

# TAX REPRESENTATION AND WARRANTY INDEMNITY AGREEMENT

This TAX REPRESENTATION AND WARRANTY INDEMNITY AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_\_, by and among:

**Indemnifying Party:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ ("Indemnifier"); and

**Indemnified Party:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ ("Indemnitee").

Indemnifier and Indemnitee are hereinafter collectively referred to as the "Parties" and individually as a "Party."

## RECITALS

WHEREAS, pursuant to that certain \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_\_\_\_ (the "Transaction Agreement"), by and among \_\_\_\_\_, Indemnifier has agreed to make certain representations, warranties, and indemnities regarding tax matters; and

WHEREAS, as a condition to the consummation of the transactions contemplated under the Transaction Agreement, the Parties have agreed to execute and deliver this Agreement to govern the representations, warranties, and indemnification obligations of the Indemnifier with respect to Tax (as defined herein) matters.

NOW, THEREFORE, in consideration of the mutual covenants, premises, and representation herein contained, 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 set forth below:

1. **"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, payroll, franchise, environmental, customs, duties, or other taxes of any kind whatsoever, imposed by any Taxing Authority, together with any interest, penalties, or additions to tax imposed with respect thereto.
2. **"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, filed or required to be filed with any Taxing Authority.
3. **"Taxing Authority"** means any government or subdivision, agency, commission, or instrumentality thereof, or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection, or other imposition of any Tax.
4. **"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 taxable period ending on and including the Closing Date.
5. **"Closing Date"** means \_\_\_\_\_, 20\_\_\_\_\_.

## SECTION 2: REPRESENTATIONS AND WARRANTIES

The Indemnifier hereby represents and warrants to the Indemnitee as of the date hereof (and, if applicable, as of the Closing Date) that:

1. **Filing of Tax Returns.** All Tax Returns required to be filed by or on behalf of the Indemnifier, or with respect to the assets or business being transferred pursuant to the Transaction Agreement, have been timely filed in accordance with all applicable laws, and all such Tax Returns are true, correct, and complete in all material respects.
2. **Payment of Taxes.** All Taxes due and owing by the Indemnifier (whether or not shown on any Tax Return) have been timely paid in full. There are no liens for Taxes upon any of the assets or properties of the Indemnifier, other than statutory liens for Taxes not yet due and payable.

3. **No Audits or Proceedings.** No examination, audit, investigation, action, suit, proceeding, or administrative claim is currently pending, or to the knowledge of the Indemnifier, threatened, by any Taxing Authority regarding any Taxes or Tax Returns of the Indemnifier. No deficiency or adjustment for any amount of Tax has been proposed, asserted, or assessed in writing against the Indemnifier which has not been fully resolved or paid.
4. **Extensions and Waivers.** The Indemnifier has not executed or requested any outstanding waiver of any statute of limitations or agreement for the extension of time for the assessment or collection of any Tax.
5. **Tax Sharing and Indemnity Agreements.** The Indemnifier is not a party to, bound by, or has any obligation under any tax sharing, allocation, or indemnification agreement or arrangement.

### SECTION 3: INDEMNIFICATION

1. **Indemnification Obligation.** Subject to the limitations set forth in this Section 3, the Indemnifier hereby agrees to defend, indemnify, and hold harmless the Indemnitee, 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 and expenses) arising out of, resulting from, or in connection with:
  - a. Any breach of or inaccuracy in any representation or warranty made by the Indemnifier in Section 2 of this Agreement;
  - b. Any breach of any covenant or agreement made by the Indemnifier in this Agreement; and
  - c. All Taxes (or the non-payment thereof) of the Indemnifier, or relating to the assets, business, or operations of the Indemnifier, for all Pre-Closing Tax Periods.
2. **Limitations on Indemnification.**
  - a. **Basket.** No claim for indemnification shall be made by the Indemnitee under this Agreement unless and until the aggregate amount of all losses eligible for indemnification exceeds \$ \_\_\_\_\_ (the "Basket"), in which event the Indemnifier shall be liable for the entire amount of such losses from the first dollar.
  - b. **Cap.** The maximum aggregate liability of the Indemnifier for all claims under this Agreement shall not exceed \$ \_\_\_\_\_ (the "Cap").
  - c. **Survival Period.** The representations and warranties contained in Section 2 shall survive the Closing Date until the expiration of thirty (30) days following the expiration of the applicable statute of limitations.

### SECTION 4: TAX CONTESTS

1. **Notice of Claim.** If the Indemnitee receives notice of any audit, assessment, or other claim by a Taxing Authority that could give rise to a claim for indemnification under Section 3 (a "Tax Claim"), the Indemnitee shall promptly notify the Indemnifier in writing. Failure to give such notice shall not relieve the Indemnifier of its obligations, except to the extent the Indemnifier is materially prejudiced thereby.
2. **Control of Defense.** The Indemnifier shall have the right, at its own expense, to control the defense, compromise, or settlement of any Tax Claim; provided, however, that the Indemnifier shall keep the Indemnitee reasonably informed of the progress of such Tax Claim, and shall not settle or compromise any such Tax Claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned, or delayed.

### SECTION 5: MISCELLANEOUS

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.
2. **Entire Agreement.** This Agreement, together with the Transaction Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.
3. **Amendments and Waivers.** No amendment, modification, or waiver of any provision of this Agreement shall be valid or binding unless set forth in writing and signed by both Parties.

4. **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 caused this Tax Representation and Warranty Indemnity Agreement to be executed by their respective duly authorized officers as of the date first written above.

**INDEMNIFIER:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INDEMNITEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_