



File No. \_\_\_\_\_

## VOLUNTARY DISCLOSURE AGREEMENT EMPLOYER WITHHOLDING TAX

Employer: \_\_\_\_\_ FEIN: \_\_\_\_\_

The Ohio Department of Taxation (the “Department”) is committed to promoting tax compliance. As a part of this effort, this Voluntary Disclosure Agreement is entered into between the Tax Commissioner for the State of Ohio (“Commissioner”) and the employer listed above (“Employer”). This agreement applies to Employer’s Ohio employer withholding tax obligations, which includes both individual income tax withholding and school district income tax withholding, as applicable, during the disclosure period. This agreement also applies to any Ohio employer withholding tax obligations that Employer has collected and not remitted, regardless of whether such amounts were collected before or during the disclosure period. **The disclosure period for this agreement will be 1/1/2018 through 12/31/2021.**

Commissioner has statutory responsibility for administering the Ohio employer withholding tax. As part of that responsibility, the Commissioner administers the Voluntary Disclosure program. In exchange for bringing this matter to the attention of the Commissioner, the Voluntary Disclosure program allows Employer to come into compliance on substantially more favorable terms than if discovered to be noncompliant by the Commissioner. Although Employer agrees to pay interest<sup>1</sup> on any tax amount due, and a 10% penalty on all tax Employer has collected and not remitted to Ohio, the Commissioner will not impose additional penalties for any other tax amounts due in the disclosure period, provided Employer complies with the terms of this agreement in good faith.

By submitting this agreement for consideration, Employer represents that Employer:

- Is noncompliant with Ohio’s employer withholding tax laws;
- Is not currently in contact with the Department regarding outstanding Ohio employer withholding tax liability for any year outside the disclosure period;
- Is not, to the best of Employer’s knowledge, under investigation by the Criminal Investigations Division of the Department;
- Does not have any outstanding bills or assessments relating to Ohio employer withholding tax liabilities (including for interest or penalties);
- Will disclose all Ohio employer withholding tax that it has collected and not remitted;
- Has not previously been contacted by the Department regarding possible outstanding Ohio employer withholding tax liability for any year during the disclosure period; **AND**
- Has not previously filed Ohio employer withholding tax return(s) for any year during the disclosure period.

**Eligibility for the Voluntary Disclosure program is predicated on these representations.**

Employer desires to enter into this agreement to become current on its tax compliance responsibilities. Accordingly, Employer agrees to the following terms:

<sup>1</sup> The applicable interest rates are 5% for calendar years 2019 and 2020, and 3% for calendar years 2021 and 2022.

1a. Employer will disclose to the Commissioner all Ohio employer withholding tax during the disclosure period by filing **all** annual employer withholding returns (IT 941 and/or SD 141), required to be filed, for each year within the disclosure period.

1b. Employer will also disclose all Ohio employer withholding tax that it has collected and not remitted by filing **all** annual employer withholding returns required to be filed, regardless of whether such amounts were collected before or during the disclosure period.

2a. Employer will make a voluntary payment to the State of Ohio of all individual income tax withholding due during the disclosure period, as well as any individual income tax withholding Employer has collected and not remitted regardless of whether such amounts were collected before or during the disclosure period.

2b. As applicable, Employer will also make a separate, voluntary payment of all school district income tax withholding due for the disclosure period, as well as any school district income tax Employer has collected and not remitted regardless of whether such amounts were collected before or during the disclosure period.

3. Employer will make a voluntary payment to the State of Ohio of interest, which will be calculated on the total amount of Ohio employer withholding tax due. Employer acknowledges that the interest amount is due pursuant to R.C. 5747.07(F) and that the interest cannot be reduced or waived.

4. For any Ohio employer withholding tax collected and not remitted, Employer agrees to voluntarily pay a 10% penalty, calculated pursuant to R.C. 5747.15(A)(4)(a).

5. Employer will file the appropriate registration forms with the Secretary of State and become registered in Ohio. Once properly registered, Employer agrees to stay in compliance with the laws of Ohio.

6. Once this agreement is accepted by the Commissioner, Employer agrees that it will not file any amended returns or refund claims for any Ohio employer withholding tax amounts paid to Ohio under the terms of this agreement.

7. Employer agrees it will timely and electronically file and pay its Ohio employer withholding tax returns for all future tax periods, to the extent required by Ohio law.

Upon Employer's completion of the terms above, the Commissioner agrees to **forgo** any potential or actual past Ohio employer withholding tax liability on amounts other than those Employer has previously collected and not remitted, including tax, penalty and interest, as well as any filing or collection and remittance responsibility that Employer may have for its Ohio employer withholding tax liability in this state incurred prior to the disclosure period. Employer understands that Ohio employer withholding tax amounts collected and not remitted, along with applicable interest and the 10% penalty imposed as part of this agreement, will **not be reduced or abated** for any reason.

The Commissioner reserves the right to review the documentation presented by Employer and any other records pertaining to the disclosure, in order to confirm that its voluntary payment amount is accurate.

Both Employer and the Commissioner agree to maintain the confidentiality of this agreement. The parties agree that they shall not disclose the fact of this agreement's existence or any term of the agreement except as required by law.

This agreement is **not** binding on the Commissioner until signed by the Commissioner. Prior to signing this agreement, the Commissioner will review his records to confirm that Employer:

- Is not currently in contact with the Department regarding outstanding Ohio employer withholding tax liability for any year outside the disclosure period;
- Does not have any outstanding bills or assessments relating to Ohio employer withholding tax liabilities (including for interest or penalties);
- Is not currently under investigation by the Criminal Investigations Division of the Department;
- Has not previously been contacted by the Department regarding possible outstanding Ohio employer withholding tax liability for any year during the disclosure period; **AND**
- Has not previously filed Ohio employer withholding tax return(s) for any year during the disclosure period.

All payments and filings must be made contemporaneously with the submission of a signed copy of this agreement. This agreement will **not be accepted**, or if accepted will be void, if Employer:

- Is not eligible for the Voluntary Disclosure program;
- Fails to remit the required payments and filings with this agreement; **OR**
- Does not substantially comply<sup>2</sup> with terms of this agreement.

If the Commissioner does not accept this agreement, or the agreement subsequently becomes void, the Commissioner can issue assessments for all tax and interest due under Ohio law, along with all appropriate penalties.

This agreement is intended to bind the parties in the absence of fraud or material misrepresentation of fact.

The person signing below for Employer knowingly does so with the authority to bind Employer to the terms of this Agreement.

\_\_\_\_\_  
Jeffrey A. McClain, Tax Commissioner

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title of Officer/Agent

<sup>2</sup> Substantial compliance includes, but is not limited to, remitting interest and applicable penalties on amounts due under this agreement, disclosing and paying Ohio employer withholding tax that was collected and not remitted, paying any additional amounts found due for the years covered by this agreement after the Commissioner's review of the submission, good faith in the Voluntary Disclosure program and execution of this agreement, and/or filing returns and paying tax, as applicable, in subsequent years.