

STATE AND LOCAL TAX INDEMNITY AGREEMENT (ASSET PURCHASE)

This STATE AND LOCAL TAX INDEMNITY AGREEMENT (this "Agreement") is entered into as of _____, by and between _____ ("Seller"), and _____ ("Buyer"). Seller and Buyer may collectively be referred to herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement, dated as of _____ (the "Purchase Agreement"), pursuant to which Buyer has agreed to purchase, and Seller has agreed to sell, substantially all of the assets of Seller used in connection with its business; and

WHEREAS, as a condition to the closing of the transactions contemplated by the Purchase Agreement, and to allocate responsibility for certain state and local tax liabilities, the Parties have agreed to enter into this Agreement.

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:

SECTION 1: DEFINITIONS

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement. For purposes of this Agreement, the following terms shall 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 the Closing Date.

"Post-Closing Tax Period" means any taxable period beginning after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

"State and Local Taxes" means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind imposed by any state, local, municipal, or other regional governmental authority, including, without limitation, income, franchise, sales, use, gross receipts, ad valorem, property, transfer, excise, payroll, and withholding taxes, together with any interest, penalties, or additions to tax imposed with respect thereto.

"Straddle Period" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

SECTION 2: TAX INDEMNIFICATION BY SELLER

Seller hereby agrees to indemnify, defend, and hold harmless Buyer and its affiliates, directors, officers, employees, and agents from and against any and all claims, losses, liabilities, damages, deficiencies, costs, and expenses (including reasonable attorneys' and accountants' fees) arising out of, resulting from, or relating to:

- a. Any and all State and Local Taxes of Seller, or relating to the ownership or operation of the Purchased Assets, for any Pre-Closing Tax Period;
- b. Any and all State and Local Taxes resulting from a breach of any representation, warranty, or covenant of Seller contained in this Agreement or the Purchase Agreement relating to State and Local Taxes;
- c. Any and all transfer, documentary, sales, use, stamp, registration, value-added, or other similar State and Local Taxes incurred in connection with the transactions contemplated by the Purchase Agreement; and
- d. Any and all State and Local Taxes of any other person or entity for which Seller is held liable under applicable state or local law (e.g., bulk sales laws, successor liability, or transferee liability) as a result of the transactions contemplated by the Purchase Agreement.

SECTION 3: TAX INDEMNIFICATION BY BUYER

Buyer hereby agrees to indemnify, defend, and hold harmless Seller and its affiliates, directors, officers, employees, and agents from and against any and all claims, losses, liabilities, damages, deficiencies, costs, and expenses (including reasonable attorneys' and accountants' fees) arising out of, resulting from, or relating to:

- a. Any and all State and Local Taxes relating to the ownership or operation of the Purchased Assets for any Post-Closing Tax Period; and
- b. Any and all State and Local Taxes resulting from a breach of any representation, warranty, or covenant of Buyer contained in this Agreement.

SECTION 4: STRADDLE PERIOD ALLOCATION

For purposes of this Agreement, in the case of any Straddle Period, the portion of State and Local Taxes that relates to the Pre-Closing Tax Period shall be determined as follows:

- a. In the case of real property, personal property, and other ad valorem State and Local Taxes, the amount of such taxes allocated to the Pre-Closing Tax Period shall be deemed to be the amount of such State and Local Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date, and the denominator of which is the total number of days in the entire Straddle Period; and
- b. In the case of all other State and Local Taxes (including income, franchise, sales, use, and payroll taxes), the amount allocated to the Pre-Closing Tax Period shall be determined based on an interim closing of the books of the Business as of the close of business on the Closing Date.

SECTION 5: TAX RETURNS AND FILINGS

5.1 Pre-Closing Tax Returns

Seller shall, at its own expense, timely prepare and file (or cause to be prepared and filed) all State and Local Tax Returns for the Seller and the Purchased Assets for all tax periods ending on or before the Closing Date. All such Tax Returns shall be prepared in a manner consistent with past practice, unless otherwise required by applicable law.

5.2 Straddle Period and Post-Closing Tax Returns

Buyer shall timely prepare and file (or cause to be prepared and filed) any State and Local Tax Returns with respect to the Purchased Assets for any Straddle Periods. Buyer shall provide Seller with a copy of any such Straddle Period Tax Return for Seller's review and comment at least _____ days prior to the due date for filing. Buyer shall incorporate all reasonable comments provided by Seller in writing within _____ days of receipt of such Tax Return. Seller shall pay to Buyer, within _____ days of demand, the amount of State and Local Taxes shown on such Tax Return that are allocated to the Pre-Closing Tax Period pursuant to Section 4.

SECTION 6: TAX CONTESTS

6.1 Notice of Claim

If any state or local taxing authority issues to Buyer or Seller a written notice of any audit, assessment, examination, or other proceeding (a "Tax Contest") with respect to State and Local Taxes for which the other Party may have an indemnification obligation under this Agreement, the Party receiving such notice shall promptly notify the other Party in writing.

6.2 Control of Tax Contests

Seller shall have the right, at its own expense, to control the defense, compromise, or settlement of any Tax Contest that relates solely to a Pre-Closing Tax Period; provided, however, that Seller shall not settle, compromise, or abandon any such Tax Contest in a manner that would adversely affect Buyer or the Purchased Assets in any Post-Closing Tax Period without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed. Buyer shall have the right to control any other Tax Contest, provided that Seller shall have the right to participate in any Tax Contest relating to a Straddle Period at its own expense.

SECTION 7: COOPERATION AND RETENTION OF RECORDS

Buyer and Seller shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of State and Local Tax Returns, any audit, litigation, or other proceeding with respect to State and Local Taxes. Such cooperation shall include the retention and (upon request) the provision of records and information reasonably relevant to any such tax matters, and making employees available on a mutually convenient basis to provide additional explanation of any material provided hereunder.

SECTION 8: MISCELLANEOUS

8.1 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 or rule.

8.2 Amendments and Waivers

This Agreement may not be amended, modified, or supplemented except by a written instrument executed by both Buyer and Seller. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party granting the waiver.

8.3 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.

8.4 Entire Agreement

This Agreement, together with the Purchase Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to such subject matter.

IN WITNESS WHEREOF, the Parties hereto have executed this State and Local Tax Indemnity Agreement as of the date first written above.

SELLER:

By: _____

Name: _____

Title: _____

BUYER:

By: _____

Name: _____

Title: _____