

PRE-CLOSING TAX LIABILITY INDEMNITY AGREEMENT

This Pre-Closing Tax Liability Indemnity Agreement (this "Agreement") is entered into as of _____, by and among:

Indemntor: _____, a _____, located at _____ ("Indemntor"),

and

Indemntee: _____, a _____, located at _____ ("Indemntee").

RECITALS

WHEREAS, pursuant to that certain _____ Agreement dated as of _____ (the "Purchase Agreement"), Indemntee is acquiring _____ (the "Company") from Indemntor;

WHEREAS, the parties desire to allocate the responsibility for, and provide indemnification against, certain tax liabilities arising from or relating to the operations of the Company on or prior to the Closing Date;

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

1. "**Closing Date**" means the date on which the closing of the transactions contemplated by the Purchase Agreement occurs.
2. "**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 and including the Closing Date.
3. "**Straddle Period**" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.
4. "**Tax**" or "**Taxes**" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto.

2. TAX INDEMNIFICATION

Subject to the terms of this Agreement, the Indemntor hereby agrees to indemnify, defend, and hold harmless the Indemntee and its affiliates (including, after the Closing Date, the Company) from and against, and pay and reimburse such parties for, any and all liability for:

1. Any and all Taxes of the Company, or for which the Company may be liable, for any Pre-Closing Tax Period;
2. 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; and
3. Any reasonable out-of-pocket legal, accounting, or consulting fees and expenses attributable to any items described in the preceding clauses.

3. ALLOCATION OF STRADDLE PERIOD TAXES

For purposes of determining the liability for Taxes of a Straddle Period, the portion of any such Taxes that is attributable to the Pre-Closing Tax Period shall be determined as follows:

1. In the case of real property, personal property, and other ad valorem Taxes, the amount of such Taxes allocated to the Pre-

Closing Tax Period shall be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date, and the denominator of which is the total number of days in the entire Straddle Period.

2. In the case of income, sales, use, withholding, and other Taxes based upon or related to income, receipts, or transactions, the amount of such Taxes allocated to the Pre-Closing Tax Period shall be determined based on an interim closing of the books of the Company as of the close of business on the Closing Date.

4. TAX RETURNS

1. **Pre-Closing Period Returns.** The _____ shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Company that are required to be filed for taxable periods ending on or before the Closing Date. All such Tax Returns shall be prepared in a manner consistent with the past practices of the Company unless otherwise required by applicable Law.
2. **Straddle Period Returns.** The _____ shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Company for Straddle Periods.

5. TAX CONTESTS

Each party shall promptly notify the other party in writing upon receipt of notice of any pending or threatened Tax audits, examinations, assessments, or other proceedings (each a "Tax Contest") for which the Indemnitee may seek indemnification under this Agreement. The Indemnitor shall have the right, at its own expense, to control the defense, compromise, or settlement of any such Tax Contest to the extent it relates solely to a Pre-Closing Tax Period, provided that the Indemnitor shall not settle or compromise any such Tax Contest without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned, or delayed.

6. TERM AND SURVIVAL

This Agreement and the indemnification obligations contained herein shall survive the Closing and shall remain in full force and effect until _____ days after the expiration of the applicable statute of limitations for the Taxes in question.

7. MISCELLANEOUS PROVISIONS

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 principles of conflicts of law.
2. **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, oral or written.
3. **Amendments.** This Agreement may not be amended, modified, or supplemented except by a written instrument executed by both parties.
4. **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.

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

INDEMNITOR:

INDEMNITEE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____