

# HOLD HARMLESS AND INDEMNITY AGREEMENT

This Hold Harmless and Indemnity Agreement (this "Agreement") is entered into and made effective as of (the "Effective Date"), by and between [INDEMNITOR NAME], a Individual with an address of [INDEMNITOR ADDRESS] (the "Indemnitor"), and [INDEMNITEE NAME], a Corporation with an address of [INDEMNITEE ADDRESS] (the "Indemnitee"). Each a "Party" and together the "Parties."

## 1. Recitals and Purpose

The Parties are entering into this Agreement in connection with the following activity, services, or transaction (the "Activity"): [DESCRIBE THE ACTIVITY SERVICES OR TRANSACTION].

In consideration of the Indemnitee's consent to the Activity and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Indemnitor agrees as follows.

## 2. Indemnification and Hold Harmless

To the fullest extent permitted by applicable law, the Indemnitor shall **indemnify, defend, and hold harmless** the Indemnitee and its officers, directors, members, managers, shareholders, employees, agents, affiliates, successors, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, actions, causes of action, suits, losses, damages, liabilities, judgments, settlements, fines, penalties, liens, costs, and expenses (including reasonable attorneys' fees, expert fees, and court costs) of any kind or nature (collectively, "Losses"), including without limitation Losses arising from or relating to Bodily Injury, Property Damage, Third Party, arising out of, resulting from, or relating in any way to the Activity or any act or omission of the Indemnitor or its personnel, agents, or contractors.

**Form of indemnity.** The Parties acknowledge this Agreement is in the **Intermediate** form. The Indemnitor's obligations cover all Losses except those arising from the **sole** negligence or willful misconduct of the Indemnified Parties.

**Carve-out.** Notwithstanding the foregoing, the Indemnitor shall have no obligation to indemnify any Indemnified Party for Losses **to the extent** caused by such Indemnified Party's (a) gross negligence, (b) recklessness, (c) willful or wanton misconduct, (d) intentional acts or omissions, or (e) violation of law.

**Tax gross-up.** All indemnity payments shall be made free of set-off or withholding, and shall be grossed up as necessary so that the Indemnified Party receives the full economic benefit of the indemnity after giving effect to any taxes required to be paid by the Indemnified Party on such payment (other than taxes on the Indemnified Party's underlying net income).

### 3. Duty to Defend

The Indemnitor's duty to defend is independent of and broader than the duty to indemnify and arises upon tender of any claim potentially within the scope of this Agreement, regardless of whether liability is ultimately established. The Indemnitor shall defend at its own expense, with counsel selected by the Indemnitor subject to the Indemnitee's reasonable prior approval. Defense costs are payable as incurred, not merely at conclusion of the matter. If the Indemnitor fails or refuses to assume the defense within a reasonable time after tender, the Indemnitee may defend itself and recover all defense costs from the Indemnitor.

**Conflict / independent counsel.** If there exists an actual conflict of interest between the Indemnitor and an Indemnified Party in the defense of a claim (including, in California, a *Cumis* conflict under Cal. Civ. Code § 2860), the Indemnified Party may retain independent counsel of its choice at the Indemnitor's expense, at reasonable hourly rates for the relevant market.

### 4. Notice, Cooperation, and Settlement

**Notice.** The Indemnitee shall provide the Indemnitor written notice of any claim for which indemnity is sought within **15 days** after becoming aware of the claim, and shall promptly forward copies of any summons, complaint, demand, or other process received. Failure to provide timely notice shall not relieve the Indemnitor of its obligations except to the extent the Indemnitor is materially prejudiced by such failure.

**No admission.** No Indemnified Party shall make any admission of liability, enter any settlement, or incur any defense expense chargeable to the Indemnitor without the Indemnitor's prior written consent (not to be unreasonably withheld), except to the extent necessary to preserve rights or avoid default.

**Cooperation; evidence.** The Indemnitee shall reasonably cooperate in the defense at the Indemnitor's expense and shall take reasonable steps to preserve evidence relevant to any indemnified claim.

**Settlement.** Neither Party shall settle or compromise any indemnified claim without the other Party's prior written consent, which shall not be unreasonably withheld or delayed.

**Subrogation.** Upon payment of any indemnified Loss, the Indemnitor shall be subrogated to the Indemnified Party's rights of recovery against third parties to the extent of such payment, and the Indemnified Party shall execute such documents as are reasonably required to perfect such subrogation.

### 6. Insurance

During the term of this Agreement and for 3 years thereafter, the Indemnitor shall maintain, at its own expense, the following coverages:

(a) **Commercial General Liability** insurance with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, covering bodily injury, property damage, products/completed operations, and contractual liability assumed under this Agreement;

(c) **Workers' Compensation** insurance at statutory limits and **Employer's Liability** insurance with limits of not less than \$1,000,000 per accident / \$1,000,000 per employee / \$1,000,000 policy limit.

All policies shall be issued by insurers rated A- VII or better by A.M. Best and licensed in the jurisdiction of the Activity. The Indemnitor shall furnish certificates of insurance before commencement of the Activity and on renewal, and shall provide at least thirty (30) days' prior written notice of cancellation or material change.

**Additional insured.** The Indemnitee and the other Indemnified Parties shall be named as **additional insureds** on the Commercial General Liability policies on a **primary and non-contributory** basis with respect to the Activity. Coverage for additional insureds shall apply on the same terms as to the named insured and shall not be diminished by any insurance maintained by the Indemnitee.

**Waiver of subrogation.** The Indemnitor waives, and shall cause its insurers to waive, all rights of subrogation against the Indemnified Parties with respect to Losses covered by this Agreement.

## 7. Survival

The indemnification, defense, and insurance obligations of this Agreement shall survive completion or termination of the Activity for a period of **3 years** (the "Survival Period"); provided that, as to any claim noticed to the Indemnitor during the Survival Period, the obligations shall survive until the claim is fully resolved.

## 8. General Provisions

**Governing Law.** This Agreement shall be governed by the laws of the State of [STATE], without regard to its conflict-of-laws principles.

**Venue.** Any action arising out of this Agreement shall be brought exclusively in the state or federal courts located in San Francisco, [STATE], and the Parties irrevocably submit to personal jurisdiction there.

**Attorneys' Fees.** In any action arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, to the extent permitted by law.

**Severability; Reformation.** If any provision is held invalid or unenforceable, such provision shall be reformed to the minimum extent necessary to make it enforceable, and the remaining provisions shall continue in full force and effect. It is the Parties' intent that indemnification be provided to the fullest extent permitted by the law of [STATE].

**Assignment.** Neither Party may assign this Agreement without the other's prior written consent, except that either Party may assign to a successor in a merger, reorganization, or sale of substantially all assets.

**Entire Agreement; Amendments.** This Agreement is the entire agreement of the Parties as to its subject matter and supersedes all prior understandings. Amendments require a writing signed by both Parties.

**Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Electronic signatures are valid under the federal ESIGN Act (15 U.S.C. § 7001 et seq.) and applicable state law.

## Signatures

### Indemnitor

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

### Indemnitee

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE