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[Search Fund Letterhead]

[Date]

[COMPANY NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]
Attention: [NAME], [TITLE]

Dear [NAME],[1]

[Search Fund] is pleased to submit this non-binding letter of intent (this "Letter") regarding a possible acquisition of all of the issued and outstanding equity interests of [COMPANY NAME] and its affiliated entities (the "Company") from the holders thereof (collectively, the "Sellers") through an acquisition company to be formed by [Search Fund] and its affiliates (hereinafter, "Buyer"). [We are very impressed with the company that you have built and are extremely excited about the prospect of completing a transaction with you and helping steward the next chapter of the Company's growth story.][2] In this Letter, (a) [Search Fund], Buyer and the Seller Parties (as defined below) are sometimes collectively referred to as the "Parties", and each of the Parties may sometimes be referred to herein as a "Party"; (b) the Company and the holders of its equity and equity-linked interests are sometimes collectively referred to as the "Seller Parties", and each of the Seller Parties may sometimes be referred to herein as a "Seller Party"[3]; (c) the above referenced acquisition of all of the issued and outstanding equity interests of the Company is sometimes referred to as the "Proposed Transaction"; and (d) the term "Business" means the business in which the Company is engaged, which as of the date of this Letter is the business of [Describe Business].

If you have any questions please do not hesitate to contact [Searcher] at [Searcher Phone] or [Searcher Email].

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PART ONE – NONBINDING PROVISIONS

The following numbered paragraphs of this Letter (collectively, the "Nonbinding Provisions") reflect our

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[1] **IMPORTANT NOTE**: Before submitting this LOI to a potential target, perform a "ctrl+f" search of the document for open and closed brackets (i.e., "[" and "]") to confirm that all bracketed terms have been either inserted properly or excluded from the submitted LOI.

[2] ***Drafting Consideration***: You can modify/personalize this sentence as you see fit.

[3] ***Drafting Consideration***: If practicable, each party that will be giving indemnification in connection with the Proposed Transaction (i.e., each Party receiving compensation or each equity holder of the Company that will indirectly receive compensation) should execute this LOI so as to (i) flush out any potential disagreement on the transaction among the equity holders and (ii) have all interested parties on the hook for the exclusivity provision. Set this expectation by customizing the signature blocks on the signature page to include both the Company and the equityholders/stockholders you are aware of.

understanding of the matters described, but each of the Parties acknowledges that the Nonbinding Provisions are not intended to create or constitute any legally binding obligation between the Parties, and none of [Search Fund], Buyer or any of the Seller Parties will have any liability to the other with respect to the Nonbinding Provisions until one or more fully integrated definitive, legally binding, written agreements are entered into by Buyer and the Seller Parties (the "Definitive Agreements"), and other related documents, are prepared, authorized, executed and delivered by and among the Parties, and all conditions stated in the Definitive Agreements are satisfied or waived.

1. Basic Transaction. On terms and subject to the conditions to be set forth in the Definitive Agreements, Buyer would acquire 100% of the issued and outstanding equity interests of the Company.

2. Proposed Consideration. Our proposed purchase price for all of the issued and outstanding equity interests of the Company is an aggregate amount equal to $[_____] (subject to adjustment as provided below, the "Total Consideration"), which is based on [__]x trailing 12-month Adjusted EBITDA of at least $[_____] as of [_____] 202[__] based on information provided by Sellers.[4] This proposed purchase price assumes that the information provided to Buyer to date regarding the Company's historical and projected Adjusted EBITDA can be verified in due diligence by an independent accounting firm and that the Company will be on pace as of immediately prior to the closing of the Proposed Transaction ("Closing") to [match its 202[__] Adjusted EBITDA results] / [achieve its 202[__] Adjusted EBITDA projections]. The trailing period may be updated and/or adjusted depending on current or projected performance of the Business. This Total Consideration assumes a cash-free / debt-free transaction and that at Closing the Company will have net working capital in an amount and character as further described in Section 4 below. The calculation of the Total Consideration also assumes that (a) the assets of the Company at Closing shall be substantially in line with the most recent balance sheet of the Company provided to Buyer as of [___], and (b) the assets of the Company at Closing are sufficient to meet the projections of the Business going forward. The Total Consideration will be structured as follows:

a) **Closing Cash Consideration**: $[_____] of the Total Consideration shall be paid in cash at Closing (the "Closing Cash Consideration").

