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## AGREEMENT FOR PURCHASE AND SALE OF ASSETS

STATE OF \_\_\_\_\_

COUNTY (PARISH) OF \_\_\_\_\_

This Agreement for Purchase and Sale of Assets (the "Agreement") is made as of \_\_\_\_\_ (the "Effective Date") by and between \_\_\_\_\_ [name], doing business as \_\_\_\_\_ [name], of \_\_\_\_\_ [address] (hereinafter referred to as "the Seller") and \_\_\_\_\_ [name], doing business as \_\_\_\_\_ [name], of \_\_\_\_\_ [address] (hereinafter referred to as "the Buyer") (collectively "the Parties").

### ARTICLE I.

#### PURCHASE AND SALE OF ASSETS

1.01. In consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, on the terms, conditions, warranties, and representations set forth in this Agreement, the following described assets (the "Assets") and any assets described on Attachment "A", incorporated into this Agreement by this reference:

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SAMPLE

### ARTICLE II.

#### PURCHASE PRICE

2.01. The total purchase price to be paid by the Buyer to the Seller for all the Assets described in Article 1.01 this Agreement is USD \$\_\_\_\_\_ (the "Purchase Price").

2.02. The Purchase Price is allocated as follows, in accordance with IRS Form 8594 (Write N/A if a particular category does not apply to the Assets, which will often be the case):

- \$ \_\_\_\_\_ Cash & bank accounts (IRS Form 8594 Class I assets);
  - \$ \_\_\_\_\_ U.S. government securities, publicly traded stock, and certificates of deposit (IRS Form 8594 Class II assets);
  - \$ \_\_\_\_\_ Accounts receivable (IRS Form 8594 Class III assets);
  - \$ \_\_\_\_\_ Stock in trade, inventory (IRS Form 8594 Class IV assets);
  - \$ \_\_\_\_\_ All assets not in any other category, including furniture and fixtures, buildings, land, vehicles, and equipment (IRS Form 8594 Class V assets);
  - \$ \_\_\_\_\_ Intangibles, intellectual property, and leasehold interests (IRS Form 8594 Class VI assets); and
  - \$ \_\_\_\_\_ Goodwill and going concern value (IRS Form 8594 Class VII assets),
- Total: \$ \_\_\_\_\_.

2.03. Each of the Parties agrees to report the transactions contemplated by this Agreement for all tax purposes (including tax returns) in a manner that is consistent with the allocation of the Purchase Price specified in Section 2.02 of this Agreement and not to take any position inconsistent with such allocation in any tax return, refund claim, or any litigation relating to taxes.

2.04. The Seller will pay all sales, use, income, and/or capital gains taxes that may be due in connection with the Seller's sale of the Assets, and the Seller agrees to defend, indemnify, and hold harmless the Buyer from and against the payment of all such taxes. The Parties shall prorate any state or local real or personal property taxes based on the date of the Closing.

### ARTICLE III.

#### PAYMENT OF PURCHASE PRICE

3.01. The Purchase Price shall be paid as follows:

(a) The sum of USD \$ \_\_\_\_\_, previously paid to the Seller by the Buyer, the receipt of which is acknowledged by the Seller;

(b) the sum of USD \$ \_\_\_\_\_ in cash, cashier's check, or certified check, shall be paid at Closing, as the term Closing is defined in Article IV, below; provided, however that the Buyer's Costs and Expenses may be offset against such payment if reasonably documented in accordance with Article IX of this Agreement; and

(c) the balance of the Purchase Price shall be paid by delivery from the Buyer to the Seller of a promissory note executed in favor of the Seller by the Buyer in the form attached as Attachment "B" and incorporated into this Agreement by this reference, for a principal amount of USD \$ \_\_\_\_\_ and bearing interest from the date of its execution at the rate of \_\_\_\_\_ percent per year, payable in \_\_\_\_\_ monthly installments beginning on \_\_\_\_\_ [date], in the monthly amount of USD \$ \_\_\_\_\_ each ("the Note"). The

payment and performance of the Note shall be secured by a security interest in the Assets listed in Article 1.01 of this Agreement, which security interest is further documented by the Security Agreement in the form attached as Attachment "C" and incorporated into this Agreement by this reference.

SAMPLE

#### ARTICLE IV.

#### CLOSING

4.01. The closing of the sale and purchase of the Assets ("the Closing") shall take place at \_\_\_\_\_, located at \_\_\_\_\_ [address], on or before \_\_\_\_\_ [date], or at such other place and date as the Parties may mutually agree.

4.02. At or prior to the Closing the Seller shall:

(a) Deliver clear and marketable title and ownership to the Buyer of all Assets listed in Article 1.01 of this Agreement;

(b) Execute the Bill of Sale attached to this Agreement as Attachment "D" and incorporated into this Agreement by this reference;

(c) Execute any other documents necessary to finalize this Agreement;

(d) Have arranged for the closure of any needed escrow for the transfer of any commercial real property included in this transaction; and

(e) Execute and deliver to the Buyer all documents required by this Agreement.

