

# TAX PENALTY AND INTEREST INDEMNITY AGREEMENT

This Tax Penalty and Interest Indemnity Agreement (the "Agreement") is entered into as of \_\_\_\_\_, by and between:

**INDEMNITOR:** \_\_\_\_\_, with a principal address at

\_\_\_\_\_

and

**INDEMNITEE:** \_\_\_\_\_, with a principal address at

\_\_\_\_\_

## RECITALS

**WHEREAS**, the Parties have entered into a transaction or relationship pursuant to \_\_\_\_\_ dated \_\_\_\_\_ (the "Underlying Agreement"); and

**WHEREAS**, certain tax positions, filings, or liabilities may arise in connection with the Underlying Agreement; and

**WHEREAS**, Indemnitor has agreed to indemnify and hold harmless Indemnitee against any and all tax penalties, fines, additions to tax, and associated interest that may be assessed by any taxing authority in connection with such matters, subject to the terms and conditions set forth herein.

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

### 1. INDEMNIFICATION

Subject to the terms of this Agreement, Indemnitor hereby agrees to defend, indemnify, and hold harmless Indemnitee, its affiliates, directors, officers, employees, and agents from and against any and all liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees and professional fees) arising out of or resulting from any penalties, additions to tax, fines, or interest assessed by any federal, state, local, or foreign taxing authority (collectively, "Tax Liabilities") with respect to:

\_\_\_\_\_  
\_\_\_\_\_

### 2. SCOPE AND LIMITATIONS

The indemnification obligation under Section 1 shall apply only to Tax Liabilities resulting from:

- a. Any misrepresentation, omission, or breach of representation or warranty made by Indemnitor in connection with the Underlying Agreement;
- b. Any failure by Indemnitor to timely file any tax return or information return required to be filed by it;
- c. The specific tax treatment of the transaction as described herein:

\_\_\_\_\_

Notwithstanding the foregoing, Indemnitor shall not be liable for any Tax Liabilities to the extent such liabilities arise from the gross negligence, willful misconduct, or bad faith of Indemnitee.

### 3. NOTICE OF CLAIM

Indemnitee shall provide prompt written notice to Indemnitor of any audit, examination, assessment, or proceeding initiated by any taxing authority that could reasonably be expected to result in a claim for indemnification under this Agreement (a "Tax Claim"). Such notice shall be provided within \_\_\_\_\_ business days of Indemnitee receiving official notification of the Tax Claim. Failure to provide timely notice shall not relieve Indemnitor of its obligations under this Agreement, except to the extent that Indemnitor is materially prejudiced by such failure.

**4. CONTROL OF DEFENSE AND SETTLEMENT**

- a. Indemnitor shall have the right, at its own expense, to participate in or assume the defense and control of any Tax Claim, provided that Indemnitor acknowledges in writing its obligation to indemnify Indemnitee under this Agreement.
- b. If Indemnitor assumes the defense, it shall keep Indemnitee reasonably informed of the progress of the Tax Claim and shall consult with Indemnitee in good faith.
- c. Indemnitor shall not settle or compromise any Tax Claim without the prior written consent of Indemnitee, which consent shall not be unreasonably withheld, conditioned, or delayed, if such settlement would impose any material non-monetary obligation or ongoing liability upon Indemnitee.

**5. PAYMENT AND REIMBURSEMENT**

Indemnitor shall pay to Indemnitee any amount due under this Agreement within \_\_\_\_\_ days after a final determination of the Tax Liability. A "final determination" shall mean a final, non-appealable settlement or resolution with the relevant taxing authority, or a final, non-appealable judgment or order of a court of competent jurisdiction.

**6. TERM AND TERMINATION**

This Agreement shall remain in full force and effect until the expiration of the applicable statute of limitations for the assessment of the tax associated with the underlying transaction, plus a period of \_\_\_\_\_ days.

**7. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_, without regard to its principles of conflicts of law. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the courts of \_\_\_\_\_.

**8. MISCELLANEOUS**

- a. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, or representations.
- b. **Amendments:** This Agreement may only be amended, modified, or supplemented by a written instrument executed by both Parties.
- c. **Severability:** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.
- d. **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 Tax Penalty and Interest Indemnity Agreement as of the date first written above.

**INDEMNITOR:**

**INDEMNITEE:**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

