

Form:

Sample Indemnification Provisions

Description:

Sample provisions indemnifying and holding harmless a party.

The following is a sample indemnification and limitation of liability protecting the general partner of a limited partnership:

5.7 Liability and Indemnity:

(a) General. The Partnership, its receiver or its trustee, shall indemnify the General Partners or their officers, directors, employees, agents, affiliates, or assigns, against and save them harmless from any claim, demand, judgment, or liability, and against and from any loss, cost or expense (including, but not limited to, attorneys' fees and court costs, which may be paid by the Partnership as incurred), which may be made or imposed upon such persons by reason of any (1) act performed for or on behalf of the Partnership or in furtherance of the Partnership business, (2) inaction on the part of such persons, or (3) liabilities arising under federal and state securities laws, to the extent permitted by law, so long as the party to be indemnified has determined, in good faith, that such course of conduct was in the best interests of the Partnership and said conduct did not constitute gross negligence or gross misconduct.

(b) Liability for Acts or Omissions. No General Partner, nor any officer, director, employee, agent, affiliate or assignee thereof, shall be liable, responsible or accountable in damages or otherwise to the Partnership or any Partner for any action taken or failure to act on behalf of the Partnership within the scope of the authority conferred on the General Partners by this agreement or by law, so long as the party to be indemnified has determined, in good faith, that such course of conduct was in the best interests of the Partnership and said conduct did not constitute gross negligence or gross misconduct.

(c) Partnership Assets Must First Be Used. All judgments against the Partnership and the General Partners or their officers, directors, employees, agents, Affiliates or assigns wherein the General Partners or such other persons or entities are entitled to indemnification, must first be satisfied from Partnership assets before the General Partners or such other persons or entities are responsible for these obligations.

(d) No Presumption. The termination of any action, suit or proceeding by judgment or settlement shall not, of itself, create a presumption that the General Partners or their officers, directors, shareholders, partners, agents, employees, affiliates or assignees are not entitled to indemnification or are not entitled to the protection afforded by this Section 5.7.

(e) Insurance. The Partnership may purchase and maintain insurance on behalf of the General Partners and the persons covered by this Section 5.7 whether or not the Partnership would have the power or obligation to provide indemnification against liability under the provisions of this Agreement.

(f) Advance. The expenses (including legal fees and expenses) of any General Partner, officer, director, shareholder, partner, employee, agent, affiliate, or assignee thereof incurred in defending any proceeding shall be paid by the Partnership in advance of the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the subject person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such person is not entitled to be indemnified by the Partnership as authorized hereunder.

The following is an indemnification section in a merger agreement and tends to be more favorable to the selling company:

ARTICLE VIII

INDEMNIFICATION

8.1 Survival of Representations, Warranties and Covenants. Notwithstanding any investigation conducted before or after the Closing Date, Buyer and the Company will be entitled to rely upon the other party's representations, warranties and covenants set forth in this Agreement. The obligations of the Buyer and the Company with respect to its representations, warranties, agreements and covenants will survive the Closing and continue in full force and effect for a period of six (6) months after the Closing, provided that if a written notice is given in accordance with the Escrow Agreement before the expiration of such six (6) month period, then (notwithstanding the expiration of such time period) the representation, warranty or covenant applicable to such claim shall survive until, but only for the purpose of, the resolution of such claim.

8.2 Indemnity by Company Shareholders. From and after the Closing Date, and subject to the other provisions of this Article 8, each Company Shareholder shall severally and not jointly indemnify and hold harmless Buyer and Surviving Corporation (an "Indemnified Person") against, and reimburse Buyer and/or Surviving Corporation for, any liability, damage, loss, obligation, demand, judgment, fine, penalty, cost or expense, including reasonable attorneys' fees and expenses, and the costs of investigation incurred in defending against or settling such liability, damage, loss, cost or expense or claim therefor and any amounts paid in settlement thereof (collectively "Damages") imposed on or reasonably incurred by Buyer as a result of: (i) any breach of any representation or warranty or failure to perform any covenant on the part of Company under this Agreement or (ii) resulting from any claim by a Company Shareholder or former Company shareholder based upon an ownership right or alleged ownership right of any shares of stock of the Company, the form of consideration payable in the Merger or any actions of the board of directors of the Company in connection with the transactions contemplated by this Agreement.

8.3 Method of Asserting Claims. All claims for indemnification by an Indemnified Person pursuant to this Article VIII shall be made in accordance with the provisions of the Escrow Agreement.

8.4 Limitations. Notwithstanding anything to the contrary herein,

(a) the aggregate liability of each Company Shareholder for Damages under this Article VIII or otherwise shall be limited to his appropriate pro rata portion the Escrow Shares (as set forth in the Escrow Agreement). Except with respect to claims based on fraud, in the event the Merger occurs, the rights of an Indemnified Person under this Article VIII shall be limited exclusively to the right to receive the Escrow Shares (or an appropriate pro rata portion thereof, as set forth in the Escrow Agreement) and such indemnification shall be the exclusive remedy of the Indemnified Persons with respect to claims resulting from or relating to any misrepresentation, breach of warranty or failure to perform any covenant or agreement of the

Company or the Company Shareholders contained in this Agreement. No Company Shareholder shall have any right of contribution against the Company with respect to any breach by the Company of any of its representations, warranties, covenants or agreements.

(b) Subject to Section 12(a) of the Escrow Agreement, the Company Shareholders shall have no obligation to indemnify the Indemnified Person pursuant to Section 8.2 hereof unless and until all Damages thereunder shall exceed \$_____ in the aggregate, at which point the Company Shareholders shall be responsible for all Damages exceeding the first \$_____ of such Damages imposed on or incurred by the Indemnified Person. As used in this Agreement, "Damages" shall be determined after giving effect to the receipt by the Indemnified Person of any insurance proceeds relating to such Damages.