**PDD#1**

LETTER OF INTENT

Exhibit 10.1

August 24, 2012

Pennybreaker Industries, Inc.

Attn: Ms. Val Williams, President

[…] Florida 33458

**Re:**

**Letter of Intent Re: Acquisition of Pennybreaker Industries, Inc.**

Dear Ms. Daniels:

This non-binding letter of intent (the “LOI”) sets forth the understanding of the mutual intentions of the below parties regarding the proposed transaction between: (i) All Country Manufacturing Services, Inc., a Nevada corporation (“ACM”); and (ii) Pennybreaker Industries, Inc., a Florida corporation (“Pennybreaker”) (ACM and Pennybreaker may be referred to hereinafter individually as a “Party” and collectively as the “Parties”).

1.

Transaction Architecture.    Pennybreaker shall transfer to ACM all shares of Pennybreaker’ common stock, which shall represent 100% of the equity interest of Pennybreaker (the “Pennybreaker Equity”), such that Pennybreaker shall become a wholly owned subsidiary of ACM. In exchange, the existing shareholders of Pennybreaker shall be issued Eight Hundred and Thirty-Three Thousand Three Hundred and Thirty-Three (833,333) shares of ACM’s Series C Preferred Stock (the “Pennybreaker Shares”), with such rights, privileges, and preferences as outlined in ACM’s Certificate of Designation to the Articles of Incorporation (the “Certificate of Designation”, a copy of which has been attached hereto as ***Exhibit A***). (The above exchange shall be referred to herein as the “Transaction”). Following the closing of the Transaction, the post transaction entity shall continue its existence as a wholly owned subsidiary of ACM. The Transaction may be structured as a tax-free share exchange agreement or other similar agreement.

2.

Transaction Closing.  The Parties shall use their commercially best efforts to close the Transaction (the “Closing”) within 90 days of execution by both Parties of this LOI, although the Closing may take place prior to 90 days from execution of this LOI upon written agreement by both Parties, and may be extended beyond 90 days from execution of this LOI upon written agreement by both Parties.

3.

Existing Pennybreaker Assets.   As of the date of this LOI, Pennybreaker owns a license to conduct business as an approved FAA Part 145 Repair Station.

4.

Definitive Agreements.  The Parties shall commence preparation of definitive legal agreements that will affect the Transaction and other commitments contemplated herein (the “Definitive Agreements”). The Definitive Agreements will contain the general provisions outlined above in addition to the usual and customary representations and warranties, covenants, conditions, and indemnifications for transaction of this kind, including, without limitations: environmental, tax, and securities filings, and corporate filings, and the accuracies of all of the same.

5

5.

Due Diligence.  For a period of ninety (90) days following execution of this LOI (the “Due Diligence Period”), the Parties must comply with all reasonable requests to review relevant information concerning themselves and business entities they are affiliated with, insofar as such requests are reasonably related to the completion of the Transaction. Upon the execution of this LOI by all Parties and subsequent request to or by a Party, the Parties shall mutually exchange the following:

·

All Financial Statements;

·

History of financings and related documents;

·

All employment contracts and consulting agreements;

·

A list of all officers, key employees, directors, and advisors, with related bios;

·

A list and description of all assets, including, but not limited to the FAA Part 145 Repair Station license;

·

A list of all known liabilities and claims;

·

A list of all licenses and certifications, including, but not limited to the FAA Part 145 Repair Station license;

·

Certificate of Incorporation (with any amendments thereto);

·

All board minutes;

·

Bylaws (with any amendments thereto); and

·

Current shareholder list.

6.

Transaction Document Expenses.  Each Party shall be solely responsible for all fees and expenses of the Parties agents, advisors, attorneys and accountants with respect to the negotiation of this LOI, the negotiation and drafting of the Definitive Agreements and, if Definitive Agreements are executed, the closing of the Transaction.

7.

No Shop.  Until the closing of the Transaction or termination of negotiations related to such Transaction, Pennybreaker may not enter into any transaction or agreement related to the sale of the Pennybreaker Equity, or any of its assets, or otherwise encumber or enter into an agreement that would encumber any of the foregoing, or enter into any agreement outside of the ordinary course of business or that would otherwise hinder the Parties rights or intentions under this agreement.

8.

Confidentiality, Non-Disclosure and Subsequent Public Announcement.    The Parties agree to execute mutual non-disclosure agreements in connection with this LOI and the Transaction in order to protect each Party’s confidential and proprietary information. Following the execution of this LOI, ACM shall release a Form 8-K with the SEC and related press release regarding the LOI and the proposed Transaction. With the exception of the Form 8-K and press release described in this section, the Parties agree not to issue any further press releases or make any further public announcement regarding the Transaction prior to the Closing without prior written mutual consent of all Parties, except where a public announcement is otherwise required by law.

9.

Acknowledgments and Assent.  The Parties acknowledge that they were advised to consult with an independent attorney prior to signing this LOI and that they have in fact consulted with counsel of their own choosing prior to executing this LOI. The Parties agree that they have read this LOI and understand the content herein, and freely and voluntarily assent to all of the terms herein.

We trust that these terms accurately reflect our understanding. If there are any questions or comments regarding the same, please feel to contact me at your convenience. Otherwise kindly execute this LOI acknowledging your agreement to the terms outlined above.

5

Agreed and accepted by:

|  |  |
| --- | --- |
|  |  |
| **All Country Manufacturing Services, Inc.**  a Nevada corporation  */s/ Norm Racher*  By: Norm Racher  Its: Chief Executive Officer | **Pennybreaker Industries, Inc.**  a Florida corporation  */s/ Val Williams*  By: Val Williams  Its: President |

5

**EXHIBIT A**

**All Country Manufacturing Services, Inc.**

**Certificate of Designation to the Articles of Incorporation**

**Series C Preferred Stock**

ALL COUNTRY MANUFACTURING SERVICES, INC., a Nevada corporation (the “Corporation”) organized and existing under and by virtue of the provisions of the Nevada Revised Statutes of the State of Nevada (the “NRS”) does hereby certify:

WHEREAS, pursuant to the Corporation’s Articles of Incorporation (as amended), the Corporation’s Board of Directors (the “Board”) is authorized to issue, by resolution and without any action by the Corporation’s shareholders, up to 50,000,000 shares of preferred stock, par value $0.001 (the “Preferred Stock”), in one or more series, and the Board may establish the designations, dividend rights, dividend rate, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and all other preferences and rights of any series of Preferred Stock, including rights that could adversely affect the voting power of the holders of the Corporation’s common stock;

WHEREAS, the Board believes it to be in the best interest of the Corporation and its shareholders to designate classes of Preferred Stock as outlined below;

RESOLVED, pursuant to the NRS, the Board hereby files this Certificate of Designation (the “Certificate”) and designates the following classes of Preferred Stock as follows:

C.

Series C Preferred Stock.The Corporation is authorized to issue up to Fifty Million (50,000,000) shares of Preferred Stock. Twenty Five Million (25,000,000) shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated “Series C Preferred Stock” with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1.

Conversion into Common Stock.

1.1

Shareholder Conversion Rights.  Each one (1) share of Series C Preferred Stock may be convertible as described herein into four hundred (400) shares of Common Stock (the “Series C Conversion Ratio”) at anytime following the issuance date of such shares. Each holder of Series C Preferred Stock who desires to convert into the Corporation’s Common Stock must provide five (5) days written notice (the date of receipt by the Corporation being the “Conversion Date”) to the Corporation of its intent to convert one or more shares of Series C Preferred Stock into Common Stock (each a “Conversion Notice”). The Corporation may, in its sole discretion, waive the written notice requirement and allow the immediate exercise of the right to convert.

 1.2

Mechanics of Conversion.    No fractional shares of Common Stock shall be issued upon conversion of Series C Preferred Stock and the number of shares of Common Stock to be issued shall be determined by rounding to the nearest whole share (a half share being treated as a full share for this purpose). Such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock the holder is at the time converting into Common Stock and such rounding shall apply to the number of shares of Common Stock issuable upon aggregate conversion. Prior to any conversion, the certificate or certificates representing Series C Preferred Stock to be converted shall be surrendered to the Corporation, duly endorsed with a medallion stamp guarantee, at the office of the Corporation or its transfer agent. The Corporation shall, within fifteen (15) business days, issue a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled.

1.3

Adjustment of Series C Conversion Ratio.

(a)

Stock Splits, Etc. The number and kind of securities issuable upon the conversion of shares of Series C Preferred Stock (the “Series C Conversion Shares”) and the Series C Conversion Ratio shall be subject to adjustment from time to time upon the happening of any of the following. In case the Corporation shall: (i) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock or (ii) combine its outstanding shares of Common Stock into a smaller number of shares of  Common Stock, then the Series C Conversion Ratio and number of Series C Conversion Shares issuable upon conversion immediately prior thereto shall be adjusted so that the holder of Series C Preferred Stock shall be entitled to receive the kind and number of Series C Conversion Shares or other securities of the Corporation which they would have owned or have been entitled to receive had such shares of Series C Preferred Stock been converted in advance thereof.

5

(b)

Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets. In case the Corporation shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another corporation (where the Corporation is not the surviving corporation or where there is a change in or distribution with respect to the Common Stock of the Corporation), or sell, transfer or otherwise dispose of all or substantially all its property, assets, or business to another corporation and, pursuant to the terms of such reorganization, reclassification, merger, consolidation or disposition of assets, shares of common stock of the successor of acquiring corporation, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring corporation (“Other Property”), are to be received by or distributed to the holders of Common Stock of the Corporation, then Series C Preferred Stock holder shall have the right thereafter to receive, upon conversion, the number of shares of common stock of the successor or acquiring corporation or of the Corporation, if it is  the surviving corporation, and Other Property receivable upon or as a result of such reorganization, reclassification, merger, consolidation or disposition of assets by a holder of the number of shares of Common Stock for which shares of Series C Preferred Stock are exercisable immediately prior to such event.  In case of any such reorganization, reclassification, merger, consolidation or disposition of assets, the successor or acquiring corporation (if other than the Corporation) shall expressly assume  the due and punctual observance and performance of each and every covenant and condition of this designation to be performed and observed by the Corporation and all the obligations and liabilities hereunder, subject to such modifications as may be deemed appropriate (as determined in good faith by resolution of the Board) in order to provide for adjustments of shares of Common Stock convertible from shares of Series C Preferred Stock which shall be as nearly equivalent as practicable to the adjustments provided for in this Section.

2.

Notices. Unless otherwise specified in the Corporation’s Certificate of Incorporation or Bylaws, all notices or communications given hereunder shall be in writing and, if to the Corporation, shall be delivered to it as its principal executive offices, and if to any holder of Series C Preferred Stock, shall be delivered to it at its address as it appears on the stock books of the Corporation.

5

**PDD#2**

10.1 LETTER OF INTENT

**LETTER OF INTENT**

**Dated: February 1, 2016**

Subject to the execution of a definitive Asset Purchase Agreement *(“Agreement”)*as hereinafter provided, this nonbinding Letter of Intent outlines the general terms for the acquisition proposal of MASTER TECHNOLOGIES INC. or an legal entity of which he is the majority owner (hereinafter known as the “Purchaser” or “Purchasing Entity”), to purchase certain assets and assume certain liabilities of MASTER ENTERPRISES INC. (hereinafter known as the “Seller”).   The Purchaser proposes the following:

I.

