

_____, 2014

CONFIDENTIAL

RE: Letter of Intent for Acquisition of substantially all of the assets of

Dear _____:

The purpose of this letter of intent ("LOI") is to set forth certain nonbinding understandings and certain binding agreements among _____, an _____ company or an affiliated entity ("Newco #1") (_____ and Newco #1 together, the "Buyer"), _____, an _____ limited liability company (the "Company" or "_____"), and _____ ("Member" or "_____") with respect to the Buyer's the acquisition of substantially all of the assets, both tangible and intangible, of the Company that are used in, or necessary for the conduct of the Company's business (the "Assets"), which shall include, without limitation: (i) all computer software and/or applications, and subsequent versions thereof, including source code, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith; (ii) assignments from Company employees, consultants, independent contractors and other persons in similar capacities of all rights with respect to any intellectual property which they developed or otherwise as to which they provided service or input in such respective capacities; (iii) any license or customer agreements and all related intellectual property (including the name _____ and/or _____ Group any and all other trade names together with their related logos or other identifying marks); (ii) the Company's websites, including domain names, all common law rights with respect thereto, and all registrations and applications for registration thereof; (iii) all furniture and equipment, (iv) any and all customer lists; and (v) any goodwill associated therewith, but shall not include the Excluded Assets (as defined below), on the terms and subject to the conditions set forth below (the "Proposed Transaction") (the Company, the Member and Buyer may be referred to individually as a "Party" and collectively as the "Parties"). The Buyer will not assume any liabilities of the Company or the Member in connection with the Proposed Transaction, except for the current lease of Company's premises and or to the extent specifically set forth in the Definitive Agreement (as hereinafter defined). It is Buyer's understanding that the Member is the sole member of the Company.

Because this LOI is being entered into prior to a detailed confirmatory due diligence review of the Company by Buyer, the Proposed Transaction is expressly subject to: (i) the confirmatory due diligence review of the Company by Buyer, (ii) the negotiation, execution and delivery of the Definitive Agreement, (iii) the approval (as applicable) of the governing bodies of the Buyer and the Company and of the Member and (iv); the Company's trailing 12 months EBITDA through _____, 20__ is at least equal to the trailing 12 months EBITDA through _____, 20__.

1. **Nonbinding Provisions.** The following lettered paragraphs of this Section 1 (collectively, the "Nonbinding Provisions") reflect the Parties' mutual understanding of the matters described therein, but each Party acknowledges that the Nonbinding Provisions are not intended to create or constitute any legally binding obligations between and among the Company, the Member and Buyer, and neither the Company, the Member nor Buyer shall have any liability to any other Party with respect to the Nonbinding Provisions until they are fully integrated into a definitive written agreement and other related documents, and said agreement and related documents are prepared, authorized, executed and delivered by and between the Company, the Member and Buyer (collectively the "Definitive Agreement"). If the Definitive Agreement is not prepared, authorized, executed or delivered for any reason, no Party to this LOI shall have any liability to any other Party to this LOI based upon, arising from, or relating to the Nonbinding Provisions.

A. **Acquisition by Buyer.**

(i) On the terms and subject to the conditions to be set forth in the Definitive Agreement, the Member and Buyer, at the closing ("Closing"), as specified in the Definitive Agreement, Buyer will acquire the Assets of the Company, the allocation value will be determined by mutual agreement. The Assets will include, without limitation:

a) Buyer will purchase the first \$50,000 of Company's accounts receivable that are collected by Buyer following the Closing. Buyer shall collect all other accounts receivable following the Closing on the Company's behalf and submit to the Company any and all collected accounts receivable above the first \$50,000 on a weekly basis with a full report detailing such received payments. If Buyer does not collect \$50,000 of accounts receivables within 120 days after the date of Closing, then this shortfall amount will be deducted from the principal amount of the promissory note payable to the Company (as further described in Section 1. A. (ii) b) below) by an equal amount, and all further such accounts receivables collected past such date will be the property of the Company and will be turned over to the Company on a weekly basis. If the amount of accounts receivable at Closing is less than \$50,000, then the amount of cash delivered to the Company at Closing as described in Section 1 A. (ii) a) below shall be reduced by such amount of accounts receivable less than \$50,000;

b) Buyer will purchase \$150,000 of the Company's cash;

c) The Assets shall not include the following (the "Excluded Assets"), which shall be retained by the Company following Closing:

I) Accounts receivable above the \$50,000 purchased as described in Section 1. A. (i) a) above;

II) Cash on hand and cash in Company's bank accounts above the \$150,000 purchased as described in Section 1. A. (i) b) above; and

III) Certain fixed assets described on Exhibit A hereto, if any.