4.03. At the closing the Buyer shall also pay all remaining moneys owed to the Seller and execute the Note and Security Agreement, if any.

#### ARTICLE V.

#### REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS BY THE SELLER

5.01. The Seller represents and warrants to the Buyer that:

(a) The Seller is the lawful owner of the Assets and has good right and due authorization to sell such Assets. As of the Effective Date of this Agreement, the Seller neither knows nor has reason to know of the existence of any outstanding threatened or actual claim, action, or proceeding against, or interest, or lien in, to, or on the Assets, except as disclosed in writing to the Buyer in this Agreement or an attachment to this Agreement;

(b) All Assets sold pursuant to this Agreement are free and clear of any lien (including UCC financing statements) and/or debt, except as disclosed in writing to the Buyer in this Agreement or an attachment to this Agreement;

(c) All Assets sold pursuant to this Agreement include all intellectual property rights reasonably necessary for the Buyer to use the Assets without violating the rights of any third party and without the need for any additional license(s) or consent(s), except as disclosed in writing to the Buyer in this Agreement or an attachment to this Agreement; and

(d) That all commercial real property involved in this transaction is unencumbered, free of liens of any nature unless expressly mentioned in writing to the Buyer and that the title thereto is free and without any clouds upon the title.

## ARTICLE VI.

### COMPLIANCE WITH BULK SALES LAW

6.01. At the Closing, the Seller will deliver to the Buyer a sworn list of all existing creditors of the Seller.

6.02. By reason of this list the Seller and the Buyer agree that notice to creditors under the Bulk Sales law of \_\_\_\_\_ [state] will not be required and need not be given except in respect to any creditors named on this list. If notice is required, the Parties shall cooperate in complying with the Bulk Sales law.

6.03. Any such debt, unless otherwise provided for in this Agreement, is to be paid solely by the Seller, and the Seller agrees to indemnify and hold harmless the Buyer from and against any and all loss, expense, damage, or liability, including attorneys' fees and costs, that the Buyer may incur or become subject to by reason of noncompliance with the applicable Bulk Sales law.

## ARTICLE VII.

### NON-ASSUMPTION OF LIABILITIES AND INDEMNIFICATION

7.01. Unless otherwise expressly agreed in this Agreement, the liabilities and obligations incurred by the Seller prior to the Closing are not assumed by the Buyer but rather shall continue as liabilities and obligations of the Seller and shall be solely paid by the Seller.

7.02. In the event the Buyer is required to pay, after the Closing, any valid lien, debt, or expense incurred by the Seller prior to the Closing Date, the Buyer shall have the right to offset any such lien, debt, or expense actually paid by the Buyer, which is the valid and legal obligation of the Seller, against any payment owed to the Seller by the Buyer; provided, however, that documentation of such payment and offset shall be provided by the Buyer to the Seller in connection with any such offset.

7.03. Except as otherwise provided in this Agreement, the Buyer will indemnify and hold the Seller and the property of the Seller free and harmless from and against any and all claims, losses, damages, injuries, and liabilities arising from or in connection with the Assets after the Closing.

## ARTICLE VIII.

### DEFAULT

8.01. After execution of this Agreement by the Parties, default shall consist in the failure of either Party to perform its respective obligations and duties and/or a breach of a representation, warranty, or covenant in this Agreement.

8.02. In the event of default of either Party, the other Party shall have the right to sue for specific performance and/or sue for damages in addition to any other relief provided in this Agreement or in any attachment to this Agreement. In a suit for default, reasonable attorney fees and costs shall be recoverable by the prevailing Party.

## ARTICLE IX.

### COSTS AND EXPENSES

9.01. All costs and expenses incurred in finalizing the purchase and sale described in this Agreement in the manner prescribed by this Agreement shall be paid by the Buyer and the Seller in the following manner:

(a) The Buyer and the Seller agree that, if they jointly retain a mutually agreeable attorney to prepare, modify, or review the Closing documents, the Parties shall be equally responsible for such attorney fees and costs incurred. This sum shall be due and payable at Closing. Should either Party retain a personal attorney, or an attorney in addition to a mutually agreeable joint attorney, then the attorney fees and costs so incurred shall be the responsibility of the Party retaining the attorney.

(b) Any other Closing costs and expenses shall be paid at the Closing by the Buyer and the Seller, in equal proportions.

(c) The Buyer shall be entitled, upon proof of payment to the Seller, to offset at Closing the Buyer's share of any of the Costs and Expenses actually incurred by the Buyer under this Article IX against the Purchase Price.

## ARTICLE X.

### GENERAL AND ADMINISTRATIVE PROVISIONS

10.01. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

10.02. Assignment. The Seller shall have no right to transfer or assign his interest in this Agreement without the prior written consent of the Buyer.