**ASSETS TO BE PURCHASED / LIABILITIES TO BE ASSSUMED:**Purchaser or a company created for this purpose will acquire all tangible and intangible assets of the Seller as of the date of Closing including cash & equivalents, accounts receivable, inventory, fixed assets, etc. associated with MASTER ENTERPRISES INC. and its online and physical retail business. Assets to be purchased are to be free and clear of all liabilities, claims, liens and security agreements, with the exception of trade payables and accrued expenses, which will be assumed as part of the purchase by the Purchaser.  Assets to be acquired include but are not limited to:

a.

Fixed & Current Assets including all normal course of business tangible assets including, accounts receivable, inventory, office equipment and furniture, point of sale equipment, software, Seller's trademarks, trade names, permits, licenses, all files, records, intellectual property, the names MASTER and MASTER Enterprises and any other websites associated with the business and all variations thereof, social media accounts, all displays and fixtures, trade agreements, vendor agreements, all phone and fax numbers, e-mail addresses, domain names, and other assets and information deemed necessary by the Purchaser;

b.

All of the Seller's customer lists and other confidential information relating to the customers and business of the Seller;

c.

Seller's rights under such contracts pertaining to its business, including such matters as purchase orders, sales contracts, equipment leases, licenses, as Purchaser may determine to acquire; and

d.

Other items to be set forth in the definitive Asset Purchase Agreement;

e.

Excluded Assets: None.

II.

**NET WORKING CAPITAL**: As part of the working capital needs, the Seller will convey all inventory *(“Base Amount”)*in Net Assets as part of the Purchase Consideration *(as defined below)*. The Net Asset value will be defined as cash & cash equivalents plus accounts receivable, plus inventory plus prepaid expenses less accounts payable less accrued expenses. To the extent that the Net Assets at closing are either 10% more or 10% less than the Base Amount, the purchase price will reduced or increased dollar-for-dollar over or below the Base Amount *(for example, if the Net Assets conveyed at closing are $5,000, the* *Purchase Consideration would be increased by $5,000.*

III.

**MAIN PURCHASE CONSIDERATION**: The total purchase price for the Seller’s assets shall be $25,000. The allocation of the purchase price will be negotiated by the parties.  The percentage of the purchase price to paid in cash and the percentage to paid in equity will be negotiated by the parties.

IV.

**ADDITIONAL TERMS AND CONDITIONS:**Any terms and conditions that raise the value above the main purchase consideration of $25,000 shall be mutually negotiated and described in the terms of the definitive Asset Purchase Agreement.

V.

**CONTROL OF PURCHASER.**IfSeller will be receiving an equity interest in Purchaser, both Purchaser and Seller agree that all decisions set forth in the controlling document of the Purchasing Entity will be made by unanimous agreement of Seller and Purchaser, unless otherwise agreed and set forth in the controlling document.  At such time that Seller has a 10 (%) or less interest in Purchasing Entity, Purchaser shall have the right to unilaterally make all decisions relating to Purchasing Entity.

VI.

**CONTINGENCIES**: This offer is expressly contingent upon the following:

a.

The Purchaser and its advisors conducting a due diligence examination of the business and assets of the Seller within ninety *(90)*days of signing of this Letter of Intent. If the Purchaser, in its sole discretion, is not satisfied with the findings of the due diligence examination the Letter of Intent may be withdrawn by Purchaser and any agreements between the parties, with the exception of Paragraphs IX *(Expenses of the Parties)*and XI *(Confidentiality of Information)*, shall be null and void.

b.

Verification to the satisfaction of the Purchaser that existing contracts, leases and licenses, if any, are assignable, assumable, transferable, or renegotiable on satisfactory terms.

c.

The execution and delivery of a formal Asset Purchase Agreement based upon the framework described in this Letter of Intent. It shall contain comprehensive representations, warranties, indemnifications and other terms appropriate to the transaction.

d.

Obtaining of financing acceptable to Purchaser within 12 months of acceptance of this Letter of Intent.

VII.

**COVENANT NOT TO COMPETE**: Seller will be bound by a Covenant Not to Compete which will be included in the Asset Purchase Agreement and in any employment or consulting agreement, for a period of five (5) years following the later of the closing of the transaction or the termination of any employment or consulting agreement.

VIII.

**OPERATIONS PENDING CLOSING**: Until the Closing, the Seller shall continue to operate the business in a reasonable manner consistent with past practices and shall not engage in any transaction outside of the ordinary course of business. All equipment used by the Seller shall be conveyed in good operating condition at time of closing

IX.

**CLOSING**: During due diligence, the Purchaser will authorize the preparation of the definitive Asset Purchase Agreement and any related agreements. The parties shall use their best efforts to have completed the agreements as promptly as possible, but in no event later than twelve *(12)*months of signing of this Letter of Intent. The Closing shall take place on or before February 1, 2017.

X.

**EXPENSES OF THE PARTIES**: Each party will be responsible for and pay its own legal and accounting fees and other costs in connection with this transaction.

XI.

**GOOD FAITH NEGOTIATIONS**: For a period of one hundred and twenty *(120)*days following the execution of this Letter of Intent, or until the Purchaser waives this provision in writing, whichever is sooner, the Seller shall not negotiate with or provide any information to any other parties for the purchase and sale of the Company or any assets of the Company.

XII.

**CONFIDENTIALITY OF INFORMATION**: The Purchaser will have reasonable access to the books, records, and assets of the Seller. Such access will be used only to evaluate the purchase. All such information will be treated in a strictly confidential manner and will not be disclosed to any third party except the Purchaser's professional advisors and potential lenders except by written consent of the Seller. In the event the sale is not completed, Purchaser shall promptly return to Seller all information received by the Purchaser.

This letter is non-binding with the exception of Paragraphs IX *(Expenses of the Parties)*, X *(Good Faith Negotiations)*and XI *(Confidentiality of Information),*which are binding and governed by the laws of the Province of Ontario.

If you agree to these terms, please promptly sign the original of this letter where indicated below and return it by March 30, 2016, after which time it shall be null and void.

**PRESENTED BY:**

Abby Lane, President, MASTER Technologies, Inc. Date: February 1, 2016

\_\_\_\_\_\_\_\_\_\_\_

**AGREED AND ACCEPTED BY:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_

**PDD#3**

LETTER OF INTENT

**Exhibit 10.1**

**LETTER OF INTENT**

February 15, 2013

To:

Bueno Media Inc., a corporation having its registered office at […], British Columbia V3W 1E6

**Re:**

**Purchase of all of the issued and outstanding securities (the “Securities”) in the capital of Bueno Media Inc. (the “Target”)**

The following sets out the basic terms upon which Future Energy Corp. (the “**Purchaser**”) would be prepared to purchase the Securities.  The terms are not comprehensive and additional terms, including customary representations and warranties*,* will be incorporated into a formal agreement (the “**Formal Agreement**”) to be negotiated between the Purchaser and the Target.  The basic terms are as follows:

1.

Purchaser:  The Purchaser is a company incorporated under the laws of the State of Nevada with its common shares registered under the *Securities Exchange Act of 1934*.

2.

Target:  The Target is a company organized under the laws of British Columbia.

3.

Securities:  The Purchaser agrees to purchase from all of the securityholders of the Target (collectively, the “**Vendors**”) and the Target agrees to use commercial best efforts to cause the Vendors to agree to sell, assign and transfer to the Purchaser, the Securities free and clear of all liens, charges and encumbrances. In the event that the Target is not able to cause all of the Vendors to consent to sell, assign and transfer all of the securities of the Target to the Purchaser, the Target will cause the shareholders of the Target (each, a “**Shareholder**”) holding a majority of the then outstanding common shares of the Target and, if applicable, the Shareholders holding a majority of each outstanding class of shares of the Target, to consent to such other transaction structure as may be permitted under the statutory provisions of the State of Nevada set forth in the Nevada Revised Statutes.

4.

Transaction:  The Purchaser, the Target and the Vendors will enter into a business combination whereby the Purchaser, or a subsidiary of the Purchaser, will purchase all of the Securities (which represent all of the issued and outstanding securities in the capital of the Target) from the Vendors (the “**Acquisition**”) in exchange for the issuance of an aggregate of 181,432,000 shares of common stock in the capital of the Purchaser. Upon the closing of the Acquisition (the “**Closing**”), the Target will become a wholly-owned subsidiary of the Purchaser or a subsidiary of the Purchaser.  The Acquisition will be completed pursuant to available exemptions from the *Securities Act of 1933*, and any other applicable securities legislation.

5.

Structure:  In order to facilitate the Acquisition, the Purchaser and the Target each agree to use their commercial best efforts to formulate a structure for the Acquisition which is acceptable to each of the parties and which is formulated to:

(a)

comply with all necessary legal and regulatory requirements;

(b)

minimize or eliminate any adverse tax consequences; and

(c)

be as cost effective as possible.

6.

Officers:  At Closing, the Target will have the right to nominate all officersof the Purchaser.

7.

Directors:  At Closing, the board of directors of the Purchaser will consist of directors nominated by the Target.

8.

Access to Information:  The Purchaser and the Target agree that, immediately upon the execution of this Letter of Intent by the Target:

(a)

the Purchaser and its respective advisors will have full access during normal business hours to, or the Target will deliver to the Purchaser, copies of all documents pertaining to the operations of the Target; and

(b)

the Target and its respective advisors will have full access during normal business hours to, or the Purchaser will deliver to the Target or the Vendors, as applicable, copies of all documents pertaining to the operations of the Purchaser.

- 2 –

9.

Return of Materials:  Each of the Purchaser and the Target agrees to return or destroy any materials delivered in accordance with Section 8 of this Letter of Intent if the Formal Agreement is not executed within the time provided in this Letter of Intent.

10.

Conditions Precedent for the Purchaser:  The obligation of the Purchaser to proceed with the Acquisition will be subject to the satisfaction by the Target and/or the Vendors or written waiver by the Purchaser of the following conditions (the “**Purchaser’s** **Conditions Precedent**”) within the time set forth in the Formal Agreement:

(a)

the Purchaser reviewing and approving all materials in the possession and control of the Target and the Vendors which are germane to the decision of the Purchaser to proceed with the Acquisition;

(b)

the Purchaser and its advisors having had a reasonable opportunity to perform the searches and other due diligence reasonable or customary in a transaction of a similar nature to that contemplated herein and both the Purchaser and its advisors being satisfied with the results of such due diligence;

(c)

the Target providing to the Purchaser, and the Purchaser and its accountant having had a reasonable opportunity to review, audited financial statements of the Target for each of the last two fiscal years completed prior to the Closing, prepared in accordance with United States generally accepted accounting principles (as modified in a manner acceptable to Purchaser) by independent accountants registered with the United States Public Company Accounting Oversight Board, and unaudited financial statements for the Target’s most recent interim financial period prior to the Closing, if any, and both the Purchaser and its accountant being satisfied with the content of such financial statements;

(d)

the Purchaser obtaining all necessary governmental, regulatory and court consents, waivers and approvals;

(e)

the Target obtaining the consent of any parties from whom consent to the Acquisition is required;

(f)

the Target and the Vendors complying with all pre-Closing covenants to be set out in the Formal Agreement and the continuing accuracy in all material respects of the representations and warranties of the Target and the Vendors as contained therein at Closing;

(g)

no material adverse change having occurred in connection with the business of the Target or the Securities;

(h)

no legal proceedings pending or threatened to enjoin, restrict or prohibit the transactions contemplated in connection with the Acquisition;

(i)

approval of the board of directors of the Purchaser and the Target being obtained;

(j)

approval of: (i) all of the Vendors being obtained; or (ii) Shareholders holding a majority of the Securities and, if applicable, Shareholders holding a majority of each outstanding class of Securities, being obtained; and

(k)

any other conditions customary in transactions similar to the Acquisition.