(ii) Subject to Buyer's confirmatory due diligence review of the Company, the aggregate consideration to be paid by Buyer to the Company for the Assets shall be \$1,050,000 (the "Purchase Price"), plus or minus any applicable adjustments contemplated in Section 1. A. (i) a) above. The Purchase Price shall be paid as follows:

a) \$_____ in cash at Closing; and

b) \$_____ promissory note payable to the order of Company with a five (5) year amortization at 5.0% interest and subordination requirements (the "Seller's Note"). Any damages to which Buyer may be entitled arising out of any breach or inaccuracy of any representation and warranty or covenant as outlined in the Definitive Agreement will reduce the principal amount of this Seller's Note by the amount of such damages. A detailed payment schedule will be created and made attached to and incorporated into the Seller's Note at Closing.

(iii) Buyer will enter into a consulting agreement contract with _____, to be negotiated and entered into at Closing, whereby _____ will provide transition and growth oriented consulting services, specifically focused on new product development and providing account management to the _____ account, that would be structured as follows:

a) _____ would be available and consult for up to 75% of time (averaging 30 hours a week) for the first six months after Closing per requests from Buyer, paid \$_____ monthly for a total of \$_____, regardless of the amount of time requested by Buyer (Buyer may request up to 75% of full time);

b) _____, would be available and consult for up to 50% of time (averaging 20 hours a week) for the next 12 month period per requests from Buyer, paid \$_____, monthly for a total of \$_____, regardless of the amount of time requested by Buyer;

c) On an as needed basis after the above periods that would be mutually agreed upon by both parties; and

d) Service on an advisory board of Newco #1 for the first 18 months following Closing (time to be included in the above).

(iv) At Closing, all of the Assets shall be conveyed free and clear of all liens, liabilities, encumbrances and defects in title, except such encumbrances and defects in title that have been disclosed in writing in the Definitive Agreement and are acceptable to Buyer in its sole discretion.

(v) At Closing, _____, and Buyer will set up a separate LLC (“Newco #2”) for the purpose of developing and selling software products for the commercial market related to products currently developed and supported by the Company. The Definitive Agreement will include specific products that will be the focus of Newco #2. _____, will be the President of “Newco #2” for at least two years following Closing and will lead the development and commercialization of these products. All services required in the operations of Newco #2, including space needs, computer time and development services, will be purchased through Newco #1, which shall be provided to Newco #2 at competitive rates. _____, will own twenty percent (20%) of the outstanding units of Newco #2 and Buyer will own eighty percent (80%) of the outstanding units of Newco #2. _____, will pay to Newco #2 the amount of \$_____, for such units. During the two year period following Closing, _____, will be responsible for ten percent (10%) of Newco #2’s expenses in excess of its income, payable to Newco #2 quarterly, but in not to exceed an aggregate of \$10,000 unless mutually agreed. If Newco #2 has the need to have a capital injection at any time, then the equity partners of Newco #2 will be called upon for additional capital contribution in the ratio of 90%/10%, of which the 10% will be _____, contribution. However, either equity partner can choose not to participate in any such capital call, and if additional capital is injected, then their respective units will be diluted accordingly. _____, salary for this work is covered by the payments above in 1.A.(iii) above. There will be customary buy/sell provisions, anti-dilution and voting provisions included in the Newco #2 operating agreement and other organizational documents, as applicable.

B. **Due Diligence.** Buyer intends to commence its confirmatory due diligence investigation as soon as possible following execution of this LOI. Company and Member will resolve to Buyer’s satisfaction all relevant issues related to the _____, Disclosure Agreement.

C. **Representations, Warranties, Covenants and Conditions in Definitive Agreement.** In the Definitive Agreement, the Company and the Member, jointly and severally, will make representations and warranties concerning the Company that are customary for transactions of the type proposed by this LOI. In addition, the Company and the Member will agree to execute and deliver certain agreements and perform certain covenants that are customary for transactions of the type proposed by this LOI. The Member will specifically indemnify Buyer from any liabilities, losses, damages or costs, including legal fees, relating to breaches of such representations, warranties and covenants by the Company or the Member. The Definitive Agreement will also contain such other deliveries, conditions to Closing and other matters as are reasonably required by Buyer.

D. **Agreement Not to Compete and Not to Solicit Customers or Employees.** The Definitive Agreement will contain (i) a covenant not to compete, pursuant to which the Company or the Member (and their affiliates) will agree not to compete with Buyer in any businesses in which Buyer will operate, and (ii) a covenant of the Company and the Member not to solicit customers or employees of the Buyer, except for the services of Member rendered for Buyer or Newco pursuant to Section 1.A.(v). The restrictive covenants described above shall be applicable for a period of _____ (__) years from Closing. The Definitive Agreement will describe the terms of such covenants more fully and will afford Buyer (post-closing) the right to all remedies available at law or in equity.

