

# CROSS BORDER TAX INDEMNIFICATION AGREEMENT

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

\_\_\_\_\_, a corporation organized and existing under the laws of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ (hereinafter referred to as the "Indemnifying Party"),

and

\_\_\_\_\_, a corporation organized and existing under the laws of \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_ (hereinafter referred to as the "Indemnified Party").

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

## **RECITALS**

WHEREAS, the Parties have entered into that certain \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Underlying Agreement"); and

WHEREAS, pursuant to the transactions contemplated under the Underlying Agreement, certain cross-border payments, assets, or operations may subject the Indemnified Party to tax liabilities, withholdings, levies, assessments, or duties in \_\_\_\_\_ and/or other jurisdictions; and

WHEREAS, the Indemnifying Party has agreed to indemnify, defend, and hold harmless the Indemnified Party from and against certain tax liabilities as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **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, assessments, duties, levies, imposts, or other governmental charges of any kind whatsoever, including income, corporate, withholding, value-added (VAT), goods and services (GST), transfer, stamp, payroll, social security, or excise taxes, together with any interest, penalties, additions to tax, or additional amounts imposed by any taxing authority.
2. **"Tax Claim"** means any assessment, audit, examination, demand, litigation, or other administrative or judicial proceeding by any taxing authority that could result in a tax liability subject to indemnification under this Agreement.
3. **"Taxing Authority"** means any government or any subdivision, agency, commission, or authority thereof, having jurisdiction over the assessment, determination, collection, or imposition of any Tax.

## **2. TAX INDEMNIFICATION**

1. **Indemnification Obligation.** The Indemnifying Party hereby covenants and agrees to indemnify, defend, and hold harmless the Indemnified Party, its affiliates, directors, officers, employees, and agents from and against any and all Taxes, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' and tax advisors' fees) arising out of, resulting from, or in connection with:
  - a. Any Tax imposed on or asserted against the Indemnified Party by any Taxing Authority of \_\_\_\_\_ in connection with the transactions contemplated under the Underlying Agreement.
  - b. Any failure by the Indemnifying Party to withhold or remit any Taxes required under applicable law to be

withheld from payments made to the Indemnified Party.

- c. Any breach of any representation, warranty, or covenant made by the Indemnifying Party herein or in the Underlying Agreement regarding tax matters.

2. **Withholding Taxes & Gross-Up.** All payments made by the Indemnifying Party to the Indemnified Party under the Underlying Agreement or this Agreement shall be made free and clear of, and without deduction or withholding for, any Taxes, unless required by applicable law. If any such Taxes are required to be withheld, the Indemnifying Party shall pay such additional amounts ("Gross-Up") as necessary to ensure that the net amount received by the Indemnified Party equals the full amount that would have been received had no such deduction or withholding been required.

### **3. PROCEDURES FOR TAX CLAIMS**

1. **Notice.** The Indemnified Party shall promptly notify the Indemnifying Party in writing within \_\_\_\_\_ days of receiving notice of any Tax Claim. Failure to provide prompt notice shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent the Indemnifying Party is materially prejudiced by such failure.
2. **Defense of Claims.** The Indemnifying Party shall have the right, at its own expense, to participate in or assume the control of the defense of any such Tax Claim, provided that the Indemnifying Party acknowledges in writing its unconditional obligation to indemnify the Indemnified Party in respect of such Tax Claim. The Indemnified Party shall have the right to employ separate counsel and participate in the defense of such Tax Claim at its own expense.
3. **Settlement.** The Indemnifying Party shall not settle or compromise any Tax Claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed, if such settlement would have a material adverse tax impact on the Indemnified Party in any tax period.

### **4. COOPERATION AND EXCHANGE OF INFORMATION**

The Parties shall cooperate fully with each other in connection with the preparation and filing of any tax returns, or any audit, litigation, or other proceeding relating to Taxes covered by this Agreement. Such cooperation shall include the provision of records, books, tax computations, receipts, and other relevant documents, as well as making employees or advisors available on a mutually convenient basis to provide additional explanation or testimony.

### **5. TERM AND TERMINATION**

This Agreement shall survive the termination 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, plus a period of \_\_\_\_\_ days.

### **6. MISCELLANEOUS**

1. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of \_\_\_\_\_, without giving effect to any conflict of law principles.
2. **Jurisdiction.** Any dispute, controversy, or claim arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the courts located in \_\_\_\_\_.
3. **Entire Agreement.** This Agreement, together with the Underlying Agreement, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements, negotiations, or understandings.
4. **Amendments.** No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
5. **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be delivered to the address of the respective Party specified above, or to such other address as either Party may designate in writing.

IN WITNESS WHEREOF, the Parties hereto have caused this Cross Border Tax Indemnification Agreement to be executed by their duly authorized representatives as of the date first written above.

**INDEMNIFYING PARTY:**

**INDEMNIFIED PARTY:**

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

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