

# TAX REPRESENTATION AND WARRANTY INDEMNITY AGREEMENT

This Tax Representation and Warranty Indemnity Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ (the "Effective Date"), by and between:

**Party A:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Party A"),

and

**Party B:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Party B").

Party A and Party B may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

## RECITALS

**WHEREAS**, the Parties have entered into that certain \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_\_\_\_ (the "Underlying Agreement"); and

**WHEREAS**, as a condition to the transactions contemplated under the Underlying Agreement, each Party has agreed to make certain tax representations and warranties, and to indemnify the other Party against certain tax liabilities as set forth herein.

**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

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

- "Tax" or "Taxes"** means any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, 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.
- "Taxing Authority"** means any government or subdivision, agency, commission or authority thereof, or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection, or other imposition of any Tax.

## SECTION 2: REPRESENTATIONS AND WARRANTIES

### 2.1 Party A's Tax Representations and Warranties

Party A hereby represents and warrants to Party B that:

1. Party A has timely filed all Tax Returns required to be filed by it under applicable laws, and all such Tax Returns are true, complete, and correct in all material respects.
2. Party A has timely paid all Taxes due and owing, whether or not shown on any Tax Return.
3. There are no audits, examinations, investigations, or other administrative or judicial proceedings ongoing or threatened in writing by any Taxing Authority against Party A.
4. No claim has ever been made by a Taxing Authority in a jurisdiction where Party A does not file Tax Returns that Party A is or may be subject to taxation by that jurisdiction.

## **2.2 Party B's Tax Representations and Warranties**

Party B hereby represents and warrants to Party A that:

1. Party B has timely filed all Tax Returns required to be filed by it under applicable laws, and all such Tax Returns are true, complete, and correct in all material respects.
2. Party B has timely paid all Taxes due and owing, whether or not shown on any Tax Return.
3. There are no audits, examinations, investigations, or other administrative or judicial proceedings ongoing or threatened in writing by any Taxing Authority against Party B.
4. No claim has ever been made by a Taxing Authority in a jurisdiction where Party B does not file Tax Returns that Party B is or may be subject to taxation by that jurisdiction.

## **SECTION 3: INDEMNIFICATION**

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### **3.1 Indemnification by Party A**

Party A shall defend, indemnify, and hold harmless Party B and its affiliates, officers, directors, employees, and agents from and against any and all losses, liabilities, claims, damages, deficiencies, costs, and expenses (including reasonable attorneys' and tax professionals' fees) arising out of, resulting from, or relating to:

1. Any inaccuracy or breach of any representation or warranty made by Party A in Section 2.1 of this Agreement.
2. Any failure by Party A to perform or comply with any covenant or agreement contained in this Agreement.
3. Taxes of Party A for any taxable period ending on or before the date hereof, or the portion of any Straddle Period ending on the date hereof.

### **3.2 Indemnification by Party B**

Party B shall defend, indemnify, and hold harmless Party A and its affiliates, officers, directors, employees, and agents from and against any and all losses, liabilities, claims, damages, deficiencies, costs, and expenses (including reasonable attorneys' and tax professionals' fees) arising out of, resulting from, or relating to:

1. Any inaccuracy or breach of any representation or warranty made by Party B in Section 2.2 of this Agreement.
2. Any failure by Party B to perform or comply with any covenant or agreement contained in this Agreement.
3. Taxes of Party B for any taxable period ending on or before the date hereof, or the portion of any Straddle Period ending on the date hereof.

### **3.3 Limitations on Indemnification**

The indemnification obligations under this Section 3 shall be subject to the following limitations:

1. **Survival Period:** The representations and warranties contained in this Agreement shall survive the closing of the transactions contemplated by the Underlying Agreement until \_\_\_\_\_ years following the expiration of the applicable statute of limitations.

2. **Cap:** The maximum aggregate liability of either Party for indemnification claims under this Agreement shall not exceed \$ \_\_\_\_\_.
3. **Basket:** Neither Party shall be entitled to indemnification under this Section 3 until the aggregate amount of all losses subject to indemnification exceeds \$ \_\_\_\_\_, in which event the indemnifying Party shall be liable for all losses from the first dollar.

#### SECTION 4: TAX CONTESTS

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If any Taxing Authority issues to an indemnified Party a written notice of any audit, assessment, claim, or intent to conduct an investigation regarding Taxes for which the other Party may be liable under Section 3 (a "Tax Claim"), the indemnified Party shall promptly notify the indemnifying Party in writing. The indemnifying Party shall have the right, at its own expense, to control the defense, compromise, or settlement of such Tax Claim, provided that the indemnifying Party shall keep the indemnified Party informed of all material developments and shall not settle any such claim without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

#### SECTION 5: MISCELLANEOUS

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**5.1 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 provisions.

**5.2 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.

**5.3 Entire Agreement:** This Agreement, together with the Underlying Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, both written and oral.

**IN WITNESS WHEREOF** the Parties hereto have caused this Tax Representation and Warranty Indemnity Agreement to be executed by their respective duly authorized officers as of the Effective Date.

**PARTY A:**

**PARTY B:**

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

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

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

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

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

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

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

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