b) [**Rollover**. An aggregate amount of approximately $[_____] of the Total Consideration would be paid in the form of rollover equity issued to the Sellers at Closing, as further described below (the "Rollover"), which Buyer will attempt in good faith with the Seller Parties to structure in a tax efficient manner. The equity interests issued to the Sellers in respect of the Rollover will be *pari passu* with the equity interests issued to the [Search Fund's] investors in the transaction.]

c) [**Seller Note**. An aggregate amount of approximately $[_____] of the Total Consideration will be paid to the Sellers in the form of a promissory note at Closing (the "Seller Note"). The Seller Note will [be interest-only and payable quarterly in arrears] / [accrue interest] at a rate equivalent to an annual rate of [5-8%], with [the principal amount due on the maturity date thereof] / [such accrued and unpaid interest to be paid-in-kind by compounding to the unpaid principal amount of the Seller Note on an annual basis]. All accrued and unpaid interest and all unpaid principal [(including amounts which have been paid-in-kind)] shall be due in full on the [fifth (5th)] anniversary of the Closing. The Seller Note will be unsecured and subordinate to any senior indebtedness of the Buyer and the

[4] ***Drafting Consideration***: This LOI assumes that there is no owned real estate subject to acquisition. If owned real estate will be acquired, you should discuss necessary updates with counsel.

terms of the Seller Note shall be subject to approval by the Buyer's senior lenders.][5]

d) **[Earn-Out**: [_____].][6]

e) **Escrow.** In addition to the Adjustment Escrow Amount (as defined below), an aggregate amount of approximately $[_____] of the Total Consideration (the "Indemnification Escrow Amount") will be deposited in [a non-] / [an] interest-bearing escrow account with an escrow agent mutually acceptable to the Parties in order to secure the performance of the Company's post-closing indemnification obligations under the purchase agreement (such escrow account, the "Indemnification Escrow Account"). The then remaining portion of the Indemnification Escrow Amount will be released [_____] months after Closing.[7]

1. Adjusted EBITDA. As previewed above, the Parties acknowledge that the Total Consideration is based upon adjusted EBITDA (the "Adjusted EBITDA") of $[_____] (trailing 12-month period as of

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[5] ***Seller Note Consideration*:** Bracketed language gives an option of an interest-only Seller Note or a PIK interest Seller Note, depending on deal dynamics. Even if the Seller Note is interest-only, references to "accrued and unpaid interest" should remain in the likely event that payoff does not occur concurrently with a quarterly interest payment. This should include a rate no lower than the applicable federal rate (AFR) at the time of the Seller Note.

Alternatively, you may want to consider structuring this as Deferred Purchase Price (holdback) instead of a Seller Note. Some Sellers in the search space are more comfortable with a "deferred purchase price" concept vs. holding subordinated debt through a Seller Note. If you decide to structure this as "deferred purchase price", you should discuss with counsel the differences and implications of this approach.

"**Deferred Purchase Price**. An aggregate amount of $[_____] of the Total Consideration will be payable following the Closing in [_____] equal installments. These deferred purchase price payments will be made on each [_____] anniversary of the Closing over the course of [_____] years."

[6] ***Earn-Out Considerations***: Very careful thought should be given before including an earnout. If not crafted very carefully and used in the right circumstances, earnouts can often lead to post-closing litigation/disputes. See Explanatory Annex I for additional drafting considerations. You should consult with counsel as to specific verbiage to ensure that these litigation risks are mitigated.

[7] ***Escrow Considerations*:**

(1) Though it seems like a no-brainer to have an interest-bearing escrow account, prevailing interest rates and the tax impacts of interest being earned on an escrow account may make interest-bearing accounts more expensive than non-interest bearing accounts (so much so that any interest earned would be used to offset the taxes and expenses that go along with the escrow account's tax distributions). If the escrow account is more than $500,000 and the duration more than 12 months, then it likely makes sense to have the account be interest-bearing; however, anything below that should be considered thoughtfully as it may result in a net expense for the parties.

(2) Market escrow/holdbacks for indemnification claims are ~10.0% to 15.0% of the purchase price.

(3) The typical length of the escrow is 12-24 months and should tie to the expiration of the survival periods for the reps and warranties.

(4) If you are considering obtaining representations & warranties insurance (RWI) you should discuss with counsel, as there are a number of market considerations to be aware of and the use of RWI will require revisions to this escrow section, the indemnification section and other provisions of this LOI. Note that it is often difficult and cost-prohibitive to obtain RWI for any deals below ~$10MM of enterprise value.

