**VOLUNTARY DISCLOSURE CLOSING AGREEMENT**

Form VDA-2M&A

State of Delaware

Delaware Secretary of State

820 North French Street, 4th Floor

Wilmington, DE 19801

This Voluntary Disclosure Closing 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, [PURCHASING ENTITY] (“Purchaser”), acting by its duly authorized officer, and [TARGET] (“Target”), acting by its duly authorized officer or legal successor.

**WHEREAS**, the Purchaser voluntarily came forward on [DATE] and entered into 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 (“Form VDA-1M&A”), evidencing a good faith desire to comply with the Abandoned or Unclaimed Property Law and deliver to the STATE property presumed abandoned or unclaimed and, therefore, subject to escheatment to the STATE; and

**WHEREAS**, following its submission of Form VDA-1M&A, Purchaser acquired or merged with Target, an entity formed under the laws of [STATE], from [SELLING ENTITY] (“Seller”);

**WHEREAS**, the Target is not presently in compliance with the Delaware Abandoned Property Law, Chapter 11 of Title 12 of the Delaware Code, (“Abandoned or Unclaimed Property Law”); and

**WHEREAS**, the Target and Purchaser are not prohibited from participating in the Voluntary Disclosure Program by 12 Del. C. § 1173(e); and

**WHEREAS**, the State desires to induce the Purchaser’s compliance with the Abandoned or Unclaimed Property Law with respect to its purchase of the Target and its 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:

1. The following terms shall have the following definitions:
   1. The term “Abandoned or Unclaimed Property” shall mean property against which a full period of dormancy has run, pursuant to the Abandoned or Unclaimed Property Law.
   2. The term “Agreement Look-Back Period” shall mean the period of time that covers all transactions starting on January 1, *20XX* that reflect property that becomes or could become Abandoned or Unclaimed Property reportable to Delaware on or before March 1, 20XX for the reporting year ending December 31,*20XX*.
   3. The term “Payable Property” shall mean Target’s accounts payable, payroll, accounts receivable property, and securities for which the dormancy period began during the Agreement Look-Back Period and that became Abandoned or Unclaimed Property. All other property types/categories of property are excluded for the definition of Payable Property for purposes of this Agreement.
2. The Purchaser, and Target if it remains in existence, agrees to pay and deliver to the State, in accordance with § 1173 of the Abandoned or Unclaimed Property Law, the Payable Property for which the dormancy period began during the Agreement Look-Back Period and that became Abandoned or Unclaimed Property, which has been identified and fully described in Exhibit B.1 and the associated line item detailed schedule of the property to be remitted which shall be marked as Exhibit B.2. After this Agreement is fully executed and returned to the Purchaser, and Target if it remains in existence, the Purchaser, and Target if it remains in existence, agrees within 10 calendar days of a demand letter being issued and received by the Purchaser, and Target if it remains in existence, to electronically upload the Abandoned or Unclaimed Property Report and associated NAUPA file directly with the Delaware Department of Finance in accordance with the Department of Finance’s policies and procedures. For the avoidance of doubt, the NAUPA file upload and payment shall occur after the State has demanded payment. The Purchaser, and Target if it remains in existnece is to provide a copy of the NAUPA Upload Confirmation Receipt to the Department of State.
3. The Purchaser, and Target if it remains in existence, has identified and designated the following individual as its contact for all correspondences with the State related to the Abandoned or Unclaimed Property Law acquired from Target or any matter associated with this Agreement, and has provided to the State the contact’s mailing address, telephone number, email address, title, and the Target’s FEIN. The Purchaser, and Target if it remains in existence, is obligated to notify the State in the case of any change of the designated individual, or any change of contact information provided herein.