It would be the expectation of the Purchaser that many of the Purchaser’s Conditions Precedent will be narrowed or eliminated altogether as the Purchaser completes its due diligence and the Formal Agreement and schedules thereto are finalized.

11.

Conditions Precedent for the Vendors:  The obligation of the Vendors to proceed with the Acquisition will be subject to satisfaction by the Purchaser or written waiver by the Vendors of the following conditions (collectively, the “**Vendors’ Conditions Precedent**”) within the time set forth in the Formal Agreement:

(a)

the Vendors reviewing and approving all materials in the possession and control of the Purchaser which are germane to the decision of the Vendors to proceed with the Acquisition;

(b)

the Vendors and their advisors having had a reasonable opportunity to perform the searches and other due diligence reasonable or customary in a transaction of a similar nature to that contemplated herein and the Vendors and their advisors being satisfied with the results of such due diligence;

- 3 –

(c)

the Vendors and their accountant having had a reasonable opportunity to review the audited financial statements of the Purchaser, and the Vendors and their accountant being satisfied with the content of such financial statements;

(d)

the Vendors and the Target obtaining all necessary governmental, regulatory and court consents, waivers and approvals (including antitrust clearance to the extent applicable);

(e)

the Purchaser obtaining the consent of any parties from whom consent to the Acquisition is required;

(f)

the Purchaser complying with all pre-Closing covenants to be set out in the Formal Agreement and the continuing accuracy in all material respects of the representations and warranties of the Purchaser as contained therein at Closing;

(g)

no material adverse change having occurred in connection with the business of the Purchaser;

(h)

approval of the board of directors of the Purchaser and the Target and approval of all of the Vendors being obtained;

(i)

no legal proceedings pending or threatened to enjoin, restrict or prohibit the transactions contemplated in connection with the Acquisition; and

(j)

other conditions customary in transactions similar to the Acquisition.

It would be the expectation of the Vendors that many of the Vendors’ Conditions Precedent will be narrowed or eliminated altogether as the Vendors complete their due diligence and the Formal Agreement and schedules thereto are finalized.

12.

Closing:  The Closing, unless otherwise agreed to by the Purchaser and the Target, will occur not later than March 31, 2013.  At the Closing, the Vendors will transfer the Securities to the Purchaser free from any outstanding liens, charges, claims or encumbrances and execute all such documents as the Purchaser’s solicitors may require in order to effect such transfer.  The Closing may take place by exchange of the appropriate solicitors’ undertakings, which will involve each party’s solicitors delivering to his or her counterpart all required documentation, to be held in trust and not released until all such documentation has been executed and delivered to the Purchaser.

13.

Confidentiality:  Except as and to the extent required by law, neither the Purchaser nor the Target will disclose or use, and will direct its respective representatives not to disclose or use to the detriment of the other party, any Confidential Information (as defined below) with respect to such other party furnished, or to be furnished, by either the Purchaser or the Target or their respective representatives to such other party or its representatives at any time or in any manner other than as may be agreed to by such other party. For purposes of this Section 13, “**Confidential Information”** means any information about the Target or the Purchaser stamped “confidential” or identified in writing as such promptly following its disclosure, unless (i) such information is already known to the other party or its representatives or to others not bound by a duty of confidentiality; (ii) such information becomes publicly available through no fault of the other party or its representatives; (iii) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Acquisition; or (iv) the furnishing or use of such information is required by, or necessary or appropriate in connection with, legal proceedings.  Upon the written request of the Purchaser or the Target, as applicable, the other party will promptly return or destroy any Confidential Information in its possession and certify in writing to the other party that it has done so.

14.

Disclosure:  Except as and to the extent required by law, without the prior written consent of the other parties, neither the Purchaser, the Vendors, nor the Target will, and each will direct its representatives not to, make, directly or indirectly, any public comment, statement or communication with respect to, or otherwise to disclose or to 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 transactions proposed in this Letter of Intent.  If a party is required by law to make any such disclosure, it must first provide to the other parties 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.

15.

Expenses:  The Purchaser, the Target and each Vendor will be responsible for and bear all of its own costs and expenses (including any broker’s or finder’s fees and the expenses of its representatives) incurred at any time in connection with pursuing or consummating the Acquisition.

16.

Formal Agreement:  Upon execution of this Letter of Intent, the Purchaser will arrange for the preparation of a draft of the Formal Agreement for the Vendors’ and Target’s review.  The Formal Agreement may require further negotiation and may contain matters not contemplated in this Letter of Intent.

- 4 –

17.

Good Faith Negotiations:  Each of the parties will act honestly, diligently and in good faith in their respective endeavors to negotiate, settle and execute the Formal Agreement on or before February 28, 2013 and to consummate the Acquisition on or before March 31, 2013.

18.

Standstill:  From the date hereof until March 31, 2013, unless a later date is mutually agreed to in writing by the parties, the parties will not, directly or indirectly, solicit, initiate, assist, facilitate, promote or encourage proposals or offers from, entertain or enter into discussions or negotiations with, or provide information relating to the matters contemplated by this Letter of Intent to, any third parties, unless such action, matter or transaction is part of the transactions contemplated in this Letter of Intent or is satisfactory to, and is approved in writing in advance by, the other party hereto or is necessary to carry on the normal course of business.

19.

Not a Binding Agreement:  This Letter of Intent does not create a binding contract and will not be enforceable, except in respect of the obligations set out in paragraphs 9, 13, 14, 15, 18, 19, 21, 22, 23 and 24 (collectively, the “**Binding Provisions**”).  The Binding Provisions will automatically terminate on March 31, 2013 and may be terminated earlier upon written notice by either party to the other party unilaterally, for any reason or no reason, with or without cause, at any time; 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 for the obligations in paragraphs 9, 13, 14, 15, 19 and 21, which will survive any such termination.

20.

Currency:  All references to “$” in this Letter of Intent shall refer to currency of the United States of America.

21.

Proper Law:  This Letter of Intent will be governed by and construed in accordance with the law of the Province of British Columbia and the parties hereby attorn to the jurisdiction of the Courts of competent jurisdiction of the Province of British Columbia in any proceeding hereunder.

22.

Counterparts and Electronic Means:  This Letter of Intent may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.  Delivery to us of an executed copy of this Letter of Intent by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy will be deemed to be execution and delivery to us of this Letter of Intent as of the date of successful transmission to us.

23.

No Liability:  Except as specified in paragraph 19, the provisions of this Letter of Intent do not constitute and will not give rise to any legally binding obligation on the part of either party to this Letter of Intent.  Moreover, except as expressly provided in the Binding Provisions (or as expressly provided in any binding written agreement that the parties may enter into in the future), no past or future action, course of conduct, or failure to act relating to the Acquisition, or relating to the negotiation of the terms of the Acquisition or the Formal Agreement, will give rise to or serve as a basis for any obligation or other liability on the part of the parties to this Letter of Intent.

24.

Acceptance:  If you are agreeable to the foregoing terms, please sign and return a duplicate copy of this Letter of Intent by no later than by 5:00 p.m. on February 18, 2013.

Yours truly,

**FUTURE ENERGY CORP.**

*/s/Winifred Nelson*

Per : Authorized Signatory

The above terms are accepted this 15th day of February, 2013.

**BUENO MEDIA INC.**

*/s/Oskar Ferd*

Per: Authorized Signatory

**PDD#4**

**10.1**

**Omikron INC.**

September 18, 2009

Inco Technologies, Inc.

Santa Clara, California

Attn:     Ms. Tamara Lance

              Interim Chief Executive Officer and Chairman

Ladies and Gentlemen:

Omikron Inc., a British Columbia corporation (“***Omikron***”), is pleased to present Inco Technologies, Inc. (“***Inco***”) with this letter of intent (this “***Letter of Intent***”) regarding a proposed transaction or series of related transactions (collectively, the “***Transaction***”), the material terms of which are set forth on Annex A and are hereby incorporated into this Letter of Intent, between Omikron (and/or one or more of its affiliates or shareholders) and Inco, as more fully described below. In this Letter of Intent, Omikron and Inco are sometimes referred to individually as a “***Party***” and collectively as the “***Parties***.”

The Transaction is premised on the mutual understanding of the Parties that the businesses of Omikron and Inco are complimentary. Omikron is already in manufacturing mode with amorphous silicon technology, and its research and development arm is poised to deploy double and triple junction technology PV module manufacturing. These capabilities would allow the combined company to start building pipeline power projects immediately in Canada and Europe. Amorphous silicon PV modules are best suited for large utility-scale ground mount projects at competitive costs. Inco’s CIGS technology represents a high potential thin-film technology. The combined company will utilize its combined financial and research and development resources to bring the CIGS technology to commercial production. This approach would allow a parallel track to benefits from both technologies for the future growth of the combined business model.

Simultaneously with the execution and delivery of this Letter of Intent, and in connection with the Transaction, Inco and Zach Schneider, acting on behalf of Rivers RRSP Account 240832S in Trust for Zach Schneider as beneficiary (“the ***Schneider RRSP Account***”), have entered into a Purchase Agreement (the “***Purchase Agreement***”) of even date herewith, pursuant to which the Schneider RRSP Account has agreed to loan to Inco, for purposes of funding Inco’s ongoing research and development and related business operations, an amount of $2,000,000 (the “***Loan***”). Pursuant to the Purchase Agreement, for an aggregate purchase price of $2,000,000, Inco will issue to the Schneider RRSP Account or as directed by Mr. Schneider on behalf of the Schneider RRSP Account (a) a Secured Convertible Promissory Note (the “***Note***”) in the aggregate principal amount of the Loan, (b) a warrant to purchase 1,500,000 shares of Inco common stock (subject to adjustment for certain dilutive transactions) (the “***First Warrant***”), and (c) upon the satisfaction of certain conditions, a warrant to purchase 1,666,667 shares of Inco common stock (subject to adjustment for certain dilutive transactions) (the “***Second Warrant***”, and together with the First Warrant, the “***Warrants***”). The Note will be convertible into shares of Inco common stock based

on a $0.60 conversion price and the Warrants will have an exercise price of $0.50 per share. Simultaneously with the execution and delivery of this Letter of Intent, and in connection with the Transaction, Inco and the Schneider RRSP Account have also entered into a Registration Rights Agreement pursuant to which Inco has granted to the Schneider RRSP Account registration rights with respect to the shares of Inco common stock that may be issued upon either conversion of the Note or exercise of the Warrants.

**1. The Transaction.**

(a)Subject to the terms and conditions set forth herein, during the Term (as defined below) the Parties agree to enter into good faith negotiations to prepare definitive agreements (the “***Agreements***”) reflecting the terms of the Transaction set forth in this Letter of Intent, as well as (i) customary representations, warranties and covenants, (ii) customary conditions to closing and (iii) appropriate indemnification provisions. The Parties agree that, for purposes of helping to expedite timing of the Transaction, Omikron’s counsel will prepare initial drafts of the Agreements.