E. **Proposed Form of Definitive Agreement.** Buyer, the Company and the Member intend promptly to begin negotiating in good faith to reach a written Definitive Agreement, subject to the approval of Buyer's and the Company's governing bodies and the Member. Buyer intends to deliver a draft of the Definitive Agreement as soon as reasonably possible after Buyer conducts its confirmatory diligence review of the Company and its business, and the Parties intend that Closing occur on or before _____, ____, 20____.

F. **Employment Arrangements.**

(i) In connection with the Definitive Agreement, Buyer will enter into employment arrangements with key employees of the Company at terms and conditions similar to their current at the Company. These arrangements will include a two (2) year non-compete, non-solicitation clause.

(ii) During the confirmatory due diligence investigation of the Company, the Company will also identify all employees engaged in the conduct of the business, and cooperate with Buyer's review and interviewing of selected employees; provided, however, Buyer will not contact the Company's employees without first obtaining the Company's permission.

2. **Binding Provisions.** Upon execution by the Company and the Member of this LOI or a counterpart thereof, the following lettered paragraphs of this Section 2 (collectively, the "Binding Provisions") will constitute the legally binding and enforceable agreements of Buyer, the Company and the Member (in recognition of the significant costs to be borne by Buyer, the Company and the Member in pursuing the Proposed Transaction and further in consideration of their mutual undertakings as to the matters described herein).

A. **Definitive Agreement.** Buyer and its counsel shall be responsible for preparing the initial draft of the Definitive Agreement. It is understood (i) that this LOI is intended to be, and shall be construed only as, a summary of tentative proposals summarizing the discussions by and among Buyer, the Company and the Member to the date hereof, and not as an agreement with respect thereto, (ii) that the respective rights and obligations of the various Parties will only be defined in the Definitive Agreement into which this LOI and all prior discussions shall merge, and (iii) that the Definitive Agreement may, pursuant to negotiation and discussion, contain terms or conditions which are in addition to or different from the terms and conditions contained in this LOI.

B. **Complete Access.** Upon execution of this LOI, the Company shall provide to Buyer complete and full access to the Company's facilities, books, records and operations and shall cause its employees, attorneys, accountants and other agents and representatives (collectively, "Representatives") to cooperate fully with Buyer's Representatives, including its bankers (i) in connection with Buyer's confirmatory due diligence investigation of the Company's business, licenses, contracts, assets, liabilities, operations, records and other aspects of the Company's business determined in the sole discretion of Buyer, and (ii) to assist in arranging Buyer's financing for the Purchase Price. Buyer will use commercially reasonable efforts to minimize disruption to the Company's operations and Representatives.

C. **Exclusive Dealing.** Until the earlier of (i) the date of the execution and delivery by the Parties of the Definitive Agreement, or (ii) termination of this LOI pursuant to paragraph I below (the "Exclusivity Period"), neither the Company, the Member, nor any of the Company's officers, members, managers or directors shall, directly or indirectly, through any Representative or otherwise, discuss or negotiate with, or furnish any non-public information with respect to the Company, to any other corporation, firm, entity or other person, or solicit, initiate, entertain or consider any inquiries or proposals (other than the Proposed Transaction) relating to the possible disposition, directly or indirectly, of all or any material part of its business and/or assets, or any of the Company Stock or any other change-of-control transaction, or recommend, or fail to recommend against, the same to each Member (any such possible disposition, proposed transaction, offer or other change-of-control transaction, an "Acquisition Transaction"). In addition, the Company and the Member shall cease any ongoing discussions or negotiations related to any Acquisition Transaction. During the Exclusivity Period, the

Company and the Member shall promptly notify Buyer after receipt of any proposal related to any Acquisition Transaction, indication of interest or request for information from a third-party relating to the Company or its assets in connection with a potential Acquisition Transaction or for access to the properties, books or records of the Company by any person or entity that indicates to the Company or the Member that such third-party is considering making, or has made, a proposal for an Acquisition Transaction. Such notice to Buyer shall be made in writing and shall set forth (i) the identity of the party making the proposal and (ii) the terms and conditions of such proposal.

D. **Conduct of Business.** During the Exclusivity Period, the Company shall conduct its business only in the ordinary course, and shall not engage in any extraordinary transactions without Buyer's prior consent, including (without limitation):

(i) selling, transferring or otherwise disposing of any of its business or assets, except in the ordinary course of business;

(ii) borrowing any funds secured by its assets, under existing credit lines or otherwise, except as reasonably necessary for the ordinary operation of its business in a manner, and in amounts, consistent with historical practices;[

(iii) entering into, terminating, modifying or amending, any material contract or agreement related to its business, including any such contract or agreement with any related parties;

(iv) issuing, selling or distributing any equity or debt securities of the Company, including any securities convertible into the right to receive equity or debt of the Company; or

(v) revising, amending or establishing any new policies related to accounting, tax reporting or payment, marketing or sales discounts or rebates, except as required by law.

