

## **DISCLAIMER REGARDING EXAMPLES**

*The following examples are intended to be used in connection with the Morgan Lewis M&A Academy Indemnification training and serve as models for discussion and comparison. However, the following indemnification provisions should not be used in any transaction documents before seeking advice from legal counsel.*

*The examples below would be applicable to an asset sale. References to the “Seller” refer to the selling entity and references to the “Principals” refer to the owners of the Seller.*

### **Buyer Version**

#### ARTICLE I.

#### INDEMNIFICATION

##### Section 1.1. Indemnification by Seller and the Principals.

(a) Subject to the limitations set forth in this Article I, following the Closing each of Seller and the Principals will jointly and severally indemnify, defend and hold harmless Buyer and each of its Affiliates (and their respective officers, directors, employees, shareholders, members, successors, assigns, agents, advisers, legal representatives and heirs) (each, a “Buyer Indemnified Person”) from, against and in respect of any and all claims, losses, liabilities, costs, penalties, fines and expenses (including reasonable attorneys’, accountants’, consultants’ and experts’ fees and expenses in connection with any Third Party Claim or any direct claim against Seller or any Principal), damages, obligations to third parties, expenditures (including costs of collection incurred in the enforcement of rights under this Agreement), proceedings, judgments, awards or demands, whether or not involving a Third Party Claim (“Losses”), incurred or suffered by Buyer Indemnified Persons or any of them as a result of, arising out of or directly or indirectly relating to:

(i) any breach of, or inaccuracy in, any representation or warranty when made or deemed made by Seller or the Principals in this Agreement or in any other Transaction Document (in each case, (A) as such representation or warranty would read if all qualifications as to Principals’ Knowledge were deleted therefrom and (B) it being understood and agreed that an inaccuracy or breach of

a representation or warranty shall be determined without giving effect to any notification made by Seller or the Principals in accordance with Section [●];

(ii) any breach, violation or non-fulfillment of any covenant or agreement of Seller or the Principals, including under this Article VIII, in or pursuant to this Agreement or in any other Transaction Document (in each case, it being understood and agreed that the breach, violation or non-fulfillment of a covenant or agreement shall be determined without giving effect to any notification made by Seller or the Principals in accordance with Section [●]);

(iii) any fraud of Seller or the Principals; or

(iv) any Excluded Assets or Excluded Liabilities.

(b) Seller and the Principals will have no obligation to indemnify the Buyer Indemnified Persons pursuant to Section 1.1(a)(i) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty described therein unless the aggregate amount of all such Losses incurred or suffered by the Buyer Indemnified Persons exceeds \$[●] (at which point Seller and the Principals will indemnify the Buyer Indemnified Persons for all such Losses, including those below \$[●]), and the aggregate liability in respect of claims for indemnification pursuant to Section 1.1(a)(i) will not exceed [●]% of the Closing Purchase Price; provided however, that the foregoing limitations will not apply to (i) claims for indemnification pursuant to Section 1.1(a)(i) in respect of breaches of, or inaccuracies in, representations and warranties set forth in Sections [●]; (ii) the certificates delivered to Buyer pursuant to Section [●]; and (iii) claims based upon fraud, willful misconduct or intentional misrepresentation. Claims for indemnification pursuant to any other provision of Section 1.1(a) are not subject to the monetary limitations set forth in this Section 1.1(b).

## Section 1.2. Indemnification by Buyer.

(a) Subject to the limitations set forth in this Section 1.2, Buyer will indemnify, defend and hold harmless the Principals and Seller and its Affiliates (and their respective officers, directors, employees, shareholders, members, successors, assigns, agents, advisers, legal representatives and heirs) (each, a “Seller Indemnified Person”) from, against and in respect of any and all Losses, whether or not involving a Third Party Claim, incurred or suffered by the Seller Indemnified Persons or any of them as a result of, arising out of or relating to, directly or indirectly:

(i) any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement or in any other Transaction Document; or

(ii) any breach, violation or non-fulfillment of any covenant or agreement of Buyer, including under this Section 1.2(a), in or pursuant to this Agreement or in any other Transaction Document.

(b) Buyer will have no obligation to indemnify the Seller Indemnified Persons pursuant to Section 1.2(a)(i) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty described therein unless and until the aggregate

amount of all such Losses incurred or suffered by the Seller Indemnified Persons exceeds \$[●] (at which point Buyer will indemnify the Seller Indemnified Persons for all such Losses, including those below \$[●]), and Buyer's aggregate liability in respect of claims for indemnification pursuant to Section 1.2(a)(i) will not exceed the amount of the Closing Purchase Price; *provided, however*, that the foregoing limitations will not apply to (i) claims for indemnification pursuant to Section 1.2(a)(i) in respect of breaches of, or inaccuracies in, representations and warranties set forth in Sections [●] or (ii) claims based upon fraud, willful misconduct or intentional misrepresentation. Claims for indemnification pursuant to any other provision of Section 1.2(a) are not subject to the limits set forth in this Section 1.2(b).