(b) The consummation of the Transaction will be subject to making or obtaining all necessary third-party filings and approvals (including any required approval by the holders of Inco’s common stock). In addition, the execution and delivery of the Agreements and consummation of the Transaction by the Parties will be subject to the condition, among others, that each Party is, on the basis of its due diligence investigation and otherwise, satisfied, in its sole and absolute discretion, that such execution or delivery or consummation is not likely to have a material adverse effect, directly or indirectly, on such Party’s business, assets, operations or prospects.

(c) The Parties covenant to use their reasonable best efforts to make and obtain all necessary third-party filings and approvals in connection with the Transaction, including the recommendation of the Inco board of directors to its stockholders that their approval of the Transaction (or any part thereof) be given to the extent that such approval is required or pursued. By executing this Letter of Intent, Inco represents and warrants to Omikron that its has obtained all corporate approvals, including the approval of its board of directors, to execute, deliver and perform the terms of this Letter of Intent.

**2. Termination.** The term of this Letter of Intent (the “***Term***”) will commence on the date both Parties have executed this Letter of Intent and will continue until the earliest of (a) the effective date of execution and delivery of the Agreements by the Parties, (b) the date of delivery by either Party to the other of notice (any such notice, a “***Termination Notice***”) that the notifying Party has elected to terminate discussions concerning the Transaction or (c) 180 days following the date of this Letter of Intent (the earliest such date is herein referred to as the “***Termination Date***”). This Letter of Intent, and each and all of the rights and obligations of the Parties under this Letter of Intent, will (except as hereinafter provided) terminate effective upon the Termination Date From and after the Termination Date, no Party will have any obligation or liability to any other Party whatsoever, except that no termination will relieve any Party for or with respect to liability for any breach of any of Sections 1(b), 3, 4, 5 or 7 of this Letter of Intent prior to such termination and, in any event, the Parties will remain bound by the provisions of Sections 5 and 7.

**3. Ordinary Course of Business.**During the Term: (a) Inco and its subsidiaries will conduct their business and affairs only in the ordinary course of business consistent with past practices, and will refrain from any extraordinary transactions; (b) Inco will use its best efforts to preserve and keep intact the business organization of Inco and its subsidiaries and to preserve the

- 2 -

good will of Inco’s customers, suppliers, creditors and others doing business with Inco and its subsidiaries; and (c) Inco and its subsidiaries will refrain from (i) declaring or paying any dividend or making any other distribution with respect to any shares of any class of stock of Inco (“***Inco Stock***”) and (ii) redeeming, purchasing or acquiring, directly or indirectly, any shares of any class of Inco Stock.

**4. Exclusive Negotiations.**

(a) Inco agrees that, during the Term, neither Inco nor any of its Representatives will, directly or indirectly, (i) enter into any agreements, understandings or negotiations with, or solicit, initiate or encourage any inquiries, proposals or offers from, any person other than Omikron or its affiliates relating to (A) any acquisition or purchase of any assets of Inco or any of its subsidiaries (other than sales of inventory, or immaterial portions of assets, in each case in the ordinary course), Inco Stock or any securities of Inco or any of its subsidiaries or (B) any merger, consolidation or business combination involving Inco or any of its subsidiaries; or (ii) with respect to any effort or attempt by any other person to do or to seek any of the types of transactions referred to in (i) above, (A) participate in any discussions or negotiations; (B) furnish to any other person any data or information with respect to Inco or any of its subsidiaries or (C) otherwise cooperate in any way with, assist or participate in or facilitate or encourage any such effort. Inco will immediately notify Omikron if any such inquiry, proposal or offer, or any contact with any person with respect thereto (whether by telephone, personal conversation, fax, email or otherwise) is made or received by Inco or any of its Representatives.

(b) During the Term, Inco will not enter into any agreement or arrangement that does, or that reasonably foreseeably might, have an adverse effect on its ability to enter into and perform the Transaction.

(c) Inco represents and warrants to Omikron that, except as contemplated hereby, there are no pending agreements or understandings with respect to the sale or exchange of Inco Stock, or any assets or securities of Inco or any of its subsidiaries (other than sales of inventory, or immaterial portions of assets, in either case in the ordinary course). Inco will terminate any pending negotiations or discussions with any other parties with respect to the Inco Stock immediately upon execution of this Letter of Intent, and Inco will use its best efforts to recover from any such other parties any data and information furnished to them respecting Inco.

**5. Break-Up Fee.** If (a) either (i) Inco or any Representative of Inco breaches any of the obligations of Inco under Sections 1(b), 1(c), 2, 3 or 4 of this Letter of Intent and, to the extent it receives notice of such breach, Omikron elects to terminate this Letter of Intent on the basis thereof, or (ii) Inco delivers a Termination Notice to Omikron, and (b) within 12 months thereafter (a)(i) or (ii) occurs, as the case may be, Inco or any of its subsidiaries enters into a letter of intent or an agreement relating to the sale or exchange of 15% or more of the Inco Stock or any of the assets or business of Inco or any of its subsidiaries, in one or a series of transactions, whether directly or indirectly, through purchase, merger, exchange, consolidation or otherwise (other than sales of inventory, or immaterial portions of the assets, in either case in the ordinary course), whether or not such transaction is consummated, then, concurrently with entering into such letter of intent or agreement, Inco will pay to Omikron a sum in cash equal to $5,000,000. Such fee will not serve as the exclusive remedy to Omikron under this Letter of Intent in the event of a breach by Inco, and Omikron will be entitled to all other rights and remedies available under law or in equity. No break-up fee will be payable in the event that Omikron either (i) breaches any of its binding obligations under this Letter of Intent or (ii) fails to consummate the Transaction for any reason other than as provided in this Letter of Intent or as a result of the breach or default of Inco.

- 3 -

**6. Confidentiality.** Each Party will hold in strict confidence and not disclose to third parties any data and information obtained from the other Party except that such Party may disclose such data and information to its employees, officers, directors, advisors, legal counsel, accountants, agents and representatives, as well as any sources of financing it may consider in connection with the Transaction (collectively, “***Representatives***”). If the Transaction is not consummated, each Party will, at the other Party’s option, either return all such data and information furnished to it to the other Party, or destroy all copies of such data and information in its possession (and cause its Representatives to do the same).

**7. Disclosure Regarding the Transaction.** Except as and to the extent required by law or applicable stock exchange rule, without the written consent of the other Party, neither Party will, and each will direct its respective Representatives not to, directly or indirectly, make any public comment, statement or other communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, the Transaction or any of the terms, conditions or other aspects of the Transaction. All press releases or other public communications relating thereto and the method of the release for publication thereof will be subject to the prior written approval of each Party, which will not be unreasonably withheld. Notwithstanding anything to the contrary herein, the Parties are expressly authorized to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to any Party related to such tax treatment and tax structure.

**8. Governing Law.** This Letter of Intent will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice-of-law principles that would require the application of the law of any other jurisdiction.

**9. Counterparts; Execution by Facsimile.** This Letter of Intent may be executed in any number of counterparts, each of which will be an original and all of which, when taken together, will constitute one agreement, and this Letter of Intent will become effective upon receipt of a counterpart hereof from each of the parties hereto. Delivery of an executed counterpart of a signature page of this Letter of Intent by facsimile or other electronic transmission will be effective as delivery of a manually executed counterpart of this Letter of Intent.

**10. Entire Agreement; Amendment; Construction.** This Letter of Intent constitutes the entire agreement and understanding of the Parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof. This Letter of Intent may not be amended or modified except by a writing signed by all of the Parties. This Letter of Intent has been freely and fairly negotiated among the Parties. If an ambiguity or question of intent or interpretation arises, this Letter of Intent will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Letter of Intent. All dollar amounts contained in this Letter of Intent refer to United States dollars.

- 4 -

**11. Binding Effect.** This Letter of Intent constitutes a non-binding statement of the Parties’ respective intentions with respect to the Transaction. This Letter of Intent does not, however, contain all matters upon which agreement must be reached in order for the Transaction to be consummated, and therefore does not constitute a binding commitment or agreement with respect to the Transaction itself. Any such binding commitment or agreement with respect to the Transaction will result only from the execution and delivery of the Agreements, subject to the terms and conditions expressed therein. **NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE AND AGREE THAT SECTIONS 1(b), 3, 4, 5 and 7 OF THIS LETTER OF INTENT ARE INTENDED TO CREATE, AND DO CREATE, FULLY BINDING LEGAL AND CONTRACTUAL OBLIGATIONS OF THE PARTIES, WITH CONTRACTUAL CONSIDERATION CONSISTING OF THE REPRESENTATIONS AND WARRANTIES AND COVENANTS AND AGREEMENTS SET FORTH THEREIN (WHICH ARE BINDING).**

*[Remainder of Page Intentionally Left Blank]*

- 5 -

If the foregoing meets with your approval, please indicate your acceptance of the terms set forth in this Letter of Intent by signing in the space provided below and on the enclosed copy and by returning the copy to us. Upon such execution and delivery, this Letter of Intent will, as and to the extent set forth in this Letter of Intent, be a binding and legally enforceable agreement of the Parties.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Sincerely yours, | | |
|  | | |
| Omikron Inc. | | |
|  |  | |
| By: |  | /s/ Ismail AlAda |
|  |  | Ismail AlAda |
|  |  | Chief Executive Officer |

Agreed to and accepted on this 18th day of September, 2009

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Inco Technologies, Inc. | | |
|  |  | |
| By: |  | /s/ Norma Raid |
| Name: |  | Norma Raid |
| Title: |  | Chief Financial Officer |

Agreed and accepted on this 18th day of September, 2009

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Rivers RRSP Account […] | | |
|  |  | |
| By: |  | /s/ Zach Schneider |
| Name: |  | Zach Schneider |
| Title: |  | Authorized Signatory |

[SIGNATURE PAGE TO LETTER OF INTENT]

Annex A

Material Terms of Transaction

|  |  |  |
| --- | --- | --- |
| • |  | The Transaction steps and structure will be determined by the Parties, and may involve one or more related transactions, including private placements, mergers, share exchanges, asset purchases, stock purchases, and other actions. |

|  |  |  |
| --- | --- | --- |
| • |  | The Transaction is intended to result in the combination of the businesses of Omikron and Inco. |

|  |  |  |
| --- | --- | --- |
| • |  | As consideration for such actions taken by Omikron in connection with the Transaction, Inco will authorize and issue a new series of preferred shares to the shareholders of Omikron. Each preferred share will be convertible into one share of Inco common stock at a conversion price of $1.80 per share. In addition to receiving such preferred shares, such holder will also be entitled to receive (without any additional consideration) a warrant to purchase 50% of the total number of shares of Inco common stock issued upon such conversion. The warrant will have an exercise price of $1.80 per share. |

|  |  |  |
| --- | --- | --- |
| • |  | Inco will either (a) enter into a registration rights agreement with respect to the registration of any Inco Stock issued to Omikron with the Securities and Exchange Commission granting both demand and piggyback registration rights to the holders of such Inco Stock or (b) file a Registration Statement on Form S-4 with respect to the Transaction registering the issuance of any Inco Stock to Omikron. |

**PDD#5**

EXHIBIT 10.1

**EXHIBIT 10.1**

**EXCHANGE AND TERMINATION AGREEMENT**

**THIS EXCHANGE AND TERMINATION AGREEMENT**(this “**Agreement**”), dated as of February 11, 2004, by and among Murdoch Electronics Corporation, a New York corporation, with headquarters located […], New York 11447 (the “**Company**”), and KLMN Investment L.L.C., a Delaware limited liability company (the “**Investor**”).