[_____] 202[__]). Adjusted EBITDA is based on consolidated financial statements of the Company and its subsidiaries provided by the Company. All EBITDA adjustments provided by Sellers are to be confirmed in diligence. Each Party acknowledges that current adjustments to EBITDA are based on management estimates and projections and therefore will be recalculated when the most up-to-date financial results are available which, following validation by Buyer's third-party financial advisors, may subject the Total Consideration to adjustment.

2. Working Capital. The Proposed Transaction will include the delivery of the Business with an appropriate amount of working capital at Closing (such amount, the "Working Capital Peg")[8], [which will be determined by the independent, third-party accountants engaged by Buyer in connection with its due diligence] / [which will be equal to the average monthly net working capital of the Business over the [_____] month period immediately prior to the Closing, as determined by the Parties and their respective advisors in good faith]. The Definitive Agreements would contain a dollar-for-dollar purchase price adjustment to the extent the actual working capital at the Closing is [higher or] lower than the Working Capital Peg. A mutually agreed upon portion of the Total Consideration[9] will be paid into a short-term escrow account with a financial institution mutually acceptable to the Parties at Closing as a source of first recovery for any working capital adjustment in favor of Buyer (the "Adjustment Escrow Amount"). The short-term escrow will close and be released to the appropriate parties within [120]-days of close of the Proposed Transaction (unless any items are being disputed, in which case funds in the working capital escrow account would continue to be held in escrow pending resolution in the disputed item(s)).

3. Structure: [The final structure of the transaction will be agreed upon by Buyer and the Sellers after consultation with and among their respective legal and tax advisors.]

[**IF THE TARGET IS AN S-CORP.**] [We understand that the Company currently elects to be treated as an S Corporation under the federal income tax code. In order for Buyer to maintain the flow-through taxation that the Sellers currently enjoy, we propose that, prior to Closing, the Company and its equity holders engage in an "F-Reorganization" pursuant to which the Company will be converted into a limited liability company owned by a new S Corporation. At Closing, Buyer will acquire the limited liability company interests of the Company (post-conversion to a limited liability company) from the new S Corporation formed for the "F-Reorganization". The final structure of the transaction will be agreed upon by Buyer and the Sellers after consultation with and among their respective legal and tax advisors.][10]

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[8] ***NWC Consideration*:** It is strongly advised that the parties delay negotiating the working capital peg and the manner in which the net working capital adjustment will be calculated until the accountants have completed the quality of earnings analysis (or, if no quality of earnings is to be conducted, until Buyer has completed its financial due diligence). The initial language with respect to the working capital peg being determined by Buyer's accountants gives maximum flexibility; however, if a Seller will not agree to something that open-ended, the alternative language can be used after consideration of the following: It is advantageous to buyers to have a high peg, so once the quality of earnings is complete, consider analyzing different timeframes for calculating the trailing time period that is used to set the peg. For example, if the business is growing and is carrying more receivables in the last 3-4 months than it was 6 months prior, then a 3-4 month average would be desirable; on the other hand, if the past 3-4 months have been a down cycle (e.g., selling popsicles in the winter), then a longer time period is likely desired to calculate the peg. In any event, setting forth a philosophy about how/why the trailing period is chosen is recommended, which will allow the numbers to stand firmer – Seller Parties will have a tougher time disagreeing with the numbers that are derived from a philosophy they've agreed to. In terms of the adjustment, a two-way adjustment is customary, but a Buyer-favorable formulation only adjusts if the working capital falls *below* the peg.

[9] ***NWC Consideration***: Market escrow/holdbacks for working capital adjustments are ~1.00% of the purchase price.

[10] ***Structuring Consideration*:** In the event that the target is an S-Corp., most often the parties structure the transaction to immediately follow an "F-Reorganization" of the target in order to allow Buyer to avoid double-tax and receive a "step-up" in the basis of the assets of the target. Sometimes Sellers ask Buyer to "pay for" its step-up (as it may result

4. Proposed Form of Agreement. Buyer and its counsel will prepare the Definitive Agreements and related documentation. The Definitive Agreements will be mutually acceptable to the Parties and include, among other things, customary representations and warranties relating to all aspects of the Company's business, indemnities, escrows, set-off rights, and covenants as are customary for a transaction of the type contemplated by this Letter.[11]