Section 1.3. Survival. Each of the representations and warranties in this Agreement shall survive the Closing for a period of thirty-six (36) months following the Closing Date; provided however, that (a) the representations and warranties in Sections [●] or in any certificate delivered pursuant to this Agreement and related thereto shall survive the Closing indefinitely and (b) the representations and warranties in Sections [●] or in any certificate delivered pursuant to this Agreement and related thereto shall survive the Closing until the end of the applicable statute of limitations (including any extensions thereof). All covenants set forth in this Agreement shall survive the Closing indefinitely unless they expire earlier in accordance with the express terms of this Agreement. No claim, lawsuit, or other proceeding arising out of or related to the breach of any representation or warranty contained in this Agreement may be made by any Indemnified Party unless notice of such claim, lawsuit or other proceeding is given to the Indemnifying Party in accordance with Section 1.4 prior to the end of the applicable survival period set forth in this Section 1.3.

#### Section 1.4. Third Party Claims.

(a) Notice of Claim. If any third party notifies an Indemnified Party with respect to any matter which may give rise to Losses for which indemnification may be sought pursuant to Section 1.1 or Section 1.2, as the case may be (a "Third Party Claim"), against Buyer, on the one hand, or Seller and the Principals, on the other hand (an "Indemnifying Party"), under this Section 1.4, then the Indemnified Party will promptly give written notice to the Indemnifying Party; *provided, however*, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article I, except to the extent such delay actually and materially prejudices the Indemnifying Party.

(b) Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense of any Third Party Claim that is the subject of a notice given by the Indemnified Party pursuant to Section 1.4(a). In addition, the Indemnifying Party will have the right to assume the defense of such Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party gives written notice to the Indemnified Party within fifteen (15) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any and all Losses the Indemnified Party may suffer, subject to the limitations contained in Section 1.1(b) or Section 1.2(b), resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim; (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the

Indemnifying Party will have adequate financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder; (iii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Party; (iv) the Indemnified Party has not been advised by counsel that an actual or potential conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of the Third Party Claim; (v) the Third Party Claim does not relate to or otherwise arise in connection with any criminal or regulatory enforcement action, suit or proceeding; and (vi) settlement of, an adverse judgment with respect to or the Indemnifying Party's conduct of the defense of the Third Party Claim is not, in the good-faith judgment of the Indemnified Party, likely to be adverse to the Indemnified Party's reputation or continuing business interests. The Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; provided however, that the Indemnifying Party will pay the fees and expenses of separate co-counsel retained by the Indemnified Party that are incurred prior to the Indemnifying Party's assumption of control of the defense of the Third Party Claim.

(c) Limitations on Indemnifying Party. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party unless such judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant; (ii) results in the full and general release of Buyer Indemnified Persons or Seller Indemnified Persons, as applicable, from all liabilities arising or relating to, or in connection with, the Third Party Claim; and (iii) involves no finding or admission of any violation of Applicable Law or the rights of any Person and has no effect on any other claims that may be made against the Indemnified Party.

(d) Indemnified Party's Control. If the Indemnifying Party does not deliver to the Indemnified Party the notice contemplated by Section 1.4(b) within fifteen (15) days after the Indemnified Party has given notice of the Third Party Claim pursuant to Section 1.4(a), or otherwise at any time fails to conduct the defense of the Third Party Claim actively and diligently, the Indemnified Party may defend the Third Party Claim in a good-faith and reasonable manner, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith). In the event that the Indemnified Party conducts the defense of the Third Party Claim pursuant to this Section 1.4(d), the Indemnifying Party will (i) reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) and (ii) remain responsible for any and all other Losses that the Indemnified Party may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in Section 1.1 or Section 1.2, as applicable.

(e) Consent to Jurisdiction Regarding Third Party Claim. Each of Buyer, Seller and the Principals, in its capacity as an Indemnifying Party, hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim may be brought against any Indemnified Party for purposes of any claim which such Indemnified Party may have against such Indemnifying Party pursuant to this Agreement in connection with such Third Party

Claim, and, in furtherance thereof, the provisions of Section [●] are incorporated herein by reference, *mutatis mutandis*.

Section 1.5. Treatment of Materiality. For purposes of this Article I, in determining whether there has been any breach of any representation or warranty, or the amount of any Losses related to a breach of a representation or warranty, such representations and warranties shall be read without regard to any materiality or Material Adverse Effect qualifier contained therein, and any breach thereof as so read shall be indemnifiable hereunder, subject to the limitations set forth in this Article I.

Section 1.6. Indemnification Purchase Price Adjustment. Any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the Closing Purchase Price for Tax purposes, unless otherwise required by Applicable Law.

Section 1.7. Setoff. Buyer can set off against any amounts that it must pay to a Seller Indemnified Person under this Agreement or any other Transaction Document any amounts that the Seller Indemnified Person must pay to Buyer under this Agreement or any other Transaction Document.

Section 1.8. Waiver of Rights to Subrogation. Neither Seller nor the Principals shall be entitled to, and Seller and the Principals hereby irrevocably waive any right to, subrogation to Buyer with respect to any liability of Seller or the Principals that may arise under or pursuant to the Transaction Documents, whether or not, with respect to a Principal, in such person's capacity as a member, director, officer, employee or agent of Seller.

Section 1.9. Investigation. The right to indemnification and all other remedies based upon any representation, warranty, covenant or agreement contained in this Agreement shall not be limited, diminished or otherwise affected by any investigation conducted with respect to, or any knowledge acquired at any time, whether before or after the Closing and regardless of whether such knowledge came from Buyer, Seller, the Principals or their respective representatives or any other Person, with respect to, the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or agreement.