**WHEREAS:**

A. The Company and the Investor have entered into that certain Securities Purchase Agreement, dated as of October 5, 2000 (the “**Securities Purchase Agreement**”), pursuant to which the Investor purchased from the Company shares of the Company’s Series C Convertible Preferred Stock (the “**Series C Preferred Stock**”), which are convertible into shares of the Company’s common stock, par value $0.01 per share (the “**Common Stock**”) (as converted, the “**Series C Conversion Shares**”), in accordance with the terms of the Company’s Certificate of Amendment of the Certificate of Incorporation filed with the Secretary of State of the State of New York on October 6, 2000 (the “**Series C Certificate of Amendment**”);

B. The Investor is the holder of (i) 629.187593 shares of Series C Preferred Stock (each a “**Series C Preferred Share**” and, collectively, the “**Series C Preferred Shares**”) and (ii) a warrant to purchase 75,000 shares of Common Stock (the “**Warrant**”);

C. Upon the terms and conditions set forth in this Agreement, the Company wishes to exchange, and the Investor wishes to allow the Company to exchange, 46.3 of the Series C Preferred Shares (the “**Exchange Shares**”) and the Warrant (collectively with the Exchange Shares, the “**Exchange Securities**”), for the number of shares of Common Stock equal to the lesser of (i) 1,800,000 (such number to be adjusted for any stock splits, stock dividends, stock combinations or other similar transactions involving the Common Stock that are effective at any time after the date hereof and prior to the Closing) and (ii) the largest number that will not cause the Investor (together with its affiliates) to have beneficial ownership of more than 9.99% of the Company’s outstanding Common Stock immediately following the Closing (as defined herein) (the shares of Common Stock to be issued to the Investor being referred to as the “**Common Shares**”);

D. The exchange of the Exchange Securities for the Common Shares is being made in reliance upon the exemption from securities registration afforded by Rule 506 of Regulation D as promulgated by the United States Securities and Exchange Commission under the Securities Act of 1933, as amended (the “**1933 Act**”); and

E. The Investor has entered into an agreement (the “**Purchase Agreement**”), dated of even date herewith with certain third parties (the “**Third Party Investors**”), pursuant to which the Investor shall sell its remaining 582.887593 shares of Series C Preferred Stock to the Third Party Investors.

**NOW THEREFORE**, the Company and the Investor hereby agree as follows:

1. AUTHORIZATION AND EXCHANGE OF THE EXCHANGE SECURITIES.

(a) Authorization. The Company will, prior to the Closing (as defined below), duly authorize the issuance of the Common Shares to the Investor in exchange for the Exchange Securities.

(b) Exchange of the Exchange Securities. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7, the Investor shall tender to the Company on the Closing Date (as defined below) the Exchange Securities, and in exchange therefor, the Company shall issue the Common Shares to the Investor.

(c) Closing Date. The date and time of the closing (the “**Closing**”) shall be 10:00 a.m. Central Time, on February 18, 2004, or such other date as is mutually agreed to by the Company and the Investor (the “**Closing Date**”), subject to notification of satisfaction (or waiver) of the conditions to the Closing set forth in Sections 6 and 7. The Closing shall occur on the Closing Date at the offices of […], Chicago, Illinois 60661-3693.

(d) Deliveries.

(i) Deliveries by the Company. On the Closing Date, the Company shall deliver to the Investor:

(A) the Common Shares through The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program by crediting such number of Common Shares to the Investor’s balance account with DTC through its Deposit Withdrawal Agent Commission system in accordance with the Investor’s written instructions (which Common Shares shall be free from any restrictive legend and from any stop order),

(B) an officer’s certificate pursuant to Section 7(c) hereof,

(C) the opinion of Muldoon Murphy & Faucette LLP, in the form attached hereto as Exhibit A,

(D) a secretary’s certificate pursuant to Section 7(e) hereof, and

(E) a letter from the Company’s transfer agent pursuant to Section 7(f) hereof.

(ii) Deliveries by the Investor. On the Closing Date, the Investor shall deliver to the Company:

2

(A) an assignment separate from certificate in the form attached hereto as Exhibit B, transferring the Exchange Shares to the Company,

(B) the certificate representing the Warrant, in genuine and unaltered form, and

(C) a certificate of an authorized representative of the Investor setting forth the number of Common Shares to be delivered to the Investor pursuant to this Agreement and confirming that the issuance of such number of Common Shares will not cause the Investor (together with its affiliates) to have beneficial ownership of more than 9.99% of the outstanding Common Stock immediately following such issuance of the Common Shares.

2. INVESTOR’S REPRESENTATIONS AND WARRANTIES.

The Investor represents and warrants with respect to only itself that:

(a) Investment Purpose. The Investor is acquiring the Common Shares for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided, however, that by making the representations herein, the Investor does not agree to hold any of the Common Shares for any minimum or other specific term and reserves the right to dispose of the Common Shares at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

(b) Accredited Investor Status. The Investor is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D.

(c) Reliance on Exemptions. The Investor understands that the Common Shares are being offered to it in reliance on specific exemptions from the registration requirements of the United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Common Shares.

(d) No Governmental Review. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Common Shares or the fairness or suitability of the investment in the Common Shares nor have such authorities passed upon or endorsed the merits of the offering of the Common Shares.

(e) Information. The Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the issuance of the Common Shares which have been requested by the Investor. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the

3

Company. Neither such inquiries nor any other due diligence investigations conducted by the Investor or its advisors, if any, or its representatives shall modify, amend or affect the Investor’s right to rely on the Company’s representations and warranties contained in Section 3 below.

(f) Residency. The Investor is a resident of the State of New York.

(g) Authorization; Enforcement; Validity. This Agreement has been duly and validly authorized, executed and delivered on behalf of the Investor and is a valid and binding agreement of the Investor, enforceable against the Investor in accordance with its terms.

(h) Ownership of the Exchange Shares. The Investor is the sole beneficial owner of the Exchange Shares and, assuming that the Company delivered good and valid title to the Exchange Shares to the Investor free and clear of any and all voting agreements and arrangements, liens, encumbrances, claims, charges, security interests and restrictions of any nature whatsoever (other than those imposed by federal and state securities laws) (collectively, “**Encumbrances**”), then as of the Closing, the Investor shall have transferred to the Company good and valid title to the Exchange Shares, free and clear of any and all Encumbrances.

(i) History of Exchange Shares; Non-Affiliate Status. The Investor purchased the Exchange Shares directly from the Company on October 10, 2000 and has held the Exchange Shares continuously since such date. The Investor is not, and at no time during the period from October 10, 2000 through the date hereof and the Closing Date has the Investor been, an “affiliate” of the Company (within the meaning of Rule 144(a)(1) under the 1933 Act).

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Investor that:

(a) Organization and Qualification. The Company is a corporation duly organized and validly existing in good standing under the laws of New York, and has the requisite corporate power and authorization to own its properties and to carry on its business as now being conducted.

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement including, without limitation, the issuance of the Common Shares in accordance with the terms hereof. The execution and delivery of this Agreement by the Company and the consummation by it of the transactions contemplated hereby, including, without limitation, the issuance of the Common Shares, has been duly authorized by the Company’s Board of Directors, and no further consent or authorization is required by the Company, its Board of Directors or its stockholders. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(c) No Stockholder Approval. The Company is not, and will not be, required

4

(under the rules and regulations of the Principal Market (as defined below) or otherwise) to obtain the approval of its stockholders with respect to the execution and performance of this Agreement or the issuance of the Common Shares to the Investor. Without limiting the foregoing, (i) no issuance by the Company of securities to the Third Party Investors (the “**Third Party Transactions”**) will cause the Company to be required (under the rules and regulations of the Principal Market or otherwise) to obtain stockholder approval for the execution and performance of this Agreement or the issuance of Common Shares to the Investor, and (ii) except for the Third Party Transactions, neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Common Shares to be integrated with prior offerings by the Company for purposes of any applicable stockholder approval provisions (under the rules and regulations of the Principal Market or otherwise), nor will the Company take any action or steps that would cause the offering of the Common Shares to be integrated with any other such offerings.

(d) Capitalization. As of the date hereof, the authorized common stock of the Company consists of (such numbers to be adjusted for any stock splits, stock dividends, stock combinations or other similar transactions involving the Common Stock that are effective at any time after the date hereof) 200,000,000 shares of Common Stock, of which as of the date hereof **[29,108,018]** shares are issued and outstanding. All of such outstanding shares have been validly issued and are fully paid and nonassessable. No shares of the Company’s common stock are subject to preemptive rights or any other similar rights (arising under New York law, the Company’s Certificate of Incorporation, as amended and as in effect on the date hereof (the “**Certificate of Incorporation**”), or the Company’s By-laws, as amended and as in effect on the date hereof (the “**By-Laws”**) or any agreement or instrument to which the Company is a party) or any liens or encumbrances granted or created by the Company. Except for the Series C Preferred Stock, there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Common Shares as described in this Agreement. The Company has furnished to each Investor true and correct copies of the Certificate of Incorporation and the By-laws.

(e) Issuance of Common Shares. As of the Closing, the Common Shares will have been duly authorized and, upon issuance in accordance with the terms hereof, shall be (i) validly issued, fully paid and non-assessable, and (ii) free from all taxes, liens and charges with respect to the issuance thereof. Subject to the truth and accuracy of the Investor’s representations in Section 2 hereof, the issuance of the Common Shares to the Investor in exchange for the Exchange Securities is exempt from registration under the 1933 Act and any applicable state securities laws, and as long as the Common Shares are not held by an “affiliate” of the Company (within the meaning of Rule 144(a)(1) under the 1933 Act), the Common Shares will be freely tradeable without restriction pursuant to Rule 144(k) under the 1933 Act or under any applicable state securities laws, and the Company shall not at any time, directly or indirectly, take any position or action inconsistent therewith or take any position that the Investor is, or has at any time been, an “affiliate” of the Company (within the meaning of Rule 144(a)(1) under the 1933 Act).

5

(f) No Conflicts. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby will not (i) result in a violation of the Certificate of Incorporation or the By-laws; (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company is a party; (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, federal and state securities laws and regulations and the rules and regulations of The American Stock Exchange, Inc. (the “**Principal Market**”)) applicable to the Company or by which any property or asset of the Company is bound or affected. The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self-regulatory agency in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement, including, without limitation, the issuance of the Common Shares in accordance with the terms hereof.

(g) SEC Documents; Financial Statements. Since December 31, 2002, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”) (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the “**SEC Documents**”). As of their respective dates and based on information known to management of the Company as of the date of this Agreement, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents. Based on information known to management of the Company as of the date of this Agreement, none of the SEC Documents, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective dates and based on information known to management of the Company as of the date of this Agreement, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Based on information known to management of the Company as of the date of this Agreement, such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(h) No General Solicitation. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the 1933 Act) in connection with

6

the offer or sale of the Common Shares.

(i) No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made, nor will make, any offers or sales of any security or solicited, nor will solicit, any offers to buy any security, under circumstances that would require registration of any of the Common Shares under the 1933 Act. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, taken, nor will take, any other action or steps that would require registration of any of the Common Shares under the 1933 Act.

