

# STANDARD FATCA TAX INDEMNIFICATION AGREEMENT

## AGREEMENT TEMPLATE FOR FOREIGN ACCOUNT TAX COMPLIANCE ACT INDEMNITY

This Standard FATCA Tax Indemnification Agreement (the "Agreement") is entered into as of \_\_\_\_\_, by and between:

\_\_\_\_\_, a company incorporated under the laws of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnifying Party"),

and

\_\_\_\_\_, a company incorporated under the laws of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnified Party").

The Indemnifying Party and the Indemnified Party may collectively be referred to as the "Parties" and individually as a "Party."

### RECITALS

**WHEREAS**, the Parties have entered into, or may enter into, certain financial, commercial, or business transactions pursuant to one or more underlying agreements (the "Underlying Agreements"); and

**WHEREAS**, the Parties are subject to the provisions of the Foreign Account Tax Compliance Act (FATCA), enacted as part of the Hiring Incentives to Restore Employment Act, and the regulations promulgated thereunder, as well as any applicable Intergovernmental Agreements (IGAs) entered into between the United States and other jurisdictions; and

**WHEREAS**, to ensure compliance with FATCA and to allocate liabilities arising from any failure to comply with FATCA requirements, the Parties agree to the indemnification terms 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

- "FATCA"** means Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, any intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof, and any local law, regulation, or directive implementing such intergovernmental agreements.
- "FATCA Withholding"** means any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, the regulations or agreements thereunder, official interpretations thereof, or any law implementing an intergovernmental approach thereto.
- "Tax" or "Taxes"** means any tax, levy, impost, duty, or other charge or withholding of a similar nature (including any related penalty, interest, or addition to tax) imposed by any governmental or taxation authority.

### 2. REPRESENTATIONS AND WARRANTIES

The Indemnifying Party represents, warrants, and covenants to the Indemnified Party that:

- Its FATCA status is: \_\_\_\_\_.
- Its Global Intermediary Identification Number (GIIN) is: \_\_\_\_\_ (if applicable).
- All tax documentation, including but not limited to IRS Form W-8BEN, W-8BEN-E, W-8IMY, W-8EXP, W-8ECI, or W-9, as applicable, provided by the Indemnifying Party to the Indemnified Party is, and will remain, true, correct, and complete.
- It will notify the Indemnified Party in writing within \_\_\_\_\_ days of any change in its circumstances that affects its FATCA status or causes any representation or documentation previously provided to become incorrect, incomplete, or obsolete.

**3. INDEMNIFICATION**

- a. The Indemnifying Party hereby agrees to indemnify, defend, and hold harmless the Indemnified Party, its affiliates, directors, officers, employees, and agents from and against any and all losses, liabilities, claims, damages, obligations, costs, taxes, interest, penalties, and expenses (including reasonable attorneys' fees and expenses) arising out of, resulting from, or in connection with:
  - o Any failure by the Indemnifying Party to comply with its obligations under FATCA;
  - o The untruth, inaccuracy, or breach of any representation, warranty, or covenant made by the Indemnifying Party in this Agreement;
  - o Any FATCA Withholding imposed on payments made to or by the Indemnified Party as a result of the Indemnifying Party's failure to provide valid, accurate, and timely tax documentation or information; and
  - o Any actions, audits, or investigations by the U.S. Internal Revenue Service (IRS) or any other tax authority arising from the Indemnifying Party's FATCA status or reporting failures.
- b. The indemnification obligation under this Section shall apply regardless of whether the relevant FATCA Withholding or liability arises before or after the termination of this Agreement or any Underlying Agreement.

**4. COOPERATION AND INFORMATION EXCHANGE**

The Parties agree to cooperate fully and to provide each other with such information, documentation, and assistance as may be reasonably requested in order to satisfy their respective obligations under FATCA, to minimize any FATCA Withholding, or to defend any audit, claim, or assessment by a taxing authority.

**5. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by, and construed in accordance with, the laws of \_\_\_\_\_, without regard to its conflict of law principles. Any dispute arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of \_\_\_\_\_.

**6. MISCELLANEOUS**

- a. **Survival:** The provisions of this Agreement shall survive the expiration or termination of any Underlying Agreements and shall remain in full force and effect until the expiration of the applicable statute of limitations for the assessment of relevant Taxes.
- b. **Amendments:** This Agreement may only be amended, modified, or supplemented by a written instrument executed by authorized representatives of both Parties.
- c. **Severability:** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- d. **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 Standard FATCA Tax Indemnification Agreement to be executed by their respective duly authorized officers as of the date first written above.

**INDEMNIFYING PARTY:**

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDEMNIFIED PARTY:**

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_