## Seller Version

### ARTICLE I.

#### INDEMNIFICATION

##### Section 1.1. Indemnification by Seller and the Principals.

(a) Subject to the limitations set forth in this Article I, following the Closing each of Seller and the Principals will, severally and not jointly, indemnify, defend and hold harmless Buyer and each of its Affiliates (and their respective officers, directors, employees, shareholders, members, successors, assigns, agents, advisers, legal representatives and heirs) (each, a "Buyer Indemnified Person") from, against and in respect of any and all claims, losses, liabilities, costs, penalties, fines and expenses (including reasonable attorneys', accountants', consultants' and experts' fees and expenses), damages, obligations to third parties, expenditures (including costs of collection incurred in the enforcement of rights under this Agreement), proceedings, judgments, awards or demands, whether or not involving a Third Party Claim ("Losses"), actually incurred or suffered by Buyer Indemnified Persons or any of them as a result of, arising out of or directly relating to:

- (i) any breach of, or inaccuracy in, any representation or warranty when made or deemed made by Seller or the Principals in this Agreement;
- (ii) any breach, violation or non-fulfillment of any covenant or agreement of Seller or the Principals, including under this Article I, in or pursuant to this Agreement;
- (iii) any fraud of Seller or the Principals; or
- (iv) any Excluded Assets or Excluded Liabilities.

(b) Seller and the Principals will have no obligation to indemnify the Buyer Indemnified Persons pursuant to Section 1.1(a)(i) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty described therein (i) unless such claim or series of related claims for which the Buyer Indemnified Persons otherwise would be entitled to indemnification pursuant to Section 1.1(a)(i) exceeds \$[●] (the "Minimum Claim Amount"), it being understood and agreed that any Losses with respect to any claim or series of related claims that are less than the Minimum Claim Amount shall be wholly disregarded for purposes of this Article I; and (ii) until the aggregate amount of all such Losses incurred or suffered by the Buyer Indemnified Persons exceeds \$[●] (the "Deductible") (at which point Seller and the Principals will indemnify the Buyer Indemnified Persons for all such Losses in excess of the Deductible), and the aggregate liability in respect of claims for indemnification pursuant to Section 1.1(a)(i) will not exceed [●]% of the Closing Purchase Price; provided however, that the foregoing limitations will not apply to (i) claims for indemnification pursuant to Section

1.1(a)(i) in respect of breaches of, or inaccuracies in, representations and warranties set forth in Sections [●]; (ii) the certificates delivered to Buyer pursuant to Section [●]; and (iii) claims based upon fraud or intentional misrepresentation. Claims for indemnification pursuant to any other provision of Section 1.1(a) are not subject to the monetary limitations set forth in this Section 1.1(b).

Section 1.2. Indemnification by Buyer.

(a) Subject to the limitations set forth in this Section 1.2, Buyer will indemnify, defend and hold harmless the Principals and Seller and its Affiliates (and their respective officers, directors, employees, shareholders, members, successors, assigns, agents, advisers, legal representatives and heirs) (each, a "Seller Indemnified Person") from, against and in respect of any and all Losses, whether or not involving a Third Party Claim, incurred or suffered by the Seller Indemnified Persons or any of them as a result of, arising out of or relating to, directly or indirectly:

(i) any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement;

(ii) any breach, violation or non-fulfillment of any covenant or agreement of Buyer, including under this Section 1.2(a), in or pursuant to this Agreement;

(iii) any fraud of Buyer; or

(iv) any Assumed Liability.

(b) Buyer will have no obligation to indemnify the Seller Indemnified Persons pursuant to Section 1.1(a)(i) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty described therein unless and until (i) the amount of Losses in respect of such claim exceeds the Minimum Claim Amount; and (ii) the aggregate amount of all such Losses incurred or suffered by the Seller Indemnified Persons exceeds the Deductible (at which point Buyer will indemnify the Seller Indemnified Persons for all such Losses in excess of the Deductible), and Buyer's aggregate liability in respect of claims for indemnification pursuant to Section 1.2(a)(i) will not exceed [●]% of the Closing Purchase Price; *provided, however*, that the foregoing limitations will not apply to (A) claims for indemnification pursuant to Section 1.2(a)(i) in respect of breaches of, or inaccuracies in, representations and warranties set forth in Sections [●]; or (B) claims based upon fraud or intentional misrepresentation. Claims for indemnification pursuant to any other provision of Section 1.2(a) are not subject to the limits set forth in this Section 1.2(b).

(c) The maximum aggregate Losses with respect to all claims for indemnification payable by Seller and the Principals pursuant to this Article I shall not exceed the Closing Purchase Price. The maximum Losses with respect to any single indemnification claim payable by Seller and each Principal pursuant to this Article I arising out of or resulting from any claim for indemnification under this Article I shall not exceed the amount of Losses for such indemnification claim as finally determined multiplied by such Principal's Pro Rata Share. In no event shall a Principal be liable for Losses resulting from any breach of a

representation, warranty, or covenant of another Principal. Without limiting the foregoing provisions, except in the case of fraud, the maximum liability of any Principal with respect to any claim for indemnification under this Article I, when added to all other Losses paid or payable by or on behalf of such Principal under this Article I, shall not exceed such Principal's Pro Rata Share of the Closing Purchase Price actually received by such Principal.