(j) Rights Agreement. Assuming that the Investor has no present intention to takeover or to participate in a takeover of the Company and so long as the proviso to the first sentence of Section IV(A) of the Certificate of Amendment remains in full force and effect, the Company specifically represents, warrants and agrees that, (i) in accordance with that certain Rights Agreement dated as of April 23, 1999 (the “Rights Plan”) between the Company and Continental Stock Transfer & Trust Company, as the Rights Agent thereunder, regardless of the number of shares of Common Stock of which the Investor is deemed the Beneficial Owner (as defined in the Rights Plan), the Investor is not intended to be nor will be deemed to be an Acquiring Person within the meaning of the Rights Plan because of the acquisition of the Common Shares pursuant to this Agreement or the acquisition of Series C Conversion Shares upon conversion of the Series C Preferred Shares, and (ii) neither the acquisition of the Common Shares pursuant to this Agreement nor the acquisition by the Investor of Series C Conversion Shares upon conversion of the Series C Preferred Shares, shall, under any circumstances, trigger a Distribution Date within the meaning of the Rights Plan.

(k) Application of Takeover Protections. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including, without limitation, any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation or the laws of the state of its incorporation which is or could become applicable to the Investor as a result of the transactions contemplated by this Agreement, including, without limitation, the Company’s issuance of the Common Shares and the Investor’s ownership of the Common Shares or as a result of the acquisition of Series C Conversion Shares.

(l) Major Transactions. The Company does not have any written or oral agreement, letter of intent, understanding, contract, arrangement, commitment or obligation relating to a Major Transaction (as defined in Section V(C) of the Series C Certificate of Amendment).

(m) No Other Agreements. The Company has not, directly or indirectly, made any agreements with the Investor relating to the terms or conditions of the transactions contemplated by this Agreement except as set forth in this Agreement.

(n) Information. Neither the Company nor any of its officers, directors, employees or agents have provided the Investors with any material nonpublic information, other than information relating to this Agreement and the transactions contemplated hereby and

7

information relating to the Third Party Transactions, all of which information will be disclosed in the Announcing 8-K (as defined below).

4. COVENANTS.

(a) Best Efforts. Each party shall use its best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Section 6 and Section 7 of this Agreement.

(b) Listing. So long as the Common Stock is listed for trading on the Principal Market or any other securities exchange or trading market, the Common Shares will be listed for trading on such exchange or market.

(c) Disclosure of Transactions and Other Material Information. At or before 8:30 a.m. (Eastern Time) on February 17, 2004, the Company shall file a Current Report on Form 8-K (the “**Announcing Form 8-K**”) with the SEC describing the terms of the transactions contemplated by this Agreement and the Third Party Transactions and including as exhibits to the Announcing Form 8-K this Agreement and any agreements entered into by the Company with respect to the Third Party Transactions (along with any other instruments that will define the rights of the Third Party Investors), if any such agreements have been executed, in the form required by the 1934 Act, and neither the Company nor the Investor shall issue any press release or any other public statement with respect to the transaction contemplated by this Agreement and the Purchase Agreement, or with respect to the Third Party Transactions, prior to such filing of the Announcing 8-K. From and after the filing of the Announcing Form 8-K with the SEC, the Investor shall not be in possession of any material nonpublic information received from the Company or any of its respective officers, directors, employees or agents. The Company shall not, and shall cause each of its respective officers, directors, employees and agents not to, provide the Investor with any material nonpublic information regarding the Company from and after the filing of the Announcing Form 8-K with the SEC without the express written consent of the Investor. Subject to the foregoing, neither the Company nor the Investor shall issue any press releases or any other public statements with respect to the transactions contemplated by this Agreement and the Purchase Agreement or with respect to the Third Party Transactions or disclosing the name of the Investor; provided, however, that the Company shall be entitled, without the prior approval of the Investor, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the Announcing Form 8-K and contemporaneously therewith and (ii) as is required by applicable law and regulations or as directed by the Principal Market (provided that in the case of clause (i) the Investor shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release).

(d) Expenses. Subject to Section 9(k), the Company shall reimburse the Investor for the Investor’s reasonable attorney’s fees and expenses in due diligence and negotiating and preparing this Agreement and agreements with the Third Party Investors. Any amounts requested by the Investor for reimbursement of expenses pursuant to this Section 4(d) shall be paid by the Company to the Investor promptly.

(e) Limitation on Net Sales of Common Stock. So long as the Investor holds

8

any Common Shares, the Investor agrees that it will not enter into, directly or indirectly, any net sales of Common Stock on any single day (each such day is referred to as a “**Limited Sales Day**”) in excess of that number of shares of Common Stock equal to (i) for any Limited Sales Day during the period beginning on and including the Closing Date and ending on and including the date which is 30 days after the Closing Date, 0.0% of the daily trading volume for the Common Stock (as reported by Bloomberg Financial Markets, or any successor thereto (“**Bloomberg**”)) for that trading day, and (ii) for any Limited Sales Day after the date which is 30 days after the Closing Date, 5.0% of the daily trading volume for the Common Stock (as reported by Bloomberg) for that trading day; provided, however, that the restrictions on net sales set forth above shall not apply (i) with respect to any sale of shares of Common Stock held by the Investor as of the Closing Date (other than shares of Common Stock issued pursuant to a conversion by the Investor of Preferred Shares after February 5, 2004) and any such sale shall be ignored for all purposes of this Section 4(e), (ii) on and after the first date on which there has been any Major Transaction or an announcement of any pending, proposed or intended Major Transaction, or (iii) on and after the date which is one year after the Closing Date.

(f) Prior Closing Under Purchase Agreement. If the sale of the 582.887593 Series C Preferred Shares to the Third Party Investors pursuant to the Purchase Agreement closes prior to the Closing, then so long as the Investor continues to hold any Exchange Shares it agrees (i) to continue to be bound by any waivers or agreements made by it in the Seller Transaction Documents (as defined in the Purchase Agreement) notwithstanding the Investor’s assignment of its right thereunder to the Third Party Investors in accordance with the Purchase Agreement and (ii) not to convert any of its Exchange Shares into Series C Conversion Shares other than pursuant to the exchange contemplated by this Agreement. The Company acknowledges and agrees (x) until the Closing the Investor continues to be the holder of 46.3 Series C Preferred Shares in spite of the fact that, for logistical purposes, the orignal stock certificate representing all of the Series C Preferred Shares held by the Investor will be delivered to representatives of the Third Party Investors in connection with the closing of the sale by the Investor of 582.887593 Series C Preferred Shares pursuant to the Purchase Agreement, which closing may occur prior to the Closing, and (y) in the event that the Closing does not occur on or prior to February 18, 2004, the Company will deliver to the Investor on February 18, 2004 an original stock certificate representing 46.3 Series C Preferred Shares in the name of the Investor.

5. TRANSFER AGENT INSTRUCTIONS.

No certificates representing any Common Shares shall bear any restrictive legend. The Company warrants that the Common Shares shall be freely transferable on the books and records of the Company and the Company shall not at any time issue any stop transfer instructions, nor permit any stop transfer instructions to be issued, to its transfer agent with respect to the Common Shares. The Company shall permit the transfer of such Common Shares and promptly instruct its transfer agent to issue one or more certificates in such name and in such denominations as specified by the Investor and without any restrictive legend. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Investor by vitiating the intent and purpose of the transaction contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5 will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5, that the Investor shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

6. CONDITIONS TO THE COMPANY’S OBLIGATIONS AT CLOSING.

The obligation of the Company to exchange the Investor’s Series C Preferred Shares for Common Shares at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company’s sole benefit and may be waived by the Company at any time in its sole discretion by providing the Investor with prior written notice thereof:

(a) The Investor shall have delivered to the Company (i) an assignment separate from certificate in the form attached hereto as Exhibit B, representing the Exchange

9

Shares and (ii) the certificate representing the Warrant.

(b) The representations and warranties of the Investor shall be true and correct as of the date when made and as of the Closing Date as though made at that time, and the Investor shall have performed, satisfied and complied with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Investor at or prior to the Closing Date.

(c) The transactions contemplated by the Purchase Agreement shall have been consummated prior to, or shall be consummated concurrently with, the Closing.

7. CONDITIONS TO THE INVESTOR’S OBLIGATIONS AT CLOSING.

The obligation of the Investor hereunder to exchange the Exchange Shares for the Common Shares at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Investor’s sole benefit and may be waived by the Investor at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have credited the number of Common Shares to the Investor’s balance account with DTC through its Deposit Withdrawal Agent Commission system in accordance with the Investor’s written instructions (which Common Shares shall be free from restrictive legend and from any stop order).

(b) The Common Stock shall not have been suspended by the SEC or the Principal Market from trading on the Principal Market; and the Common Shares shall be listed upon the Principal Market.

(c) The representations and warranties of the Company shall be true and correct as of the date when made and as of the Closing Date as though made at that time, and the Company shall have performed, satisfied and complied with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing Date. The Investor shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Investor.

(d) The Investor shall have received the opinion of […] LLP dated as of the Closing Date, in the form of Exhibit A attached hereto.

(e) The Company shall have delivered to the Investor a secretary’s certificate, dated as of the Closing Date, certifying as to (i) the resolutions of the Company’s board of directors approving this Agreement and the transactions contemplated thereby, (ii) the Certificate of Incorporation and (iii) the By-laws, each as in effect at the Closing.

(f) The Company shall have delivered to the Investor a letter from the Company’s transfer agent certifying the number of shares of Common Stock outstanding as of a

10

date within five days of the Closing Date.

(g) The transactions contemplated by the Purchase Agreement shall have been consummated prior to, or shall be consummated concurrently with, the Closing.

8. INDEMNIFICATION. In consideration of the Investor’s execution and delivery of this Agreement and in addition to all of the Company’s obligations under this Agreement, the Company shall defend, protect, indemnify and hold harmless the Investor and all of its stockholders, officers, directors, employees and direct or indirect investors and any of the foregoing persons’ agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the “Indemnitees”) from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including, without limitation, reasonable attorneys’ fees and disbursements (the “Indemnified Liabilities”), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in this Agreement or any other certificate, instrument or document contemplated hereby, (b) any breach of any covenant, agreement or obligation of the Company contained in this Agreement or any other certificate, instrument or document contemplated hereby, (c) any cause of action, suit or claim brought or made against such Indemnitee (other than a cause of action, suit or claim which is (x) brought or made by the Company and (y) is not a shareholder derivative suit) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of this Agreement or any other certificate, instrument or document contemplated hereby, or (ii) the status of the Investor or holder of the Common Shares as an investor in the Company. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The indemnification required by this Section 8 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. Each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or

11

proceeding is improper. Each of the parties hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(b) Counterparts. This Agreement may be executed in identical counterparts, both of which shall be considered one and the same agreement and shall become effective when both counterparts have been signed and delivered to the other party; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Entire Agreement; Effect on Prior Agreements; Amendments.

(i) This Agreement supersedes all other prior oral or written agreements between the Investor, the Company, their affiliates and persons acting on their behalf with respect to the matters expressly discussed herein, and this Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters expressly covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Investor makes any representation, warranty, covenant or undertaking with respect to such matters.

(ii) No provision of this Agreement may be amended or waived other than by an instrument in writing signed by the Company and the Investor.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) business day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. Unless such party has indicated another address and/or facsimile number and/or to the

12

attention of such other person as the recipient party has specified by written notice five (5) days prior to the effectiveness of such change, the addresses and facsimile numbers for such communications shall be:

If to the Company:

Murdoch Electronics Corporation

[…] New York 11747

Telephone: […]

Facsimile:

Attention: Betto Cinqueterre, President and Chief Executive Officer

With a copy to:

[…] LLP

[…], DC 20016

Telephone: […]

Facsimile: […]

Attention: […], Esq.