[**OPTION #1**] [The Seller Parties would agree to indemnify and hold Buyer and its affiliated parties harmless from any and all 'Losses' (as such term will be defined in the Definitive Agreements) arising from the breach of the representations and warranties of any Seller Party set forth in the Definitive Agreements, the failure of any Seller Party to perform any covenant or obligation imposed upon it by the Definitive Agreements or documents executed pursuant thereto, any pre-closing taxes, Indebtedness (as defined in the Definitive Agreements) or transaction expenses not satisfied at the Closing, as well as any other mutually agreed-upon matters.] [Buyer would have the right to setoff and recoup any Losses against any amounts otherwise payable to the Sellers pursuant to the [Seller Note / Earn-Out / equity securities issued in connection with the Rollover][12].]

[**OPTION #2**][Subject to Buyer's completion of its due diligence to its satisfaction, (a) the non-fundamental representations and warranties (which includes all of the representations and warranties other than the Fundamental Representations (as defined below)) (the "Non-Fundamental Representations") will survive until the [_____] month anniversary of the Closing, at which time all funds remaining in the Indemnification Escrow Account (other than those reserved for then-pending claims) will be released to the Sellers; (b) customary fundamental representations and warranties (to be mutually agreed upon following the completion of Buyer's due diligence but which are currently contemplated to include representations and warranties regarding organization and legal power; authorization; validity and enforceability; taxes; no brokers; [intellectual property];[13] capitalization; and no conflicts (the "Fundamental Representations")) will survive indefinitely following the Closing; (c) claims for any other Losses by Buyer (other than as may arise from the breach of a Non-Fundamental Representation subject to the [_____] month survival period set forth in subsection (a) above or from the breach of a Fundamental Representation which will survive indefinitely as set forth in subsection (b) above) will survive until thirty (30) days after the expiration of the applicable statute of limitations or, if there is no applicable statute of limitations, the date that is six (6) years following the Closing; and (d) indemnification claims resulting from breaches of Non-Fundamental Representations will be subject to a cap of [_____]% of the Total Consideration and a [tipping] basket of [_____]% of the Total Consideration [(whereby, upon exceeding

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in some limited ordinary income tax treatment for Sellers depending on purchase price allocation and historical depreciation), so we are positioning this LOI to focus on the flow-through tax treatment and not the step-up (though the step-up remains a benefit of this structure). Tax structure should be carefully vetted with counsel and your tax advisors.

[11] ***Drafting Consideration*:** Consideration should be given as to whether additional specifics around indemnification should be proposed in the LOI (i.e., such as caps, baskets, etc.). The bracketed paragraphs should be removed if these specifics are not to be addressed in the LOI. These specifics are often significant deal points and LOIs lacking specificity on these points may not reflect a meeting of the minds on deal terms (and thus set the parties up for a broken deal when the framework for a suitable indemnification regime cannot be agreed).

[12] ***Drafting Consideration*:** Consider including any other contingent amounts against which you would like the right to set off against here.

[13] ***Drafting Consideration***: Include reference to "intellectual property" only if IP is a material component of the deal (e.g., a software or tech company).

such basket, the indemnifying Party will be required to pay or be liable for all such Buyer related Losses from the first dollar)].][14]

[**OPTION #2 (Continued)**] [Notwithstanding anything contained in the preceding paragraph to the contrary, (a) any indemnification claims for any Buyer related Losses with respect to breaches of Non-Fundamental Representations will first be offset against amounts in the Indemnification Escrow Account prior to any offset against the Seller Note / earnout obligations that may be payable to the Seller Parties or direct recourse against the Company or any equityholder; and (b) damages, if any, related to breaches by any Seller Party of any non-competition, non-solicitation or similar restrictive covenant agreement between Buyer and such Seller Party will be borne by the such breaching Seller Party under such restrictive covenant agreement and not the other Seller Parties.]

The Definitive Agreements will be governed by and construed under the laws of the state of Delaware without regard to principles of conflict of laws.

5. Conditions. The proposal set forth in this Letter is subject to the conditions set forth on Appendix 1 hereto.

PART TWO--BINDING PROVISIONS

Upon execution by the Seller Parties of this Letter or counterparts thereof, the following lettered paragraphs of this Letter (collectively, the "Binding Provisions") will constitute the legally binding and enforceable agreement of Buyer and the Seller Parties (in recognition of the significant costs to be borne by Buyer and the Seller Parties in pursuing this Proposed Transaction and further, in consideration of their mutual undertakings as to the matters described herein).