Section 1.3. Survival. Each of the representations and warranties in this Agreement shall survive the Closing for a period of twelve (12) months following the Closing Date; *provided, however*, that (a) the representations and warranties in Sections [●] or in any certificate delivered pursuant to this Agreement and related thereto shall survive the Closing indefinitely and (b) the representations and warranties in Sections [●] or in any certificate delivered pursuant to this Agreement and related thereto shall survive the Closing until the end of the applicable statute of limitations (including any extensions thereof). All covenants set forth in this Agreement shall survive the Closing indefinitely unless they expire earlier in accordance with the express terms of this Agreement. No claim, lawsuit, or other proceeding arising out of or related to the breach of any representation or warranty contained in this Agreement may be made by any Indemnified Party unless notice of such claim, lawsuit or other proceeding is given to the Indemnifying Party in accordance with Section 1.4 prior to the end of the applicable survival period set forth in this Section 1.3.

#### Section 1.4. Third Party Claims.

(a) Notice of Claim. If any third party notifies an Indemnified Party with respect to any matter which may give rise to Losses for which indemnification may be sought pursuant to Section 1.1 or Section 1.2, as the case may be (a "Third Party Claim"), against Buyer, on the one hand, or Seller and the Principals, on the other hand (an "Indemnifying Party"), under this Section 1.4, then the Indemnified Party will promptly give written notice to the Indemnifying Party; provided however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article I, except to the extent such delay actually and materially prejudices the Indemnifying Party.

(b) Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense of any Third Party Claim that is the subject of a notice given by the Indemnified Party pursuant to Section 1.4(a). In addition, the Indemnifying Party will have the right to assume the defense of such Third Party Claim with counsel of its choice so long as (i) the Indemnifying Party gives written notice to the Indemnified Party within thirty (30) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will assume the defense of such Third Party Claim; and (ii) the Indemnified Party has not been advised in writing by counsel that an actual or potential conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of the Third Party Claim. The Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim.

(c) Limitations on Indemnifying Party. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party unless such



judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant and (ii) results in the full and general release of Buyer Indemnified Persons or Seller Indemnified Persons, as applicable, from all liabilities arising or relating to, or in connection with, the Third Party Claim; *provided, however*, that any such settlement or resolution contemplated by the Indemnifying Party that does not satisfy the requirements of items (i) and (ii) of this sentence shall not be concluded without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed).

(d) Indemnified Party's Control. If the Indemnifying Party does not deliver to the Indemnified Party the notice contemplated by Section 1.4(b) within thirty (30) days after the Indemnified Party has given notice of the Third Party Claim pursuant to Section 1.4(a), the Indemnified Party may defend the Third Party Claim in a good-faith and reasonable manner, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim with the prior written consent of the Indemnifying Party.

Section 1.5. Indemnification Purchase Price Adjustment. Any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the Closing Purchase Price for Tax purposes, unless otherwise required by Applicable Law. Notwithstanding anything contained in this Agreement to the contrary, in the event that any fact, event or circumstance which results in an adjustment to the Closing Purchase Price pursuant to Article II hereof would also constitute a breach of any Indemnifying Party's representations, warranties, covenants or agreements under this Agreement or otherwise result in a Loss to the Indemnified Party, such Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such breach to the extent that recovery for any such Loss would constitute a duplicative payment of amounts recovered as a Closing Purchase Price adjustment pursuant to Article II.

Section 1.6. Exclusive Remedy. From and after the Closing, except in the case of fraud or as provided in Section [●] with respect to specific performance, as provided for in Article II (which shall be the exclusive remedy for purchase price adjustments and the other matters set forth therein), this Article I will provide the exclusive remedy for any claim arising out of or in connection with this Agreement. The Parties acknowledge that this Section 1.6 and the other limitations on liability set forth in this Article I have been negotiated fully and at arm's length and that the Parties would not have entered into this Agreement but for this Section 1.6 and the other limitations on liability set forth in this Article I.

Section 1.7. Consequential Damages. No Indemnifying Party shall have any liability for indirect, speculative, special, incidental, consequential, punitive or similar damages, including lost profits, lost opportunity costs, diminution in value or lost prospective economic advantage (collectively, "Consequential Damages"). No Indemnifying Party shall have any liability under this Article I for any Losses to the extent that the Losses arose from or were exacerbated by any action taken directly or indirectly by any Indemnified Party on or after the Closing Date. Any Indemnified Party that becomes aware of a Loss for which it seeks indemnification under this Article I shall be required to use its reasonable best efforts to mitigate the Loss, including taking any actions reasonably requested by the Indemnifying Party, and an Indemnified Party shall not be liable for any Loss to the extent that it is attributable to the

Indemnified Party's failure to mitigate. Neither Seller nor any Principal shall have any liability for any Loss which would not have arisen but for any change in the accounting policies, practices or procedures adopted by Buyer or its Affiliates or for any other act or omission by the Buyer or its Affiliates after the Closing Date.