(vi) Notwithstanding paragraphs (i) through (v) above, at the request of the Member, Buyer will allow the Member to utilize pre-closing restructuring to take advantage of any tax or estate planning that may be available to them, so long as any such actions would not result in an adverse economic impact to the Company or the Company's business and provided the Member give reasonable notice to Buyer in advance of taking any such actions so that Buyer may assess the potential for such actions to result in an adverse economic impact to the Company or the Company's business.

E. **Disclosure.** The Company, the Member, Buyer and their respective Representatives shall not disclose to any third party the substance, terms, conditions or any other aspects of this LOI. The Company, the Member, Buyer and their respective Representatives shall use commercially reasonable efforts to coordinate the substance of any mutually agreed upon public comment, statement or communication by any of them with respect to the Proposed Transaction, and the Company, the Member and Buyer shall obtain approval of the other Parties of any such proposed comment, statement or communication prior to the release thereof.

F. **Costs.**

(i) Buyer shall be responsible for and bear all of its own costs and expenses (including any broker's fees, finder's fees or other similar fees, collectively hereinafter "**Broker's Fees**") payable to any other person or entity incurred in connection with the Proposed Transaction, including the expenses of its Representatives.

(ii) The Company and Member shall be responsible for and bear all of the Company's and the Member's Broker's Fees payable to any other person or entity incurred in connection with the Proposed Transaction, including the expenses of its Representatives. The Company shall pay all closing costs associated with the Acquisition, including but not limited to, survey costs, title insurance fees, lease

assumption fees and recording costs. Neither the Company nor the Member have consulted with or discussed the Proposed Transaction with any broker, finder or other similar agent.

(iii) No Party shall be responsible for any such costs and expenses of the other Parties. Further, each Party shall indemnify, defend and hold the others harmless from any claim or action of any person or entity with respect to any Broker's Fees, or other costs or expenses of any type or kind with respect to this LOI.

G. **Consents.** The Company and the Member shall cooperate with Buyer to obtain all necessary consents and approvals from governmental authorities, lenders, landlords and other third parties of every type or kind, and to endeavor to comply with all other legal or contractual requirements which are preconditions to the execution and consummation of the Definitive Agreement and the consummation of the Proposed Transaction.

H. **Governing Law.** This letter will be governed by and construed in accordance with the State of _____, and the applicable therein.

I. **Termination.** The Binding Provisions may be terminated:

(i) at any time by mutual agreement of the Parties;

(ii) at any time by Buyer upon written notice to the Company of its determination that its confirmatory due diligence review of the Company or the Business will not be satisfactory, in its sole discretion; or

(iii) at any time on or after _____, ____, 20____, upon written notice by Buyer or the Company to the other Parties if the Definitive Agreement has not been executed by such date; provided however, that the termination of the Binding Provisions shall not affect the liability of a Party for breach of any of the Binding Provisions prior to the termination. Upon termination of this LOI, the Parties shall have no further obligations hereunder, except as stated in paragraphs E, F and H of this Section 2, which shall survive (along with this sentence) any such termination of this LOI.

J. **Termination Fees.** Upon the signing of this LOI, the Parties will deposit \$_____, ("Ernest Money") into an escrow account administered by the law firm of _____, or in another account administered by a mutually agreed upon entity. If either Party withdraws from completing the Acquisition or fails to negotiate in good faith, except for the Termination conditions set forth in 2. I. above, the full amount of the Ernest Money will be paid to the other Party as a penalty for such Termination. Upon execution of the Definitive Agreement, the Ernest Money will be released from the escrow account and the \$_____, will be paid back to each Party at Closing.

If the foregoing reflects your understanding of the Proposed Transaction and if the Member is in agreement in principle with the terms and conditions of the proposal herein, please sign and date this LOI in the space provided below and return a fully executed copy to the undersigned on or before 5:00 p.m. (EDT), on _____, ____, 20____. If a fully executed copy of this LOI is not returned to the undersigned by such date, this LOI shall terminate. This LOI may be executed in multiple counterparts, each of which will be deemed an original and such counterparts together will constitute one and the same instrument.

Very truly yours,

Managing Member
_____, LLC

ACCEPTED AND AGREED

_____, LLC

By: _____
Name: _____
Title: _____
Date: _____

_____ Date

EXHIBIT "A"

EXCLUDED FIXED ASSETS