Taxes incurred in connection with the transactions contemplated by the Purchase Agreement.

2. **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 such Straddle Period as follows:
 - a. In the case of Taxes based upon or related to income, receipts, wages, or expenditures, such Taxes shall be deemed equal to the amount which would be payable if the taxable period ended with the Closing Date; and
 - b. In the case of other Taxes (such as ad valorem or property Taxes), such Taxes shall be allocated based on the number of days in the Straddle Period falling on or before the Closing Date relative to the total number of days in the entire Straddle Period.

SECTION 3. TAX RETURNS

1. **Pre-Closing Tax Returns.** Seller shall, at its sole cost and expense, prepare or cause to be prepared, and timely file or cause to be 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 past practice unless otherwise required by applicable law. Seller shall submit each such Tax Return to Buyer for its review and approval at least _____ days prior to the due date for filing.
2. **Straddle Period Tax Returns.** Buyer shall prepare or cause to be prepared, and timely file or cause to be filed, any Tax Returns of the Company for Straddle Periods. Buyer shall submit each such Tax Return to Seller for its review and comment at least _____ days prior to the due date for filing. Seller shall pay to Buyer the portion of the Taxes shown on such Tax Return that relates to the Pre-Closing Tax Period within _____ days of demand therefor.

SECTION 4. TAX CONTESTS

1. **Notice.** Buyer shall promptly notify Seller in writing upon receipt by Buyer or the Company of any notice of any tax audits, examinations, assessments, or other proceedings (a "Tax Contest") for which Seller may be liable for indemnification under this Agreement.
2. **Control.** Seller shall have the right to control, at its own expense, the conduct of any Tax Contest that relates solely to a Pre-Closing Tax Period; provided, however, that (a) Seller shall keep Buyer fully informed of the status of such Tax Contest, (b) Buyer shall have the right to participate in such Tax Contest at its own expense, and (c) 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.

SECTION 5. MISCELLANEOUS

1. **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 Tax Returns and any Tax Contest.
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 provision.
3. **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 executed this Pre-Closing Tax Matters Indemnity Agreement as of the date first written above.

SELLER:

By: _____

Name: _____

Title: _____

BUYER:

By: _____

Name: _____

Title: _____

COMPANY:

By: _____

Name: _____

Title: _____