Section 1.8. Third Party Recovery; Tax Benefits. The amount of Losses for which indemnification is provided under this Article I shall be net of (a) any amounts recovered by the Indemnified Person or its Affiliates from a third party (including any insurer) whether by way of payment, discount, credit, offset, counterclaim, indemnification, contribution or otherwise; and (b) any net Tax benefit available to the Indemnified Party or its Affiliates from the incurrence or payment of any such Losses. In computing the amount of any such Tax benefits, the Indemnified Party and its Affiliates shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any items arising from the receipt or accrual of any indemnity payment hereunder or the incurrence or payment of any indemnified Losses for which indemnification is provided under this Article I. For purposes of this Agreement, the Indemnified Party and its Affiliates shall be deemed to have received a net Tax benefit to the extent that, and at such time as, the amount of Taxes payable by the Indemnified Party or such Affiliate is reduced below the amount of Taxes that the Indemnified Party or such Affiliate would have been required to pay but for the receipt or accrual of the indemnity payment or the incurrence or payment of such Losses. An Indemnified Party agrees to use (and to cause its applicable Affiliates to use) commercially reasonable efforts to make any claims for insurance, Tax benefits and/or indemnification, or contribution available from any third party(ies) with respect to any Losses for which it elects to seek indemnification hereunder and to diligently pursue such claims in good faith. If any such insurance proceeds and/or other amounts are received by the Indemnified Party or its Affiliates after the Indemnifying Party pays any amount pursuant to this Article I, the Indemnified Party shall promptly pay to the Indemnifying Party the amount such Indemnifying Party would not have had to pay pursuant to this Article I had such insurance proceeds and/or other amounts been received by the Indemnified Party or its Affiliates prior to such Indemnifying Party's payment under this Article I.

Section 1.9. Excluded Liabilities. Any claim for indemnification by an Indemnified Party that relates to an Excluded Liability shall be subject to the limitations in this Article I applicable to claims for indemnification for breaches of representations and warranties to the extent such claim could also be brought as a claim for breach of a representation and warranty.

Section 1.10. Subrogation. If an Indemnified Party recovers any amount from an Indemnifying Party under this Article I in respect of Losses, each Indemnifying Party shall be subrogated, to the extent of such recovery, to the Indemnified Party's rights against any third party with respect to such Losses. Without limiting the foregoing, upon request from any Indemnifying Party that has paid an indemnification claim hereunder, the Indemnified Party to whom such payment was made will assign to the Indemnifying Party, to the fullest extent allowable, any rights to recover from insurance, applicable warranties or third parties with respect to any Losses for which the Indemnifying Party provided indemnification to the Indemnified Party hereunder, or if such assignment is not permissible but the Indemnified Party in question is nonetheless permitted to pursue such a claim on such Indemnifying Party's behalf, the Indemnified Party shall pursue such claim, at the Indemnifying Party's direction and expense

(which expenses shall be deemed indemnified Losses paid by the Indemnifying Party hereunder), with any recovery thereon to be transmitted to the Indemnifying Party promptly upon receipt, up to the amount of indemnified Losses paid by the Indemnifying Party with respect to the claim in question.

Section 1.11. Investigation. Seller and the Principals shall not be liable under this Article I for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties or covenants of Seller or the Principals contained in this Agreement if Buyer had knowledge of such inaccuracy or breach prior to the Closing.

## Redline of Buyer Version Against Seller Version

### Buyer~~Seller~~ Version

#### ARTICLE I.

#### INDEMNIFICATION

##### Section 1.1. Indemnification by Seller and the Principals.

(a) Subject to the limitations set forth in this Article I, following the Closing each of Seller and the Principals will ~~jointly and,~~ severally and not jointly, indemnify, defend and hold harmless Buyer and each of its Affiliates (and their respective officers, directors, employees, shareholders, members, successors, assigns, agents, advisers, legal representatives and heirs) (each, a “Buyer Indemnified Person”), from, against and in respect of any and all claims, losses, liabilities, costs, penalties, fines and expenses (including reasonable attorneys’, accountants’, consultants’ and experts’ fees and expenses ~~in connection with any Third Party Claim or any direct claim against Seller or any Principal~~), damages, obligations to third parties, expenditures (including costs of collection incurred in the enforcement of rights under this Agreement), proceedings, judgments, awards or demands, whether or not involving a Third Party Claim (“Losses”), actually incurred or suffered by Buyer Indemnified Persons or any of them as a result of, arising out of or directly ~~or indirectly~~ relating to:

(i) any breach of, or inaccuracy in, any representation or warranty when made or deemed made by Seller or the Principals in this Agreement ~~or in any other Transaction Document (in each case, (A) as such representation or warranty would read if all qualifications as to Principals’ Knowledge were deleted therefrom and (B) it being understood and agreed that an inaccuracy or breach of a representation or warranty shall be determined without giving effect to any notification made by Seller or the Principals in accordance with Section [●]);~~

(ii) any breach, violation or non-fulfillment of any covenant or agreement of Seller or the Principals, including under this Article VIII, in or pursuant to this Agreement ~~or in any other Transaction Document (in each case, it being understood and agreed that the breach, violation or non-fulfillment of a covenant or agreement shall be determined without giving effect to any notification made by Seller or the Principals in accordance with Section [●]);~~

(iii) any fraud of Seller or the Principals; or

(iv) any Excluded Assets or Excluded Liabilities.