If to the Transfer Agent:

Transfer & Trust Company

[…], NY 10004

Telephone: […]

Facsimile: […]

Attention: Compliance Officer

If to the Investor:

Bello Asset Management, L.L.C.

[…], NY 10022

Telephone: […]

Facsimile: […]

Attention: […]

With a copy to:

Enrico Maroni

[…], IL 60661

Telephone: […]

Facsimile: […]

Attention: […]

13

Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender’s facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a nationally recognized overnight delivery service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including, without limitation, any purchasers of the Common Shares. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investor. The Investor may assign some or all of its rights hereunder (i) to a Permitted Transferee (as defined below) without the consent of the Company and (ii) to a person which is not a Permitted Transferee with the prior consent of the Company, which consent shall not be unreasonably withheld; in which event such assignee shall be deemed to be the Investor hereunder with respect to such assigned rights; provided, however, that any such assignment shall not release the Investor from its obligations hereunder unless such obligations are assumed by such assignee. For purposes of this Section 9(g), a “Permitted Transferee” means (i) an Affiliate (as defined below) of the Investor, or (ii) any entity which has the same investment advisor or manager or trading advisor or manager as the Investor or an Affiliate of the Investor. “Affiliate” for purposes of this Section 9(g) means, with respect to any person or entity, another person or entity that, directly or indirectly, (A) has a 5% or more equity interest in that person or entity, (B) controls that person or entity, (C) is controlled by that person or entity, or (D) is under common control with that person or entity. “Control” or “controls” for purposes of this Section 9(g) means that a person or entity has the power, directly or indirectly, to conduct or govern the policies of another person or entity.

(h) No Third Party Beneficiaries. Except with respect to Section 9(o), this Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

(i) Survival. Unless this Agreement is terminated under Section 9(k), the representations and warranties of the Company and the Investor contained in Sections 2 and 3, the agreements and covenants set forth in Sections 4, 5 and 9, and the indemnification provisions set forth in Section 8, shall survive the Closing.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other

14

agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Termination. In the event that the Closing shall not have occurred on or before February 16, 2004 due to the Company’s or the Investor’s failure to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party’s failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party; provided, however, that if this Agreement is terminated by the Company pursuant to this Section 9(k), the Company shall remain obligated to reimburse the Investor for the expenses described in Section 4(d) above.

(l) Financial Advisor. The Company shall be responsible for the payment of any financial advisory fees or brokers’ commissions relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold the Investor harmless against, any liability, loss or expense (including, without limitation, attorney’s fees and out-of-pocket expenses) arising in connection with any such claim made against the Investor for such fees.

(m) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(n) Remedies. The Investor shall have all rights and remedies set forth in this Agreement and all rights and remedies which have been granted at any time under any other agreement or contract and all of the rights which the Investor has under any law. Any person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

(o) Mutual General Release.

(i) In consideration of the releases set forth in Sections 9(o)(ii) and 9(o)(iii), and other consideration set forth herein, effective as of the Closing, the Investor, on behalf of itself and, to the extent permitted by law, its heirs, executors, administrators, devisees, trustees, partners, directors, officers, shareholders, employees, consultants, representatives, predecessors, principals, agents, parents, associates, affiliates, subsidiaries, attorneys, accountants, successors, successors-in-interest and assignees (collectively, the “**Investor Releasing Persons**”), hereby waives and releases, to the fullest extent permitted by law, but subject to Section 9(o)(iii) below, any and all claims, rights and causes of action, whether known or unknown (collectively, the “**Investor Claims**”), that any of the Investor Releasing Persons had, currently has or then has against (i) the Company, (ii) any of the Company’s current or former parents, shareholders, affiliates, subsidiaries, predecessors or assigns, or (iii) any of the Company’s or such other persons’ or entities’ current or former officers, directors,

15

employees, agents, principals, investors, signatories, advisors, consultants, spouses, heirs, estates, executors, attorneys, auditors and associates and members of their immediate families (collectively, the “**Company Released Persons**”), including, without limitation, any Investor Claims arising out of or relating to the Securities Purchase Agreement, Registration Rights Agreement between the Company and the Investor, dated as of October 5, 2000 (the “**Registration Rights Agreement**”) and the Series C Certificate of Amendment (collectively, the “**Released Documents**”), other than Investor Claims arising from third party claims, actions or proceedings after the Closing.

(ii) In further consideration of the Investor entering into this Agreement, effective as of the Closing, the Company on behalf of itself and, to the extent permitted by law, its heirs, executors, administrators, devisees, trustees, partners, directors, officers, shareholders, employees, consultants, representatives, predecessors, principals, agents, parents, associates, affiliates, subsidiaries, attorneys, accountants, successors, successors-in-interest and assignees (collectively, the “**Company Releasing Persons**”), hereby waives and releases, to the fullest extent permitted by law, but subject to Section 9(o)(iii) below, any and all claims, rights and causes of action, whether known or unknown (collectively, the “**Company Claims**”), that any of the Company Releasing Persons had, currently has or then has against (i) the Investor, (ii) any of the Investor’s current or former parents, shareholders, affiliates, subsidiaries, predecessors or assigns, or (iii) any of the Investor’s or such other persons’ or entities’ current or former officers, directors, employees, agents, principals, investors, signatories, advisors, consultants, spouses, heirs, estates, executors, attorneys, auditors and associates and members of their immediate families (collectively, the “**Investor Released Persons**”), including, without limitation, any Company Claims arising out of or relating to the Released Documents.

(iii) The Company and the Investor acknowledge that the releases set forth in Sections 9(o)(i), and 9(o)(ii) above do not affect any claim which any Company Releasing Person or Investor Releasing Person may have under this Agreement or Section 5, 6 or 7 of the Registration Rights Agreement.

(p) Limitation of Beneficial Ownership. Notwithstanding anything to the contrary in this Agreement, in no event shall the Investor have the right to convert any Series C Shares into, or exchange any Series C Shares for, shares of Common Stock to the extent that, after giving effect to such conversion or exchange the Investor (together with Investor’s affiliates) would have beneficial ownership of in excess of 9.99% of the shares of the Common Stock outstanding immediately after giving effect to such conversion or exchange. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Investor and its affiliates shall include the number of shares of Common Stock issuable upon conversion or exchange of the Series C Shares with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable (i) upon conversion of the remaining unconverted Series C Shares beneficially owned

16

by Investor and its affiliates, and (ii) upon conversion or exercise of the unconverted or unexercised portion of any other securities of the Company beneficially owned by the Investor and its affiliates subject to a limitation on conversion or exercise analogous to the limitation contained in this paragraph. Except as set forth in the preceding sentence, for purposes of this paragraph beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this paragraph, in determining the number of outstanding shares of Common Stock, the Investor may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company’s most recent Form 10-Q or Form 10-K, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its transfer agent setting forth the number of shares of Common Stock outstanding, including, without limitation, as disclosed in Section 3(d) of this Agreement. For purposes of compliance with this paragraph, upon the written or oral request of the Investor, the Company shall reasonably promptly confirm orally and in writing to the Investor the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Series C Shares, by Investor or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported.

**\* \* \* \* \* \***

17

**IN WITNESS WHEREOF,** the Investor and the Company have caused this Exchange and Termination Agreement to be duly executed as of the date first written above.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |
| **COMPANY:**    **MURDOCH ELECTRONICS CORPORATION** | | |  |  |  | **INVESTOR:**    **KLMN INVESTMENT L.L.C**  By: Promethean Asset Management, L.L.C.  Its: Investment Manager | | |
|  |  | |  | |  | |  | |
| By: |  | /s/    Betto Cinqueterre |  |  |  | By: |  | /s/    Sheryl Bates |
|  |  |  |  |  |  |  |  |  |
|  |  | Name: Betto Cinqueterre  Title:   President and Chief Executive Officer |  |  |  |  |  | Name: Sheryl Bates  Its: Authorized Representative |

18

**EXHIBIT A**

**Form of Company Counsel Opinion**

Based on the foregoing, and subject to the assumptions and qualifications set forth below, we are of the opinion that:

1. The Company is a corporation incorporated, validly existing and in good standing under the laws of New York, and has the requisite corporate power and authority to conduct its business, and to own, lease and operate its properties, as described in the Company’s Annual Report on Form 10-K for the year ended December 31, 2002.

2. The Company has the requisite corporate power and authority to execute, deliver and perform its obligations under the Exchange and Termination Agreement (the “**Exchange Agreement**”), including issuance of the Common Shares, in accordance with the terms of the Exchange Agreement. The execution and delivery of the Exchange Agreement by the Company, the performance of the obligations of the Company thereunder and the consummation by it of the transactions contemplated therein have been duly authorized by the Company’s Board of Directors and no further consent or authorization of the Company, its Board of Directors or its stockholders is required therefor. The Exchange Agreement has been duly executed and delivered by the Company and constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

3. The issuance of the Common Shares has been duly authorized, and when issued in accordance with the terms of the Exchange Agreement, the Common Shares will be validly issued, fully paid and non-assessable and free of all taxes, liens, charges and preemptive rights with respect to the issue thereof.

4. As of the date hereof, the authorized common stock of the Company consists of 200,000,000 shares of Common Stock, par value $0.01 per share. None of such Common Stock or such Preferred Stock is subject to preemptive rights or other rights of the shareholders of the Company pursuant to the Certificate of Incorporation or the By-laws or under the New York Business Corporation Law. Except for the Series C Preferred Stock, to our knowledge, there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Common Shares in accordance with the terms of the Exchange Agreement.

5. Subject to the accuracy as to factual matters of the Investor’s representations in Section 2 of the Exchange Agreement, the Common Shares may be issued to you pursuant to the Exchange Agreement without registration under the 1933 Act or the securities laws of any state, and you will be able to utilize or tack the holding period applicable to the Series C Preferred Stock for purposes of Rule 144 under the 1933 Act in connection with sales of the Common Shares.

6. No authorization, approval, consent, filing or other order of any Federal or state governmental body, regulatory agency, self-regulatory organization or stock exchange or market, or any court, or, to our knowledge, any third party, is required to be obtained by the Company to

19

enter into and perform its obligations under the Exchange Agreement or for the issuance and sale of the Common Shares.

7. To our knowledge and other than that which has been publicly disclosed by the Company, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body or any governmental agency or self-regulatory organization pending or threatened against the Company or any of the properties of the Company which is reasonably be expected to have a material adverse effect on the business, properties, assets, operations, results of operations, financial condition or prospects of the Company taken as a whole or on the transactions contemplated by the Exchange Agreement.

8. The execution, delivery and performance by the Company of the Exchange Agreement, the consummation by the Company of the transactions contemplated thereby, and the compliance by the Company with the terms thereof, does not (a) violate, conflict with or constitute a default (or an event which, with the giving of notice or lapse of time or both, constitutes or would constitute a default) under (i) the Certificate of Incorporation or the By-laws, or (ii) any agreement, note, lease, mortgage, deed or other instrument to which the Company is a party or by which the Company is bound and which the Company has filed as an exhibit to its reports filed with the Securities Exchange Commission under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”) or which, to our knowledge, the Company otherwise is required or will be required to file as an exhibit to its reports under the 1934 Act; or (b) result in any violation of any statute, law, rule or regulation known to us to be applicable to the Company or, to the best of our knowledge, any order, writ, injunction or decree.