A. Exclusive Dealing. No Seller Party will, directly or indirectly, through any Representative (as defined below) or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other person relating to the acquisition of the Company's

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[14] ***Indemnification Consideration*:**

(1) *Survival*: Market survival periods for indemnification claims based on breaches of non-fundamental representations are 12-24 months. Consideration should be given to whether an 18-24 month survival period should be proposed in the first draft of the LOI based on how competitive the transaction is and the positioning that Buyer is taking in its first draft.

(2) *Indemnification Caps*: Market caps for indemnification claims based on breaches of non-fundamental representations are ~10% to 15% of the purchase price, however, in transactions with a sub $10MM purchase price consideration should be given to a cap which is significantly higher, sometimes even closer to 100% of the purchase price as the purchase price is not always indicative of the size of a material indemnifiable issue. Indemnification for breaches of fundamental representations, covenants or other specific indemnities should not be subject to a cap below the aggregate purchase price. Claims with respect to fraud should never be subject to any cap.

(3) *Baskets / Deductibles*: Market baskets / deductibles for indemnification claims based on breaches of non-fundamental representations are ~0.5% - 1.0% of the purchase price. While heavily negotiated, it is more often than not that these baskets / deductibles are "first dollar" or "tipping baskets" where the Seller is not responsible for indemnification until the basket / deductible is reached, in which case the Seller is responsible for the amount of all Losses, regardless of the basket / deductible. Indemnification for breaches of fundamental representations, covenants, or other specific indemnities, as well as for claims with respect to fraud should not be subject to any basket / deductible.

(4) *RWI Policy:* See above footnote marked "***Escrow Considerations***".

assets or the sale or issuance of the Company's ownership interests (whether issued or authorized and unissued), in whole or in part, whether through direct purchase, merger, consolidation, sale or issuance of an ownership interest or other business combination. The Seller Parties will immediately notify Buyer regarding any contact between any Seller Party or any of its Representatives and any other person regarding any such offer or proposal or any related inquiry, and any terms presented or proffered by such person. The foregoing "exclusivity" provision will remain in effect for [90 / 120] days following the date on which this Letter is executed by the Seller Parties set forth on the signature page hereto and [Search Fund] (the "Exclusivity Period")[; provided, however, if the Proposed Transaction is not able to be consummated by the completion of such [90 / 120] day period, Buyer shall have the option to extend the Exclusivity Period for one additional 30 day period via written notice to the Company or one of its Representatives so long as Buyer continues to use diligent efforts to close the transaction in a timely manner].[15] The foregoing is agreed to by the undersigned Seller Parties as partial consideration for the significant resources Buyer is expected to expend in connection with its due diligence review of the Company during such Exclusivity Period.

B. Nonbinding Provisions Not Enforceable. The Parties agree that the Nonbinding Provisions do not create or constitute any legally binding obligations by any Party with respect to the Proposed Transaction or any other transactions. The Nonbinding Provisions of this Letter reflect only the Parties' current understanding of the Proposed Transaction, and no Party will have any liability to any other Party with respect to the Nonbinding Provisions (including any obligation to continue negotiations) until the Definitive Agreements are successfully negotiated, executed and delivered by and between all Parties. If the Definitive Agreements are not prepared, authorized, executed or delivered for any reason, no Party will have any liability to any other Party based upon, arising from, or relating to the Nonbinding Provisions. No obligations of one Party to the other (including any obligation to continue negotiations) or liability of any Party of any kind shall arise with respect to the Nonbinding Provisions of this Letter from executing this Letter, a Party's partial performance of the terms of this Letter, its facilitating or conducting due diligence, its taking or refraining from taking any actions relating to the Proposed Transaction or any other course of conduct by the Parties. The Parties agree that no Party shall have a duty to negotiate in good faith and that either Party may discontinue negotiations at any time for any reason or no reason. Any letters, drafts or other communications shall have no legal effect and shall not be used as evidence of any oral or implied agreement between the Parties.

C. Definitive Agreements. Buyer and its counsel will be responsible for preparing the initial drafts of the Definitive Agreements.

