

TAX REPRESENTATION AND WARRANTY INDEMNITY AGREEMENT

This TAX REPRESENTATION AND WARRANTY INDEMNITY AGREEMENT (this "Agreement") is entered into as of _____, by and among:

INDEMNITOR: _____, a _____ corporation, with its principal place of business at _____ (the "Indemntor");

AND

INDEMNIFIED PARTY: _____, a _____ corporation, with its principal place of business at _____ (the "Indemnified Party").

RECITALS

WHEREAS, pursuant to that certain Acquisition Agreement dated as of _____ (the "Acquisition Agreement"), by and among the Indemntor, the Indemnified Party, and _____ (the "Target Company"), the Indemnified Party has agreed to acquire all of the outstanding equity interests of the Target Company;

WHEREAS, as a condition and material inducement to the Indemnified Party's willingness to enter into and consummate the transactions contemplated by the Acquisition Agreement, the Indemntor has agreed to provide certain representations, warranties, and indemnities with respect to Tax matters of the Target Company; and

WHEREAS, the parties desire to set forth their agreement with respect to such Tax representations, warranties, and indemnification obligations.

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

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

"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.

"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, whether disputed or not.

"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 REPRESENTATIONS AND WARRANTIES

The Indemntor hereby represents and warrants to the Indemnified Party that, except as set forth in the disclosure schedules attached

hereto:

1. **Filing of Tax Returns.** The Target Company has timely filed, or has caused to be timely filed on its behalf, all Tax Returns required to be filed by it for all taxable periods ending on or prior to the date hereof. All such Tax Returns are true, complete, and correct in all material respects.
2. **Payment of Taxes.** All Taxes due and owing by the Target Company (whether or not shown on any Tax Return) have been timely paid in full.
3. **No Audit or Proceedings.** There is no action, suit, proceeding, investigation, audit, or claim now pending or, to the knowledge of the Indemnitor, threatened against the Target Company in respect of any Taxes or Tax Returns.
4. **Withholding.** The Target Company has complied in all material respects with all applicable laws relating to the payment and withholding of Taxes and has duly and timely withheld and paid over to the appropriate Taxing Authority all amounts required to have been so withheld and paid.
5. **Statute of Limitations.** There are no outstanding agreements or waivers extending the statutory period of limitation applicable to any Tax assessment or deficiency against the Target Company.

ARTICLE III

TAX INDEMNIFICATION

1. **Indemnification Obligations.** From and after the Closing, the Indemnitor shall defend, indemnify, and hold harmless the Indemnified Party, the Target Company, and their respective affiliates, officers, directors, employees, and agents from and against any and all Losses incurred or suffered by, or asserted against, any such indemnified person arising out of or resulting from:
 - a. any breach of or inaccuracy in any representation or warranty made by the Indemnitor in Article II of this Agreement;
 - b. any Taxes of the Target Company for any Pre-Closing Tax Period; and
 - c. any Taxes arising from a breach of any covenant or agreement of the Indemnitor contained in this Agreement.
2. **Survival of Claims.** The representations, warranties, covenants, and indemnification obligations of the Indemnitor under this Agreement shall survive the Closing until _____ days after the expiration of the applicable statute of limitations.
3. **Limitations on Indemnity.**
 - a. **Basket:** The Indemnitor shall not be liable for indemnification under this Article III until the aggregate amount of all Losses exceeds \$ _____, in which event the Indemnitor shall be liable for all such Losses from the first dollar.
 - b. **Cap:** The maximum aggregate liability of the Indemnitor for Losses under this Agreement shall not exceed \$ _____.

ARTICLE IV

TAX MATTERS AND COOPERATION

1. **Preparation and Filing of Tax Returns.** The Indemnitor shall prepare, or cause to be prepared, and timely file, or cause to be timely filed, all Tax Returns of the Target Company for all Pre-Closing Tax Periods that are required to be filed after the Closing Date. All such Tax Returns shall be prepared in a manner consistent with past practices of the Target Company except as otherwise required by applicable law.
2. **Cooperation.** The Indemnified Party and the Indemnitor shall reasonably cooperate, and shall cause their respective affiliates to cooperate, in connection with the preparation and filing of any Tax Returns of the Target Company and any audit, litigation, or other proceeding with respect to Taxes of the Target Company.

ARTICLE V

MISCELLANEOUS

1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of

_____, without giving effect to any choice of law or conflict of law provision or rule.

2. **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.
3. **Amendments and Waivers.** This Agreement may be amended, modified, or superseded, and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by each of the parties hereto.
4. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, sent by overnight courier, or mailed by certified mail to the addresses set forth on the first page of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Tax Representation and Warranty Indemnity Agreement as of the date first written above.

INDEMNITOR:

INDEMNIFIED PARTY:

By: _____

By: _____

Name:

Name:

Title:

Title:
