Form VDA-1M&A

**NOTICE OF MERGER OR ACQUISITION AND DISCLOSURE AND NOTICE OF INTENT TO VOLUNTARILY COMPLY WITH ABANDONED OR UNCLAIMED PROPERTY LAW**

**PURSUANT TO 12 Del. C. §§ 1147 AND 1173**

This Voluntary Disclosure Agreement (“Agreement”) is entered into between the State of Delaware, by and through the Delaware Secretary of State (“State”), acting by its undersigned duly authorized representative, and [PURCHASING ENTITY] (“Purchaser”), acting by its duly authorized officer.

**WHEREAS**, Purchaser intends to purchase [TARGET] (“Target”), an entity formed under the laws of [STATE], from [SELLING ENTITY] (“Seller”) after entering this Agreement, subject to feasibility, financing, acquisition, necessary approvals, and/or the satisfaction of certain other conditions precedent to Purchaser’s acquisition of Target. The expected signing date for Purchaser’s acquisition of Target is [DATE 1] (“Signing Date”) and the expected closing date for the acquisition is [DATE 2] (“Closing Date”). This Agreement will automatically terminate if Purchaser fails to acquire Target, which shall be evidenced by Purchaser’s delivery of written notice thereof to State;

**WHEREAS**, Purchaser, as the intended successor or acquiring entity of Target, is now coming forward in good faith to insulate itself from inheriting any and all of Target’s historic unclaimed property liabilities that may be due to the State of Delaware pursuant to 12 Del. C. §1147 and comply with the Abandoned or Unclaimed Property Law, and

**WHEREAS**, the State desires to induce the Purchaser’s compliance with the Abandoned or Unclaimed Property Law with respect to its potential purchase of Target and the related successor liabilities pursuant to 12 Del. C. §1147.

**NOW THEREFORE**, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

Purchaser shall work with Target and Seller in good faith to provide the data requests listed in the VDA-1M&A-Instructions and obtain approval from Target and Seller to provide same to State.

State agrees to review Target’s information and documentation provided by Purchaser and will issue an Establishment of Escrow Amount Notice as soon as practicable, and provided this Form VDA-1M&A and substantial information and documentation pursuant to the VDA-1M&A- Instructions is submitted at least thirty days before Closing Date, an Establishment of Escrow Amount Notice will be issued at least ten days before Closing Date.

State agrees to limit any successor liability of Purchaser related to its acquisition of Target pursuant to 12 Del. C. §1147 to the amount noted in the Establishment of Escrow Amount Notice. To enter into a Voluntary Disclosure Closing Agreement, Form VDA-2M&A, Purchaser may choose to pay the abandoned or unclaimed property liability listed in the Establishment of Escrow Amount Notice or complete a self-review of Target’s books and records following its merger or acquisition. Should Purchaser choose this self-review, it shall be completed in a manner which is consistent with the “Department of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program Regulations Relating to Estimation,” the “Secretary of State’s Implementing Guidelines Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program” and the associated deliverables as outlined in these documents.

It is imperative and agreed that Target, by and through Purchaser, and Purchaser, provide as much information and documentation as possible in this process because, notwithstanding a Purchaser’s choice to pay the abandoned and unclaimed property liability listed in the Establishment of Escrow Amount Notice, holders or holders’ successors, at all times assume the applicable reporting responsibilities for abandoned and unclaimed property amounts where names and addresses do exist which may be due or payable to other states; these amounts are not subject to any release and indemnification provisions received through this program.

The State agrees that upon confirmation by Purchaser that it wishes to pay the amount noted in the Establishment of Escrow Amount Notice, and upon payment of the abandoned and unclaimed property to the State or the establishment of a payment plan by the Purchaser that is accepted by the State, the State will enter into a Voluntary Disclosure Closing Agreement, Form VDA-2M&A, granting the Purchaser the protections contemplated by that agreement. The State alternatively agrees that upon its satisfactory review and approval of the reports and materials submitted by the Purchaser following its self-review, and upon payment of the abandoned property to the State or the establishment of a payment plan by the Purchaser that is accepted by the State, the State will enter into a Voluntary Disclosure Closing Agreement, Form VDA-2M&A, with the Purchaser, granting the Purchaser the protections contemplated by that agreement.

The Purchaser agrees to enter into a Voluntary Disclosure Closing Agreement, Form VDA-2M&A, with the State and to either pay the abandoned or unclaimed property due to the State under the Abandoned or Unclaimed Property Law, or enter into a plan for its payment, no later than the two year anniversary of the effective date of this Agreement. If the Purchaser fails to enter into a Voluntary Disclosure Closing Agreement and make payment or enter into a plan for payment within 30 days after the two years have expired, the Purchaser may be referred to the State Escheator for examination pursuant to 12 Del. C. §1172 and the successor liability cap identified in the Establishment of Escrow Amount Notice may no longer be valid. However, the Purchaser and State shall work together in good faith to complete the Program as soon as practicable.

Should the Target, or any subsidiary and/or related entity with or part of the merger or acquisition, be deemed ineligible pursuant to 12 Del. C. §1173(e) or any other provision of Delaware law, then this Form VDA-1M&A enrollment shall be deemed null and void only with respect to those entities which are deemed ineligible to participate.

The Purchaser understands that time is of the essence and the Purchaser’s delay in completing its review may result in either

1. removal of the Purchaser from the program, or
2. the imposition of interest on the abandoned property payable to the State, notwithstanding the parties’ expectation that by the terms of the form Voluntary Disclosure Closing Agreement to be executed after the Purchaser’s review of its books and records that interest is to be waived. In the event of such delay, the form Voluntary Disclosure Closing Agreement will be amended to provide for the imposition of interest on all abandoned property payable to the State from the due date of the report(s).

# Purchaser Signature and Information

Date: By:

Name:

Title:

Name and Title of designated Purchaser contact:

Purchaser Address: Purchaser Contact Telephone number:

Purchaser Contact E-mail: Purchaser FEIN:

Purchaser Advocate contact information:

|  |  |  |
| --- | --- | --- |
| **Contact Information** | **Advocate** | **Advocate** |
| Name |  |  |
| Title |  |  |
| Company |  |  |
| Address |  |  |
| Phone |  |  |
| Email Address |  |  |

# State Signature

ACCEPTED: Date: By:

The Honorable Jeffrey W. Bullock Secretary of State

State of Delaware

Send via e-mail to SOS.VDA@delaware.gov a PDF copy of Form VDA-1M&A which has been executed by an officer of the company.