(b) Seller and the Principals will have no obligation to indemnify the Buyer Indemnified Persons pursuant to Section 1.1(a)(i) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty described therein ~~unless(i) unless such claim or series of related claims for which the Buyer Indemnified Persons otherwise would be~~

entitled to indemnification pursuant to Section 1.1(a)(i) exceeds \$[●] (the “Minimum Claim Amount”), it being understood and agreed that any Losses with respect to any claim or series of related claims that are less than the Minimum Claim Amount shall be wholly disregarded for purposes of this Article I and (ii) until the aggregate amount of all such Losses incurred or suffered by the Buyer Indemnified Persons exceeds \$[●] (the “Deductible”) (at which point Seller and the Principals will indemnify the Buyer Indemnified Persons for all such Losses; ~~including those below \$[●] in excess of the Deductible~~), and the aggregate liability in respect of claims for indemnification pursuant to Section 1.1(a)(i) will not exceed [●]% of the Closing Purchase Price; *provided, however*, that the foregoing limitations will not apply to (i) claims for indemnification pursuant to Section 1.1(a)(i) in respect of breaches of, or inaccuracies in, representations and warranties set forth in Sections [●]; (ii) the certificates delivered to Buyer pursuant to Section [●] and (iii) claims based upon fraud, ~~willful misconduct~~ or intentional misrepresentation. Claims for indemnification pursuant to any other provision of Section 1.1(a) are not subject to the monetary limitations set forth in this Section 1.1(b).

#### Section 1.2. Indemnification by Buyer.

(a) Subject to the limitations set forth in this Section 1.2, Buyer will indemnify, defend and hold harmless the Principals and Seller and its Affiliates (and their respective officers, directors, employees, shareholders, members, successors, assigns, agents, advisers, legal representatives and heirs) (each, a “Seller Indemnified Person”), from, against and in respect of any and all Losses, whether or not involving a Third Party Claim, incurred or suffered by the Seller Indemnified Persons or any of them as a result of, arising out of or relating to, directly or indirectly:

(i) any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement ~~or in any other Transaction Document~~; or

(ii) any breach, violation or non-fulfillment of any covenant or agreement of Buyer, including under this Section 1.2(a), in or pursuant to this Agreement;

(iii) any fraud of Buyer; or ~~in any other Transaction Document~~.

(iv) any Assumed Liability.

(b) Buyer will have no obligation to indemnify the Seller Indemnified Persons pursuant to Section 1.2.1(a)(i) in respect of Losses arising from the breach of, or inaccuracy in, any representation or warranty described therein unless and until (i) the amount of Losses in respect of such claim exceeds the Minimum Claim Amount and (ii) the aggregate amount of all such Losses incurred or suffered by the Seller Indemnified Persons exceeds \$[●] the Deductible (at which point Buyer will indemnify the Seller Indemnified Persons for all such Losses; ~~including those below \$[●] in excess of the Deductible~~), and Buyer’s aggregate liability in respect of claims for indemnification pursuant to Section 1.2(a)(i) will not exceed ~~the amount~~ [●]% of the Closing Purchase Price; *provided, however*, that the foregoing limitations will not apply to (i) claims for indemnification pursuant to Section 1.2(a)(i) in respect of breaches of, or inaccuracies in, representations and warranties set forth in Sections

[●], or (ii) claims based upon fraud, ~~willful misconduct~~ or intentional misrepresentation. Claims for indemnification pursuant to any other provision of Section 1.2(a) are not subject to the limits set forth in this Section 1.2(b).

(c) The maximum aggregate Losses with respect to all claims for indemnification payable by Seller and the Principals pursuant to this Article I shall not exceed the Closing Purchase Price. The maximum Losses with respect to any single indemnification claim payable by Seller and each Principal pursuant to this Article I arising out of or resulting from any claim for indemnification under this Article I shall not exceed the amount of Losses for such indemnification claim as finally determined multiplied by such Principal's Pro Rata Share. In no event shall a Principal be liable for Losses resulting from any breach of a representation, warranty, or covenant of another Principal. Without limiting the foregoing provisions, except in the case of fraud, the maximum liability of any Principal with respect to any claim for indemnification under this ARTICLE I, when added to all other Losses paid or payable by or on behalf of such Principal under this ARTICLE I, shall not exceed such Principal's Pro Rata Share of the Closing Purchase Price actually received by such Principal.

Section 1.3. Survival. Each of the representations and warranties in this Agreement shall survive the Closing for a period of ~~thirty-six (36)~~twelve (12) months following the Closing Date; *provided, however*, that (a) the representations and warranties in Sections [●] or in any certificate delivered pursuant to this Agreement and related thereto shall survive the Closing indefinitely and (b) the representations and warranties in Sections [●] or in any certificate delivered pursuant to this Agreement and related thereto shall survive the Closing until the end of the applicable statute of limitations (including any extensions thereof). All covenants set forth in this Agreement shall survive the Closing indefinitely unless they expire earlier in accordance with the express terms of this Agreement. No claim, lawsuit, or other proceeding arising out of or related to the breach of any representation or warranty contained in this Agreement may be made by any Indemnified Party unless notice of such claim, lawsuit or other proceeding is given to the Indemnifying Party in accordance with Section 1.4 prior to the end of the applicable survival period set forth in this Section 1.3.

#### Section 1.4. Third Party Claims.

(a) Notice of Claim. If any third party notifies an Indemnified Party with respect to any matter which may give rise to Losses for which indemnification may be sought pursuant to Section 1.1 or Section 1.2, as the case may be (a "Third Party Claim"), against Buyer, on the one hand, or Seller and the Principals, on the other hand (an "Indemnifying Party"), under this Section 1.4, then the Indemnified Party will promptly give written notice to the Indemnifying Party; *provided, however*, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article I, except to the extent such delay actually and materially prejudices the Indemnifying Party.

(b) Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense of any Third Party Claim that is the subject of a notice given by the Indemnified Party pursuant to Section 1.4(a). In addition, the Indemnifying Party will have the right to assume the defense of such Third Party Claim with counsel of its choice ~~reasonably~~

~~satisfactory to the Indemnified Party~~ so long as (i) the Indemnifying Party gives written notice to the Indemnified Party within ~~fifteen~~thirty (~~15~~30) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will ~~indemnify the Indemnified Party from and against the entirety of any and all Losses the Indemnified Party may suffer, subject to the limitations contained in Section 1.1(b) or Section 1.2(b), resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim;~~ (ii) ~~the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have adequate financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder;~~ (iii) ~~the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Party;~~ assume the defense of such Third Party Claim; and (ii) the Indemnified Party has not been advised in writing by counsel that an actual or potential conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of the Third Party Claim; ~~(v) the Third Party Claim does not relate to or otherwise arise in connection with any criminal or regulatory enforcement action, suit or proceeding and (vi) settlement of, an adverse judgment with respect to or the Indemnifying Party's conduct of the defense of the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to be adverse to the Indemnified Party's reputation or continuing business interests. The Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim;~~ provided, however, that the Indemnifying Party will pay the fees and expenses of separate co-counsel retained by the Indemnified Party that are incurred prior to Indemnifying Party's assumption of control of the defense of the Third Party Claim.

(c) Limitations on Indemnifying Party. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party unless such judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant; and (ii) results in the full and general release of Buyer Indemnified Persons or Seller Indemnified Persons, as applicable, from all liabilities arising or relating to, or in connection with, the Third Party Claim ~~and (iii) involves no finding or admission of any violation of Applicable Law or the rights of any Person and has no effect on any other claims that may be made against;~~ provided, however, that any such settlement or resolution contemplated by the Indemnifying Party that does not satisfy the requirements of items (i) and (ii) of this sentence shall not be concluded without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed).

(d) Indemnified Party's Control. If the Indemnifying Party does not deliver to the Indemnified Party the notice contemplated by Section 1.48.4(b) within ~~fifteen~~thirty (~~15~~30) days after the Indemnified Party has given notice of the Third Party Claim pursuant to Section 1.4(a), ~~or otherwise at any time fails to conduct the defense of the Third Party Claim actively and diligently,~~ the Indemnified Party may defend the Third Party Claim in a good faith and reasonable manner, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim ~~in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any~~with the prior written consent ~~from, of~~ the Indemnifying Party ~~in connection therewith).~~ ~~In the event that the Indemnified Party conducts the defense of the Third Party Claim pursuant to this Section 1.4(d), the Indemnifying Party will (i) advance the Indemnified Party promptly and periodically for the~~

~~costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) and (ii) remain responsible for any and all other Losses that the Indemnified Party may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in Section 1.1 or Section 1.2, as applicable.~~

~~(e) Consent to Jurisdiction Regarding Third Party Claim. Buyer, Seller and the Principals, each in its capacity as an Indemnifying Party, hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim may be brought against any Indemnified Party for purposes of any claim which such Indemnified Party may have against such Indemnifying Party pursuant to this Agreement in connection with such Third Party Claim, and in furtherance thereof, the provisions of Section [●] are incorporated herein by reference, *mutatis mutandis*.~~

~~Section 1.5. Treatment of Materiality. For purposes of this Article I, in determining whether there has been any breach of any representation or warranty, or the amount of any Losses related to a breach of a representation or warranty, such representations and warranties shall be read without regard to any materiality or Material Adverse Effect qualifier contained therein, and any breach thereof as so read shall be indemnifiable hereunder, subject to the limitations set forth in this Article I.~~

~~Section 1.5.Section 1.6. Indemnification Purchase Price Adjustment. Any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the Closing Purchase Price for Tax purposes, unless otherwise required by Applicable Law. Notwithstanding anything contained in this Agreement to the contrary, in the event that any fact, event or circumstance which results in an adjustment to the Closing Purchase Price pursuant to Article II hereof would also constitute a breach of any Indemnifying Party's representations, warranties, covenants or agreements under this Agreement or otherwise result in a Loss to the Indemnified Party, such Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such breach to the extent that recovery for any such Loss would constitute a duplicative payment of amounts recovered as a Closing Purchase Price adjustment pursuant to Article II.~~

~~Section 1.6. Exclusive Remedy. From and after the Closing, except in the case of fraud or as provided in Section [●] with respect to specific performance, as provided for in Article II (which shall be the exclusive remedy for purchase price adjustments and the other matters set forth therein), this Article I will provide the exclusive remedy for any claim arising out of or in connection with this Agreement. The Parties acknowledge that this Section 1.6 and the other limitations on liability set forth in this Article I have been negotiated fully and at arm's-length and that the Parties would not have entered into this Agreement but for this Section 1.6 and the other limitations on liability set forth in this Article I. ~~Set-Off. Buyer can set off against any amounts that it must pay to a Seller Indemnified Person under this Agreement or any other Transaction Document any amounts that the Seller Indemnified Person must pay to Buyer under this Agreement or any other Transaction Document.~~ Consequential Damages. No Indemnifying Party shall have any liability for indirect, speculative, special, incidental, consequential, punitive or similar damages, including lost profits, lost opportunity costs, diminution in value or lost prospective economic advantage (collectively, "Consequential Damages"). No Indemnifying Party shall have any liability under this Article I for any Losses to~~



the extent that the Losses arose from or were exacerbated by any action taken directly or indirectly by any Indemnified Party on or after the Closing Date. Any Indemnified Party that becomes aware of a Loss for which it seeks indemnification under this Article I shall be required to use its reasonable best efforts to mitigate the Loss, including taking any actions reasonably requested by the Indemnifying Party, and an Indemnified Party shall not be liable for any Loss to the extent that it is attributable to the Indemnified Party's failure to mitigate. Neither Seller nor any Principal shall have any liability for any Loss which would not have arisen but for any change in the accounting policies, practices or procedures adopted by Buyer or its Affiliates or for any other act or omission by the Buyer or its Affiliates after the Closing Date.

~~Section 1.8. Waiver of Rights to Subrogation. Neither Seller nor the Principals shall be entitled to, and Seller and the Principals hereby irrevocably waives any right to, subrogation to Buyer with respect to any liability of Seller or the Principals that may arise under or pursuant to the Transaction Documents, whether, with respect to the Principals, in such person's capacity as a member, director, officer, employee or agent of Seller. Third Party Recovery; Tax Benefits. The amount of Losses for which indemnification is provided under this Article I shall be net of (i) any amounts recovered by the Indemnified Person or its Affiliates from a third party (including any insurer) whether by way of payment, discount, credit, off-set, counterclaim, indemnification, contribution or otherwise and (ii) any net Tax benefit available to the Indemnified Party or its Affiliates from the incurrence or payment of any such Losses. In computing the amount of any such Tax benefits, the Indemnified Party and its Affiliates shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any items arising from the receipt or accrual of any indemnity payment hereunder or the incurrence or payment of any indemnified Losses for which indemnification is provided under this Article I. For purposes of this Agreement, the Indemnified Party and its Affiliates shall be deemed to have received a net Tax benefit to the extent that, and at such time as, the amount of Taxes payable by the Indemnified Party or such Affiliate is reduced below the amount of Taxes that the Indemnified Party or such Affiliate would have been required to pay but for the receipt or accrual of the indemnity payment or the incurrence or payment of such Losses. An Indemnified Party agrees to use (and to cause its applicable Affiliates to use) commercially reasonable efforts to make any claims for insurance, Tax benefits and/or indemnification, or contribution available from any third party(ies) with respect to any Losses for which it elects to seek indemnification hereunder and to diligently pursue such claims in good faith. If any such insurance proceeds and/or other amounts are received by the Indemnified Party or its Affiliates after the Indemnifying Party pays any amount pursuant to this Article I, the Indemnified Party shall promptly pay to the Indemnifying Party the amount such Indemnifying Party would not have had to pay pursuant to this Article I had such insurance proceeds and/or other amounts been received by the Indemnified Party or its Affiliates prior to such Indemnifying Party's payment under this Article I.~~

Section 1.9. Excluded Liabilities. Any claim for indemnification by an Indemnified Party that relates to an Excluded Liability shall be subject to the limitations in this Article I applicable to claims for indemnification for breaches of representations and warranties to the extent such claim could also be brought as a claim for breach of a representation and warranty.

Section 1.10. Subrogation. If an Indemnified Party recovers any amount from an

Indemnifying Party under this Article I in respect of Losses, each Indemnifying Party shall be subrogated, to the extent of such recovery, to the Indemnified Party's rights against any third party with respect to such Losses. Without limiting the foregoing, upon request from any Indemnifying Party that has paid an indemnification claim hereunder, the Indemnified Party to whom such payment was made will assign to the Indemnifying Party, to the fullest extent allowable, any rights to recover from insurance, applicable warranties or third-parties with respect to any Losses for which the Indemnifying Party provided indemnification to the Indemnified Party hereunder, or if such assignment is not permissible, but the Indemnified Party in question is nonetheless permitted to pursue such a claim on such Indemnifying Party's behalf, the Indemnified Party shall pursue such claim, at the Indemnifying Party's direction and expense (which expenses shall be deemed indemnified Losses paid by the Indemnifying Party hereunder), with any recovery thereon to be transmitted to the Indemnifying Party promptly upon receipt, up to the amount of indemnified Losses paid by the Indemnifying Party with respect to the claim in question.

~~Section 1.11, Section 1.9. Investigation. The right to indemnification and all other remedies based upon any representation, warranty, covenant or agreement contained in this Agreement shall not be limited, diminished or otherwise affected by any investigation conducted with respect to, or any knowledge acquired at any time, whether before or after the Closing and regardless of whether such knowledge came from Buyer, Seller, the Principals or their respective representatives or any other Person, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or agreement.~~ Investigation. Seller and the Principals shall not be liable under this Article I for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties or covenants of Seller or the Principals contained in this Agreement if Buyer had knowledge of such inaccuracy or breach prior to the Closing.