Name and Title of designated contact at Purchaser or Target (circle one):

Address:

Telephone number:

Contact Email Address:

Target FEIN:

1. The Purchaser, and Target if it remains in existence, represents that, except as otherwise specifically made known to the State, with respect to all work product prepared by the Purchaser or Target, that it is entering into this Agreement intending to fully comply with the Abandoned or Unclaimed Property Law and the rules of priority set forth by the United States Supreme Court in the cases of *Texas v. New Jersey* and *Delaware v. New York*. The Purchaser, and Target if it remains in existence, also represents that the production of information and documentation provided to the State, and the payment and delivery of the Payable Property is made in good faith compliance with the Abandoned or Unclaimed Property Law, including but not limited to § 1153 of the Abandoned or Unclaimed Property Law.
2. In this Agreement, “good faith” requires, *inter alia*, that, with respect to all work product prepared by the Purchaser and Target, the Purchaser, and Target if it remains in existence, disclosed to the State all determinations related to the Abandoned or Unclaimed Property Law made in connection with this Agreement. This includes, but is not limited to, any determination by the Purchaser or Target that a particular item, kind, or type of property is not abandoned or unclaimed property under the Abandoned or Unclaimed Property Law where such determination results in a reduction in the amount of property reported, to the State, or the omission of a particular kind or type of property from disclosure, by the Purchaser, and Target if it remains in existence, to the State. The Purchaser or Target’s reliance on an independent third-party to process the Target’s books and records and to determine the amount of the Payable Property does not, by itself alone, without more, constitute “good faith.”
3. The State releases the Purchaser, and Target if it remains in existence, from all claims, demands, interest, penalties, fines, actions or causes of action the State may have from the beginning of time through and including the date of this Agreement that relate to the Payable Property, subject only to the conditions in paragraph nos. 7 and 10 below. Upon payment of the Payable Property, the State agrees to indemnify the Purchaser, and Target if it remains in existence, pursuant to the terms of § 1153 of the Abandoned or Unclaimed Property Law. Notwithstanding the foregoing provisions of this paragraph 6, for Payable Property for which complete names and addresses do exist, the Purchaser, and Target if it remains in existence, assumes the applicable reporting responsibilities and any such amounts due or paid to any state other than the State are not subject to the release and indemnification provisions contained in this paragraph 6.
4. The State releases the Purchaser, and Target if it remains in existence, from any further reporting requirements for the Payable Property from the beginning of time through the Abandoned and Unclaimed Property Report due to Delaware for reporting year 20XX which Report was due March 1, 20XX. The Purchaser, and Target if it remains in existence, agrees to file and report, to the State, abandoned or unclaimed property annually as required by the Abandoned or Unclaimed Property Law. Should the Purchaser, or any successor entity of the Target or any of its subsidiaries and affiliates listed on Exhibit A, fail to fulfill Delaware’s annual reporting requirements in any of the subsequent three (3) report years after the execution of this Agreement, the State will issue a warning letter to the individual listed in paragraph 3, notifying the holder of its failure to comply with the Agreement, no earlier than 30 days after the deadline to submit the annual report. In the event that the Purchaser, and Target if it remains in existence, fails to adhere to the reporting requirements of the Abandoned or Unclaimed Property Law after the State issues a warning letter, the State, at its sole discretion, may void paragraph nos. 6 and 10 of this Agreement and, at the State’s discretion, audit the Purchaser, and Target if it remains in existence, for any time, including but not limited to the Agreement Look-Back Period.
5. With respect to any work product prepared by the Purchaser, and Target if it remains in existence, the Purchaser, and Target if it remains in existence, has disclosed to the State any estimation techniques which were used to determine the Payable Property for any periods where the Purchaser, and Target if it remains in existence, attests that records either do not exist, or are inadequate to determine the exact amount of property which became abandoned or unclaimed during the Agreement Look-Back Period. The Purchaser, and Target if it remains in existence, swears that no estimation techniques were used to infer, create, or otherwise identify addresses for persons appearing to be owners of abandoned or unclaimed property where the Target’s books and records do not in fact contain the addresses of the persons appearing to be owners of the abandoned or unclaimed property.
6. The State will maintain the confidentiality of information voluntarily disclosed and shall only disclose such information as provided in § 1189 of the Abandoned or Unclaimed Property Law, or as otherwise required by law.
7. The State recognizes that the Purchaser, and Target if it remains in existence, has come forward on a voluntary basis, through Purchaser, and hereby enters into compliance with the Abandoned or Unclaimed Property Law. Except in circumstances where there is evidence of fraud or willful misrepresentation by the Purchaser, and Target if it remains in existence, or those acting on the holder’s behalf or non-compliance with annual reporting requirements in the Abandoned or Unclaimed Property Law and described in paragraph no. 7 above, the State waives its right to audit the Purchaser, and Target if it remains in existence with respect to the Payable Property, pursuant to the Abandoned or Unclaimed Property Law, concerning property that became Abandoned or Unclaimed Property during or prior to the Agreement Look-Back Period. In other words, the State waives its right to audit the Purchaser, or Target if it remains in existence, pursuant to the Abandoned or Unclaimed Property Law, concerning the categories of Payable Property that became Abandoned or Unclaimed Property for the Agreement Look-Back Period and all preceding years.
8. The parties agree and acknowledge that this settlement and the terms of this Agreement (including all statements, representations, and communications made by the Parties or their attorneys or other representatives in the course of negotiating this Agreement) shall not be taken or construed to be an admission of liability with respect to the Payable Property described in paragraph 2 (or non-liability with respect to property excluded from the Payable Property described in paragraph 2) for any other matter, property, agreement, settlement, or administrative or judicial proceeding or purpose regarding the Parties or any other organization or holder that is not a party to this Agreement. This Agreement is directed solely to the Parties identified herein. It is based on the facts relevant to this matter and is not binding precedent and should not be cited as binding by any organization or holder not a party to this Agreement.