10.03. Corporate Authority. If any Party to this Agreement is a legal entity (partnership, corporation, limited liability company, and/or trust), such Party represents to the other Party that this Agreement, the transaction contemplated in this Agreement, and the execution and delivery hereof, have been duly authorized by all necessary partnership, corporate, LLC, or trust proceedings and actions, including, without limitation, the action on the part of the directors, if the Party is a corporation, members or managers, if the Party is a LLC, and trustee(s) if the Party is a trust. Certified copies of such corporate or other resolutions authorizing this transaction shall upon request of the other Party to this Agreement be delivered at the Closing.

10.04. Use of Pronouns. The use of the neuter singular pronoun to refer to the Parties described in this Agreement shall be deemed a proper reference even though the Parties may be an individual, a partnership, a corporation, a LLC, a trust, or group of two or more individuals, partnerships, corporations, LLCs, or trusts. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one party to this Agreement, and to either trusts,

corporations, LLCs, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

10.05. \_\_\_\_\_ [State] Law. This Agreement shall be subject to and governed by the laws of the State of \_\_\_\_\_ applicable to agreements made and performed entirely therein. Any and all obligations or payments are due and payable in \_\_\_\_\_ [city], \_\_\_\_\_ [county/parish], \_\_\_\_\_ [state].

Subject to the provisions of this Section, all disputes, controversies or claims arising out of or relating to this Agreement will be resolved through mandatory binding arbitration conducted in a JAMS facility closest to the offices of the Buyer before JAMS/ENDISPUTE or its successor ("JAMS") pursuant to the United States Arbitration Act, 9 U.S.C. Section 1, et seq. ("the Act") and this Agreement. The arbitration will be conducted in accordance with the provisions of JAMS' Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration ("the JAMS Rules"), subject to the provisions of this Section. The terms set forth in this Agreement will control in the event of any inconsistency between such terms and the JAMS Rules. The Parties will cooperate with JAMS and with each other in promptly selecting a single arbitrator from JAMS' panel of neutrals. If the Parties fail to so select an arbitrator within thirty (30) days following the date of either Party's notice of demand to conduct arbitration, then JAMS will appoint an arbitrator in accordance with the JAMS Rules. The award of the arbitrator will be in writing and will set forth findings of fact and conclusions of law. Judgment on the arbitrator's award will be final and binding upon the Parties and may be entered in any court having jurisdiction thereof. If for any reason JAMS or its successor no longer is in business, then the arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitrator's fees will be shared equally by the Parties, and each Party will initially bear its own costs and attorneys' fees, but the prevailing Party shall be reimbursed by the other Party for all attorneys' fees, witness fees, and arbitration costs. All papers, documents, or evidence, whether written or oral, filed with or presented in connection with the arbitration proceeding will be deemed by the Parties and by the arbitrator to be confidential information of both Parties. The arbitrator chosen in accordance with these provisions will not have the power to alter, amend, or otherwise affect the terms of these arbitration provisions or the provisions of this Agreement.

10.06. Severability. If any provision of this Agreement should, for any reason, be held in violation of any applicable law, and so much of this Agreement be held unenforceable, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate any other provisions in this Agreement, which other provisions shall remain in full force and effect unless removal of the invalid provisions destroys the legitimate purposes of this Agreement, in which event this Agreement shall be canceled.

10.07. Entire Agreement. This Agreement represents the entire understanding of the Parties with regard to the subject matter of this Agreement. There are no oral agreements, understandings, or representations made by any Party to this Agreement that are outside of this Agreement and are not expressly stated in it.

10.08. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if mailed from within the United States by first class mail, postage prepaid, and addressed as follows:

Seller's Address: \_\_\_\_\_

Buyer's Address: \_\_\_\_\_

A Party may change the address for notice by giving of such change to the other Party in writing.

SIGNED, ACCEPTED, AND AGREED TO on \_\_\_\_\_ [date] by the undersigned Parties, who acknowledge that they have read and understand this Agreement and the Attachments to it and that they execute this legal document voluntarily and of their own free will.

Seller's Signature: \_\_\_\_\_

Buyer's Signature: \_\_\_\_\_

*This Section for Notary Public:*

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, (here insert name and title of the officer),

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)





**Attachment B**

**Attach the Promissory Note (or write "N/A"):**

**Attachment C**

**Attach the Security Agreement (or write "N/A"):**

**Attachment D**

**BILL OF SALE**

For good and sufficient consideration, the receipt of which is hereby acknowledged, the undersigned Seller hereby sells, transfers, and conveys to Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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The undersigned warrants that said goods, chattels, commercial real property, and tangible and intangible property are free and clear of all encumbrances and clouds upon any relevant titles, that it has full right and title as sole owner to sell and transfer ownership of the same, and that it will warrant and defend the same against the claims and demands of all persons.

This Agreement shall be deemed to be made and performed in, and shall be governed and construed in accordance with the laws of the state of \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Buyer Printed Name

\_\_\_\_\_  
Buyer Signature

\_\_\_\_\_  
Seller Printed Name

\_\_\_\_\_  
Seller Signature

*This Section For Notary:*