D. Access. The Seller Parties will provide Buyer with full access to the Company's facilities, documents, accounts, books and records and will cause its stockholders or members, as applicable, and directors, employees, accountants and other agents and representatives (collectively, "Representatives") to cooperate with Buyer and its Representatives in connection with its due diligence investigation. Buyer will not be under any obligation to continue with its due diligence investigation or negotiations regarding the Definitive Agreements if, at any time, the results of its due diligence investigation are not satisfactory to Buyer for any reason in its sole discretion.[16]

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[15] ***Exclusivity Consideration*:** Consideration should be given to the length of the exclusivity period. Buyers should attempt to obtain an exclusivity period of 120 days, or, if a lesser period is necessary, buyers should attempt to obtain an extension beyond the shorter period if they are negotiating the transaction in good faith (i.e., see the bracketed language in Para. A).

[16] ***Drafting Consideration***: Sellers may push back on the inclusion of D. and E. as Binding Provisions. This is generally OK, but please discuss with counsel before removing as additional revisions will be needed to the LOI.

E. **Cooperation; Conduct of Business.** The Seller Parties will cooperate with Buyer and proceed, as promptly as is reasonably practicable, to prepare and file necessary notifications, to seek to obtain all necessary consents and approvals from lenders and other third-parties, and to endeavor to comply with all other legal or contractual requirements for or preconditions to the execution and consummation of the Definitive Agreements; provided, that in no event shall either Party take any action in furtherance of the requirements of this Paragraph E if it violates the provisions of Paragraphs F or G hereof.

Until the Definitive Agreements have been executed and delivered by all the Parties or the Binding Provisions have been terminated pursuant to Paragraph I, the Company will conduct its business only in the ordinary course, and not to engage in any extraordinary transactions without prior written notice to Buyer. This includes any equity holder dividends, distributions, material changes to large customer or vendor relationships, or changes in employee compensation.

F. **Disclosure.** Except as and to the extent required by law, without the prior written consent of the other Party, neither Buyer nor any Seller Party will, and each will direct its Representatives not to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, a possible transaction between the Parties or any of the terms, conditions or other aspects of the Proposed Transaction. If a Party is required by law to make any such disclosure, it must first provide to the other Party the content of the proposed disclosure, the reasons that such disclosure is required by law, and the time and place that the disclosure will be made.

G. **Confidentiality.** Nothing contained in this Letter limits or otherwise affects the terms of that certain [Mutual Non-Disclosure Agreement], dated as of [_____], which will remain in full force and effect in accordance with the terms thereof.[17]

H. **Costs.** Buyer and each Seller Party will be responsible for and bear all its own costs and expenses incurred in connection with the Proposed Transaction (including, with respect to the Seller Parties, the costs and expenses of the Company), including expenses of its Representatives, incurred at any time in connection with pursuing or consummating the Proposed Transaction.

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

(i) by mutual written consent of Buyer and the Seller Parties;

(ii) at the option of Buyer if Buyer is not reasonably satisfied with respect to its due diligence; or

(iii) upon written notice by any Party to the other Party if the Definitive Agreements have not been executed prior to the expiration of the Exclusivity Period;

provided, however, that the termination of the Binding Provisions will not affect the liability of a Party for breach of any of the Binding Provisions prior to the termination. Upon termination of the Binding Provisions, the Parties will have no further obligations hereunder, except as stated in Paragraphs B, F, G, H, I, J, K, and L which will survive any such termination.

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[17] ***Confidentiality Consideration*:** Referencing the NDA that is in place between Buyer and the Company/Sellers here will cut down on the amount of additional language required regarding the use of and access to confidential information (and will allow the parties to rely on language that has already been negotiated instead of starting anew in this document).

J. Entire Agreement; Amendment; Assignability. The Binding Provisions constitute the entire agreement between the Parties regarding the transactions described in the Nonbinding Provisions and supersede all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties with respect to the subject matter hereof. Except as otherwise provided herein, the Binding Provisions may be amended or modified only by a writing executed by all of the Parties. No Party shall have the right to assign its rights or delegate its obligations under this Letter without the prior written consent of the other Parties, which consent shall not be unreasonably withheld; provided, however, [Search Fund] may assign this Letter to any of its affiliates and / or to Buyer without the prior written consent of the other Parties.

K. Counterparts. This Letter may be executed in multiple counterparts with the same effect as if all signing Parties had signed the same document. All counterparts will be construed together and constitute the same instrument. This Letter, and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic mail (including .pdf or any other electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method, will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto will re-execute original forms thereof and deliver them to all other Parties.

L. Governing Law. This Letter will be governed by and construed under the laws of the state of [Delaware][18] without regard to principles of conflict of laws.

