

TAX INDEMNITY COVENANT

This TAX INDEMNITY COVENANT (this "Covenant") is entered into as of _____, by and between _____ ("Seller"), and _____ ("Buyer"). Seller and Buyer are hereinafter collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, pursuant to that certain Share Purchase Agreement dated as of _____ (the "Agreement"), Buyer has agreed to purchase from Seller, and Seller has agreed to sell to Buyer, all of the issued and outstanding shares of capital stock of _____ (the "Company"); and

WHEREAS, as a condition to the closing of the transactions contemplated by the Agreement, the Parties have agreed to execute and deliver this Covenant to govern their respective rights and obligations regarding pre-closing tax liabilities and related tax matters.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained herein and in the Agreement, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Covenant, 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.

"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 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, value added, alternative minimum, estimated, or other taxes, together with any interest, penalties, or additions to tax imposed by any taxing authority.

"Tax Return" means any return, declaration, report, claim for refund, information return, or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

ARTICLE II TAX INDEMNIFICATION

Section 2.01 Indemnification by Seller. Seller shall indemnify, defend, and hold harmless Buyer, the Company, and their respective affiliates, successors, and assigns from and against any and all liability for, or in arising out of, or in connection with:

- a. Any and all Taxes of the Company, or for which the Company may be liable, for any Pre-Closing Tax Period;
- b. Any and all Taxes resulting from a breach of any representation, warranty, or covenant made by Seller in this Covenant or in the Agreement relating to Taxes;
- c. Any and all transfer, documentary, sales, use, stamp, registration, value added, or other similar Taxes incurred in connection with the transactions contemplated by the Agreement; and
- d. Any and all reasonable out-of-pocket legal, accounting, or consulting fees and expenses attributable to any item described in clauses (a) through (c) above.

Section 2.02 Straddle Period Allocation. For purposes of determining the liability for Taxes for a Straddle Period, the portion of

any Tax that is allocable to the Pre-Closing Tax Period shall be determined as follows:

- a. In the case of property Taxes, ad valorem Taxes, or other flat-rate periodic Taxes, the amount of such Tax allocable to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date, and the denominator of which is the total number of calendar days in the entire Straddle Period.
- b. In the case of all other Taxes (including income Taxes, franchise Taxes, sales and use Taxes, and withholding Taxes), the amount allocable to the Pre-Closing Tax Period shall be determined on the basis of an interim closing of the books of the Company as of the close of business on the Closing Date.

ARTICLE III TAX RETURNS AND CONTESTS

Section 3.01 Preparation and Filing of Tax Returns.

- a. Seller shall, at its sole cost and expense, prepare or cause to be prepared, and timely file or cause to be timely 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 the past practices of the Company unless otherwise required by applicable law. Seller shall provide Buyer with a draft of any such Tax Return at least _____ days prior to the due date thereof for Buyer's review and comment.
- b. Buyer shall prepare or cause to be prepared, and timely file or cause to be timely filed, any Tax Returns of the Company for Straddle Periods. Buyer shall provide Seller with a draft of any such Tax Return at least _____ days prior to the due date thereof for Seller's review and approval.

Section 3.02 Tax Contests.

- a. Buyer shall promptly notify Seller in writing upon receipt by Buyer or the Company of any notice of any tax audit, examination, assessment, or administrative or judicial proceeding (a "Tax Contest") affecting the Taxes of the Company for any Pre-Closing Tax Period.
- b. Seller shall have the right, at its own expense, to control the conduct and resolution of any Tax Contest that relates solely to a taxable period ending on or before the Closing Date; provided, however, that 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, if such settlement or compromise would have a material adverse effect on the Tax liability of the Company or Buyer for any period (or portion thereof) beginning after the Closing Date.

ARTICLE IV MISCELLANEOUS

Section 4.01 Cooperation. Seller and Buyer shall reasonably cooperate, and shall cause their respective affiliates to cooperate, in preparing and filing all Tax Returns and in conducting any Tax Contest, including by maintaining and making available to each other all books, records, and information necessary or useful for such purposes.

Section 4.02 Survival. The indemnification obligations and covenants contained in this Covenant shall survive the Closing and shall remain in full force and effect until _____ days after the expiration of the applicable statute of limitations.

Section 4.03 Governing Law. This Covenant shall be governed by, and construed in accordance with, the laws of the State of _____, without regard to the conflict of laws principles thereof.

Section 4.04 Entire Agreement. This Covenant, together with the 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 the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Tax Indemnity Covenant as of the date first above written.

SELLER:

BUYER:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____