

# WITHHOLDING TAX INDEMNITY AGREEMENT

This Withholding Tax Indemnity Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

**Indemnitor:** \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnitor");

and

**Indemnitee:** \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnitee").

## RECITALS

WHEREAS, Indemnitor and Indemnitee have entered into a \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Underlying Agreement"), pursuant to which certain payments are to be made by Indemnitee to Indemnitor;

WHEREAS, Indemnitor has represented that payments made under the Underlying Agreement are not subject to withholding tax under the laws of \_\_\_\_\_;

WHEREAS, in reliance on such representations, Indemnitee has agreed to make payments under the Underlying Agreement without deduction or withholding for or on account of any taxes, subject to the Indemnitor executing this Agreement;

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. TAX REPRESENTATIONS AND WARRANTIES

The Indemnitor represents and warrants to the Indemnitee that:

- a. It is a resident for tax purposes in \_\_\_\_\_.
- b. It is the beneficial owner of all payments to be received under the Underlying Agreement.
- c. The payments made under the Underlying Agreement are exempt from withholding tax pursuant to \_\_\_\_\_.
- d. It shall provide to the Indemnitee a properly completed and executed Form \_\_\_\_\_, or any other applicable tax certificate or treaty documentation, prior to the receipt of any payment.

## 2. INDEMNIFICATION

- a. The Indemnitor hereby agrees to indemnify, defend, and hold harmless the Indemnitee, its affiliates, officers, directors, employees, and agents from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), interest, penalties, and additions to tax arising out of, resulting from, or in connection with any failure by the Indemnitee to withhold taxes from any payments made to the Indemnitor under the Underlying Agreement.
- b. If any tax authority asserts a claim or assesses any tax, interest, or penalty against the Indemnitee in respect of payments made to the Indemnitor, the Indemnitor shall, upon demand by the Indemnitee, pay to the Indemnitee an amount equal to such tax, interest, penalty, and any associated costs within \_\_\_\_\_ business days of receiving written notice of such claim or assessment.

**3. NOTIFICATION AND COOPERATION**

- a. The Indemnitee shall promptly notify the Indemnitor in writing of any inquiry, audit, assessment, or proceeding initiated by any tax authority relating to withholding taxes covered by this Agreement.
- b. The Indemnitor shall have the right, at its own expense, to participate in and control the defense of any such tax claim, provided that the Indemnitor acknowledges its obligation to fully indemnify the Indemnitee under this Agreement. The Indemnitee shall cooperate fully with the Indemnitor in contesting any such claim.

**4. GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of \_\_\_\_\_, without regard to its conflict of law principles.

**5. TERM AND SURVIVAL**

This Agreement shall survive the termination or expiration of the Underlying Agreement and shall remain in full force and effect until the expiration of the applicable statute of limitations for the assessment of the relevant taxes.

IN WITNESS WHEREOF, the parties hereto have executed this Withholding Tax Indemnity Agreement as of the date first written above.

**INDEMNITOR:**

**INDEMNITEE:**

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

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

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

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

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

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

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

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