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[*Signature Page Follows*]

[18] ***Governing Law Consideration*:** Prior to agreeing to any Seller proposed change to the governing law from Delaware to the jurisdiction of formation or location of the Target, please be sure to discuss with counsel as consideration should be given to how this impacts the definitive documentation, etc.

This Letter expires if not signed by [_____], 202[__].[19] Please sign and date this Letter in the space provided below to confirm the mutual agreements set forth in the Binding Provisions and return a signed copy to the undersigned.

Very truly yours,

[SEARCH FUND]

By:_____
Name:
Title:
Date: _____

Acknowledged and agreed as to the Binding Provisions:

SELLER PARTIES

"Company":

[COMPANY]

By:
Name: [_____]
Title: [_____]
Date: _____

"Sellers":

Name: [Company Equity Holder]
Date: _____

Name: [Company Equity Holder]
Date: _____

Name: [Company Equity Holder]
Date: _____

[19] ***Drafting Consideration***: This date used should allow for enough time for the Sellers to review and consider its terms with counsel and should be updated prior to execution if negotiation of the LOI terms delay execution. Typically five (5) business days is appropriate runway.

APPENDIX 1

Conditions

The proposal set forth in this Letter and the closing of the Proposed Transaction shall be subject to the following conditions:

1. The negotiation and execution of the Definitive Agreements between the Parties containing customary covenants, representations, warranties, terms and conditions/

2. Each of [List Key Employees] agreeing to continued employment with the Company following the closing the Proposed Transaction.

3. [The Seller Parties entering into restrictive covenants, in a form acceptable to Buyer, agreeing not to: (i) compete with the Business for [five (5)][20] years following the closing, and (ii) hire or solicit any employee of the Business or encourage any such employee to leave such employment for a period of [five (5)] years following the closing.]

4. The approval of the Proposed Transaction and the Definitive Agreements by the boards of directors (or comparable governing body) of the Parties and by their respective stockholders, investors or members, as applicable.

5. Satisfactory completion of legal, accounting, and business due diligence, assuming the Seller Parties afford Buyer and Buyer's representatives all reasonable opportunity and access to inspect and review the assets and liabilities, contracts, operations, employees and business of the Company before Closing.

6. Receipt of all necessary and material consents and approvals of governmental bodies, lenders, lessors and other third Parties.

7. The ability of Buyer to obtain appropriate financing for the transaction.

8. Delivery of customary closing certificates and other documentation.

9. There shall have been no material adverse change in the condition (financial or otherwise), results of operations or prospects of the Company or the Business.

10. Other customary conditions precedent.

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[20] ***Restrictive Covenants Consideration***: Enforceability and other legal considerations with respect to non-compete restrictions is constantly evolving. Please consult with counsel as to scope of restrictive covenants to determine what is market and what is enforceable.

Explanatory Annex I

Earn-Outs

One principal consideration when drafting an Earn-Out provision in an LOI includes the selection of the performance metric:

- Financial Metrics. The most common financial metrics are (i) gross profit / revenue, (ii) consolidated net income, and (iii) EBITDA. Sellers typically prefer gross profit / revenue as they are easier to achieve and less easily manipulated by buyer. Buyers typically prefer net income because it provides a more complete picture of the financial performance of the business (including costs). Sellers and Buyers often compromise on EBITDA (which includes certain operational costs but excludes certain non-operational/ non-cash / non-recurring costs).

- Non-Financial Metrics. In certain cases, non-financial metrics are more appropriate because there is no historical information to use as a basis for financial projections. In these cases, period over period healthcare reimbursements; product development milestones, and customer / contract retention may be used as the metric.

Another principal consideration should be given to any Seller-requested restrictions on the business during the Earn-Out period, as these restrictions are generally off-market. While Seller-requested Earn-Out restrictions may appear reasonable when presented (e.g., "operate in the ordinary course of business", etc.), these covenants are ripe for litigation in the event that the Earn-Out is not achieved. For this reason, your LOI should make clear that Buyer will not be prohibited from operating the business as it sees fit following the closing.

Finally, any requirements that the Earn-Out be accelerated when or if Seller-equityholders are terminated from employment with the Company should be pushed back on, as such provisions can (i) turn the tax characterization of the Earn-Out payment from purchase price to compensation to the Sellers, and (ii) create a scenario where the cash underlying the Earn-Out metrics and targets has not actually been received by the Business, but the Business is still required to pay out the Earn-Out payment.

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