

# MASTER WITHHOLDING TAX INDEMNIFICATION AGREEMENT

This Master Withholding Tax Indemnification Agreement (the "Agreement") is entered into as of \_\_\_\_\_, by and between \_\_\_\_\_ ("Indemnitee"), and \_\_\_\_\_ ("Indemnitee"). Indemnitee and Indemnitee may collectively be referred to herein as the "Parties" and individually as a "Party."

## RECITALS

WHEREAS, the Parties have entered, and/or contemplate entering, into one or more transactions, agreements, or commercial arrangements (collectively, the "Underlying Transactions"); and

WHEREAS, in connection with the Underlying Transactions, Indemnitee may make certain payments to or for the benefit of Indemnitee, or Indemnitee may make payments to or for the benefit of Indemnitee; and

WHEREAS, such payments may be subject to withholding taxes imposed by federal, state, local, or foreign taxing authorities; and

WHEREAS, to facilitate the Underlying Transactions, Indemnitee has agreed to indemnify and hold harmless Indemnitee against certain withholding tax liabilities as 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. DEFINITIONS

- A. **"Tax" or "Taxes"** means any and all taxes, duties, levies, imposts, assessments, or other charges of a similar nature imposed by any governmental, fiscal, or taxing authority, including any interest, additions to tax, or penalties applicable thereto.
- B. **"Withholding Taxes"** means any Taxes required under applicable law to be deducted, withheld, or collected from any payment made in connection with the Underlying Transactions.
- C. **"Losses"** means any and all liabilities, losses, damages, claims, costs, and expenses (including, without limitation, reasonable attorneys' fees, expert fees, tax advisors' fees, interest, and penalties) arising out of or resulting from any assessment, reassessment, or demand for Withholding Taxes.

## 2. REPRESENTATIONS AND WARRANTIES

Indemnitee represents, warrants, and covenants to Indemnitee that:

- A. Indemnitee is duly organized, validly existing, and in good standing under the laws of \_\_\_\_\_.
- B. Indemnitee has the legal capacity, power, and authority to enter into and perform its obligations under this Agreement.
- C. Indemnitee is the sole beneficial owner of all payments to be received under the Underlying Transactions and is entitled to the benefits of the tax treaty between \_\_\_\_\_ and \_\_\_\_\_, if applicable, to reduce or eliminate withholding tax.
- D. All tax forms, certificates, documentation, and information provided by Indemnitee to Indemnitee (including, but not limited to, IRS Form W-9, W-8BEN, W-8BEN-E, W-8ECI, or W-8EXP) are, and will remain, true, correct, complete, and valid. Indemnitee shall immediately notify Indemnitee in writing of any change in circumstances that renders any such documentation obsolete, incorrect, or invalid, and shall promptly provide updated, valid documentation.

## 3. INDEMNIFICATION

- A. **Scope of Indemnity.** Indemnitee hereby agrees to indemnify, defend, and hold harmless Indemnitee, its affiliates, directors, officers, employees, agents, and representatives from and against any and all Losses resulting from or arising out of:
  - i. Any failure by Indemnitee to deduct or withhold Taxes from any payment to Indemnitee, where such failure was

based on or resulted from Indemntor's representations, warranties, covenants, tax forms, or instructions;

- ii. Any determination by any governmental or taxing authority that withholding or additional withholding of Taxes was required with respect to any payment made to Indemntor;
- iii. Any inaccuracy, breach, or misrepresentation in any tax form, certificate, document, representation, or warranty provided by Indemntor to Indemntee.

B. **Gross-Up.** If Indemntee is required by law to make any deduction or withholding of Taxes from any payment to be made to Indemntor under an Underlying Transaction, then, unless otherwise explicitly provided in writing for a specific transaction, the sum payable by Indemntee shall be increased as necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section), Indemntor receives an amount equal to the sum it would have received had no such deduction or withholding been required. Indemntor shall provide Indemntee with the information and documentation necessary to calculate and pay such gross-up.

C. **Payment of Indemnity.** Indemntor shall pay any amounts due under this Section within \_\_\_\_\_ days of receipt of a written demand from Indemntee, accompanied by reasonable supporting documentation of the Loss or Tax liability.

#### 4. NOTICE AND CONTEST

A. **Notice of Claim.** Indemntee shall notify Indemntor in writing within \_\_\_\_\_ days of receiving any written notice, claim, assessment, or audit from a taxing authority regarding any Withholding Tax liability subject to indemnification under this Agreement. The failure to give prompt notice shall not relieve Indemntor of its obligations under this Agreement except to the extent Indemntor is materially prejudiced by such failure.

B. **Contest of Claim.** Indemntee shall have the sole right to control, defend, compromise, or settle any claim, audit, or proceeding relating to Withholding Taxes. Indemntee may, at its sole discretion, allow Indemntor to participate in any such proceeding at Indemntor's sole expense. Indemntee shall not settle any claim subject to indemnification hereunder without the prior written consent of Indemntor, which consent shall not be unreasonably withheld, conditioned, or delayed.

#### 5. TERM AND TERMINATION

This Agreement shall commence on the date first written above and shall remain in full force and effect until terminated by either Party upon \_\_\_\_\_ days' prior written notice to the other Party. Notwithstanding any termination of this Agreement, the indemnification obligations, representations, and warranties of Indemntor contained herein shall survive termination with respect to any payments made or transactions entered into prior to the effective date of termination.

#### 6. MISCELLANEOUS

A. **Governing Law.** 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.

B. **Jurisdiction.** Any legal action, suit, or proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts of \_\_\_\_\_.

C. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations. This Agreement may not be amended, waived, or modified except by a written instrument signed by authorized representatives of both Parties.

D. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

E. **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. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission (e.g., PDF) shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Master Withholding Tax Indemnification Agreement to be executed by their respective duly authorized officers as of the date first written above.

**INDEMNITOR:**

**INDEMNITEE:**

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

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

\_\_\_\_\_  
By: (Signature)

\_\_\_\_\_  
By: (Signature)

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

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

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

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

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

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