**Agreed to by:**

PURCHASER:

I, [NAME, TITLE], on behalf of [PURCHASER] and certain affiliated companies as detailed in Exhibit A to this Agreement, declare under penalty of perjury that I am authorized to sign this Agreement on behalf of the Purchaser, have examined this Agreement and the accompanying schedules and exhibits and swear that they are true and correct to the best of my knowledge, information and belief.

(Signature)

Date:

TARGET (if it remains in existence):

I, [NAME, TITLE], on behalf of [TARGET] and certain affiliated companies as detailed in Exhibit A to this Agreement, declare under penalty of perjury that I am authorized to sign this Agreement on behalf of the Target, have examined this Agreement and the accompanying schedules and exhibits and swear that they are true and correct to the best of my knowledge, information and belief.

(Signature)

Date:

**Agreed to by:**

**STATE OF DELAWARE:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Honorable Jeffrey W. Bullock Secretary of State

State of Delaware

***Exhibit A***

***Statement attached to and made part of***

***Form VDA-2M&A - Voluntary Disclosure Closing Agreement***

***Purchaser Name: \_\_\_\_\_\_\_\_\_\_\_\_\_***

***Target Name: \_\_\_\_\_\_\_\_\_\_\_\_\_***

**List of Entities**

The following entities are included in the Voluntary Disclosure Agreement.

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| **Name of Entity** | **EIN #** | **Date of Incorporation** | **State of Incorporation** |
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***Exhibit B.1***

***Statement attached to and made part of***

***Form VDA-2M&A – Voluntary Disclosure Closing Agreement***

***Purchaser Name: \_\_\_\_\_\_\_\_\_\_\_\_\_***

***Target Name: \_\_\_\_\_\_\_\_\_\_\_\_\_***

Summary of Abandoned or Unclaimed Property due by Property Type Pursuant to Secretary of State Voluntary Disclosure Agreement Program

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| --- | --- | --- | --- |
| **Property Type** | **NAUPA Code** | **Amount Due** | **Number of Shares** |
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