

## PRE-CLOSING TAX LIABILITY INDEMNITY AGREEMENT

This PRE-CLOSING TAX LIABILITY INDEMNITY AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_\_, by and among:

**INDEMNITOR:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ ("Seller"); and

**INDEMNITEE:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ ("Buyer").

Seller and Buyer are collectively referred to herein as the "Parties" and individually as a "Party."

### RECITALS

WHEREAS, Seller and Buyer have entered into that certain Purchase Agreement dated as of \_\_\_\_\_, 20\_\_\_\_\_, (the "Purchase Agreement"), pursuant to which Buyer has agreed to acquire \_\_\_\_\_ (the "Company") from Seller; and

WHEREAS, as a condition to the closing of the transactions contemplated by the Purchase Agreement (the "Closing"), and to induce Buyer to consummate the transaction, Seller has agreed to provide indemnification to Buyer for certain Tax liabilities relating to periods ending on or prior to the Closing Date.

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:

### ARTICLE I DEFINITIONS

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

"**Closing Date**" shall mean \_\_\_\_\_, 20\_\_\_\_\_.

"**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, levies, imposts, duties, and other assessments, including income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, severance, stamp, occupation, windfall profits, environmental, federal highway use, commercial rent, value added, alternative minimum, add-on minimum, registration, social security, real property, personal property, or other tax of any kind whatsoever, imposed by any governmental authority, including any interest, additions to tax, or penalties applicable thereto.

### ARTICLE II TAX INDEMNIFICATION

**Section 2.1 Indemnification by Seller.** Seller hereby covenants and agrees to defend, indemnify, and hold harmless Buyer, the Company, and their respective affiliates, successors, and assigns (collectively, the "Buyer Indemnified Parties") from and against, and pay and reimburse the Buyer Indemnified Parties for, any and all Taxes, losses, claims, liabilities, damages, costs, and expenses (including reasonable attorneys' and accountants' fees and expenses) arising out of or relating to:

- a. Any and all Taxes imposed on or with respect to the Company for any Pre-Closing Tax Period;
- b. Any and all Taxes of any member of an affiliated, consolidated, combined, or unitary group of which the Company is or was a member on or prior to the Closing Date;
- c. Any breach or inaccuracy of any representation or warranty made by Seller regarding Tax matters in the Purchase Agreement

or this Agreement; and

- d. Any breach of any covenant or agreement made by Seller in this Agreement.

**Section 2.2 Allocation of Straddle Period Taxes.** For purposes of determining Pre-Closing Taxes for a Straddle Period, the portion of any Taxes that is attributable to the Pre-Closing Tax Period shall be determined as follows:

- a. In the case of property Taxes, ad valorem Taxes, or other flat or periodic Taxes, the amount of such Tax allocated to the Pre-Closing Tax Period shall be the total 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 Straddle Period ending on and including the Closing Date, and the denominator of which is the total number of calendar days in the entire Straddle Period; and
- b. In the case of income Taxes, sales and use Taxes, employment Taxes, and other Taxes based upon or related to income, activities, transactions, or receipts, the amount of such Tax allocated to the Pre-Closing Tax Period shall be determined on an interim closing-of-the-books basis as of the close of business on the Closing Date.

### ARTICLE III TAX RETURNS AND CONTESTS

**Section 3.1 Preparation and Filing of Tax Returns.**

- a. Seller shall, at its own expense, prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns of the Company that are required to be filed for any taxable period ending on or before the Closing Date. All such Tax Returns shall be prepared in a manner consistent with prior practice unless otherwise required by applicable law.
- b. Buyer shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns of the Company for any Straddle Period. To the extent any such Straddle Period Tax Return reflects Pre-Closing Taxes for which Seller is responsible under this Agreement, Buyer shall provide such Tax Return to Seller for review and comment at least \_\_\_\_\_ days prior to the filing due date. Seller shall pay to Buyer the amount of Pre-Closing Taxes shown as due on such Straddle Period Tax Return at least \_\_\_\_\_ days prior to the filing due date.

**Section 3.2 Tax Contests.** Buyer shall notify Seller in writing within \_\_\_\_\_ days of receipt by Buyer or the Company of any notice of audit, assessment, or other claim relating to Taxes of the Company for a Pre-Closing Tax Period (a "Tax Claim"). Seller shall have the right, at its own expense, to control the defense, compromise, or settlement of any such Tax Claim, provided that Seller shall keep Buyer fully informed of the progress of such Tax Claim, and shall not settle or compromise any such Tax Claim without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.

### ARTICLE IV MISCELLANEOUS

**Section 4.1 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 provision or rule.

**Section 4.2 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 4.3 Notices.** All notices, requests, claims, demands, and other communications under this Agreement shall be in writing and shall be given to the respective Parties at the addresses set forth below or to such other address as any Party may have furnished to the other in writing.

If to Seller:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

If to Buyer:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

**Section 4.4 Entire Agreement.** This Agreement, together with the Purchase 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 caused this Pre-Closing Tax Liability Indemnity Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

**SELLER:**

**BUYER:**

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

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

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

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

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

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