9. To our knowledge, the Company is not an “investment company” or any entity controlled by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

|  |
| --- |
|  |

20

**EXHIBIT B**

**Form of Assignment Separate From Certificate**

FOR VALUE RECEIVED, KLMN Investment L.L.C. does hereby sell, assign and transfer unto Murdoch Electronics Corporation, a New York corporation,                           shares of the Series C Convertible Preferred Stock, $0.01 par value per share, of Murdoch Electronics Corporation, a New York corporation (the “Company”), standing in the undersigned’s name on the books of said Company represented by Certificate No.              and does hereby irrevocably constitute and appoint                           as attorney to transfer the said securities on the books of the Company with full power of substitution in the premises.

Dated:

**PDD#6**

NON-BINDING LETTER OF INTENT

**Alfan Holdings, Inc.**  
**xxxxxxx**  
**Dundee, XO DN2 2QE**  
  
December 1, 2008

Strictly Private and Confidential  
  
Supertrue Group, Inc.  
XXX  
Rochelle, QC H4R 5J8  
  
Ladies and Gentlemen:

     The purpose of this Letter of Intent (“LOI”) is to set forth the terms and conditions pursuant to which Alfan Holdings, Inc., a Nevada Corporation (“Alfan”) will enter into a business combination (the “Acquisition”) with Supertrue Group, Inc., a Delaware corporation (“Company”). Alfan and the Company may individually be referred to herein as a “Party” or collectively as the “Parties”.

     While this LOI is not a binding agreement, except as specifically set forth in Section 11 below, it outlines the preliminary terms of the Acquisition and the transactions contemplated herein. This LOI is intended to serve as an outline of the proposed principal terms and conditions regarding the Acquisition, and is subject to the execution and closing of a definitive agreement (“Definitive Agreement”) among Alfan and the Company. The Parties recognize that there are other terms and conditions that have yet to be addressed, but the Parties agree to work together in good faith to address these issues and to complete a Definitive Agreement that is acceptable to both Parties as quickly as is practicable.

     1.      Acquisition.    Pursuant to the terms and conditions of the Definitive Agreement, Alfan or a wholly owned subsidiary of Alfan will acquire the Company. Alfan shall submit for approval to FINRA and other necessary organizations for a reverse equity stock split of 1:8. Current Management will then cancel approximately 8,200,000 post split shares. Alfan will issue approximately 15,750,000 post split shares of the capital stock for the acquisition. After the Acquisition, the Company’s current shareholders will beneficially own and control approximately 70% of the then outstanding shares of Alfan (which are estimated to be 22,500,000 shares of the common stock of Alfan based on a 1:8 reverse stock split).

     2.      Board of Directors and Executive Officers.     As a condition to the Company closing the Acquisition, the then Board of Directors and executive officers of Alfan will appoint new members of the Board of Directors and new executive officers to replace them, as designated in writing by the Company and resign simultaneously.

     3.      Closing.    The Parties will use their best efforts to close the Acquisition contemplated herein as soon as reasonably possible following the execution of this LOI (“Closing”).

     4.      Due Diligence.    Alfan shall conduct a business, financial, and legal due diligence investigation of the Company and each of its subsidiaries, their business and operations and the Company shall conduct a business, financial, and legal due diligence investigation of Alfan , to each of their satisfaction. To expedite this review, each Party agrees to make such information as reasonably requested by the other Party ("Due Diligence Information") available to the requesting Party and its agents and representatives and to authorize reasonable visits to facilities of each Party, including meetings with its staff, consultants and experts as reasonably requested by the requesting Party.

     5.      Additional Closing Conditions:    The obligations of Alfan to complete the Acquisition are subject to satisfaction by the Company of the following conditions precedent (unless waived in writing by Alfan):

|  |  |  |
| --- | --- | --- |
|  | A. | Between the date of the signing of this LOI and the Closing, the business of the Company and the Subsidiaries shall be run in the ordinary course, and in a manner consistent with past practices. The Company will not, without the written consent of Alfan , enter into or perform any transactions outside of the ordinary course of business relating to the Company or the Subsidiaries; |
|  |  | |
|  | B. | No material change in the business, financial condition or capitalization of the Company and the Subsidiaries shall have occurred between the date of this LOI and Closing other than as required herein or in the Definitive Agreement or as agreed upon by the parties; |
|  |  | |
|  | C. | The Company and the Subsidiaries shall have received and delivered to Alfan information as may be necessary for any filings required to be made by Alfan in connection with the Transaction. |
|  |  | |
|  | D. | Alfan shall have entered into financing arrangements providing Alfan with $1 million in financing on terms acceptable to the Company. |
|  |  | |
|  | E. | At Closing, Alfan will enter into a mutually agreed upon consulting agreement with Rollfox, LLC for certain investor and public relations services, the term of such agreement shall be 12 months at a rate of $5,000 per month. |
|  |  | |

     6.      Confidentiality.    This LOI is being delivered with the understanding that the Company, together with their respective officers, directors, managers, members, representatives, agents, owners and employees, each agree to use their best efforts to keep the existence of this LOI and its contents confidential. Any information, including but not limited to data, business information (including customer lists and prospects), technical information, computer programs and documentation, programs, files, specifications, drawings, sketches, models, samples, tools or other data, oral, written or otherwise, (hereinafter called “Information”), furnished or disclosed by one party to the other for the purpose of the contemplated transaction herein, will remain the disclosing party’s property until the closing of the Acquisition, at which time all such Information will become the property of Alfan. All copies of such Information in written, graphic or other tangible form must be returned to the disclosing party immediately upon written request if the transaction contemplated herein is not consummated. Unless such Information was previously known to receiving party free of any obligation to keep it

2

confidential, or has been or is subsequently made public by the disclosing party or a third party, it must be kept confidential by the receiving party, will be used only in performing due diligence for the Acquisition, and may not be used for other purposes except upon such terms as may be agreed upon between Alfan and the Company in writing.

     7.      Expenses.    Alfan and the Company shall each be responsible for their own fees and expenses incurred as part of the Acquisition and the transactions contemplated under this Agreement, including but not limited to, legal fees, accounting fees, investment banking fees and related expenses.

     8.      Announcements.    No announcement shall be made regarding a pending or completed transaction or agreement between the parties without the prior written consent of both Alfan and the Company.

     9.      Exclusivity.    In consideration hereof and of the time and resources that Alfan will devote to the Acquisition and the Definitive Agreement, and the various investigations and reviews undertaken by Alfan , the Company, its subsidiaries and each of their respective affiliates, directors, officers, employees, representatives and agents will not, directly or indirectly, solicit, initiate, enter into or continue any discussions or transactions with, or encourage, or provide any information to any person or entity with respect to any proposal pursuant to which the Company or any of the Subsidiaries would (i) obtain any debt or equity capital, (ii) be acquired, whether through a purchase, Acquisition, tender offer, consolidation or other business combination, (iii) sell all or a substantial part of the assets of the Company or any of it’s the Subsidiaries or their businesses, or (iv) enter into any transaction or arrangement or otherwise approve any transaction which would result in any third party acquiring more than 5% of the outstanding equity of the Company or any of the Subsidiaries between the date of execution by them of this LOI and December 31, 2008 or as such terms may be mutually extended in writing by the Parties and that the Company and each of the Subsidiaries shall use its best efforts to preserve intact its business organization and the good will of its customers, suppliers and others having business relations with it.

     10.      Non-binding:    Except for paragraphs 6, 7, 8, and 9 of this LOI (which are legally binding upon execution of this LOI), this LOI is a statement of mutual intention; it is not intended to be legally binding, and does not constitute a binding contractual commitment with respect to the transaction. Without limiting the foregoing, the failure of Alfan and the Company to reach agreement on the terms and conditions being included in the Definitive Agreement and other agreements referred to herein shall not be construed as a breach of this LOI by any party hereto provided that the provisions of the four immediately preceding paragraphs are not breached. A legally binding obligation with respect to the transaction contemplated hereby will arise only upon execution and delivery of the Definitive Agreement and other agreements referred to herein by the parties thereto, subject to the conditions expressed therein.

     11.      Governing Law Dispute Resolution and Jurisdiction.    This LOI shall be governed by and construed in accordance with the laws of the State of Nevada, without giving effect to the conflicts of laws principles thereof. All disputes, controversies or claims ("Disputes") arising out of or relating to this LOI shall in the first instance be the subject of a meeting between a representative of each Party who has decision making authority with respect to the

3

matter in question. Should the meeting either not take place or not result in a resolution of the dispute within twenty (20) business days following notice of the dispute to the other Party, then the dispute shall be resolved in a binding arbitration proceeding to be held in Denver, Colorado in accordance with the rules of the American Arbitration Association. The Parties agree that a panel of one arbitrator shall be required. Any award of the arbitrator shall be deemed confidential information for a minimum period of five years. The arbitrator may award attorneys' fees and other arbitration related expense, as well as pre and post judgment interest on any award of damages, to the prevailing Party, in his / her or its sole discretion.

     12.      Multiple Counterparts.    This LOI may be executed in multiple counterparts, each of which may be deemed an original. It shall not be necessary that each Party executes each counterpart, or that any one counterpart be executed by more than one Party so long as each Party executes at least one counterpart.

     13.      Expiration.    This LOI shall expire if not accepted by the Company by 12:00 p.m. Mountain Time on December 1, 2008.

     If the terms and conditions of this LOI are acceptable, kindly execute a copy hereof where indicated below and return it to us or before 12:00 p.m. Mountain Time on December 1, 2008. This LOI shall be non binding except as specifically set forth herein and is subject to the negotiation and execution of the Definitive Agreement and collateral documents referred to above.

|  |  |
| --- | --- |
|  | Very truly yours, |
|  |  |
|  |  |
|  | Alfan Holdings, Inc. |
|  |  |
|  |  |
|  |  |
|  | CHARLES CRUMBLE |

ACCEPTED AND AGREED to  
  
this 1stday of December, 2008

Supertrue Group, Inc.

JAMES KLEIN

4

**PDD#7**

EX-10.1 2 ex10-1.htm

**Exhibit 10.1**

***Letter of Intent for BERK CORP. to Acquire MELROSE***

February 7, 2021

**XXXXXX**

**President & Owner**

**MELROSE**

**XXXXXX**

**XXXXXX**

Dear Mr. XXXXXX:

This Letter of Intent (“LOI” or the “Initial Agreement”) dated this 7th day of February 2021 outlines the proposed terms and conditions under which BERK CORP. (“BERK”; OTC: DGTR) would acquire MELROSE (“MELROSE”). Under this LOI, in the future (from execution of this document to T+90 days), BERK will acquire all of the outstanding equity of MELROSE (which includes control of its ownership interests and intellectual property related to HVAC services and equipment sales, virus cleaning equipment sales, distribution, private-label, and energy management equipment sales, software sales and services). Except as specifically provided for herein, the terms of this LOI are preliminary and non-binding on either party with regard to a potential future acquisition of MELROSE by BERK. The complete terms of any proposed transaction between the parties will be set forth in a Definitive Agreement which may be executed by the parties in the future.

1. **Purchase Consideration**. Upon successful completion of mutual due diligence, fulfillment of all other contingencies contained herein and in the Acquisition Agreement (defined below in Section 5), if entered into, BERK will acquire 100% of the outstanding equity of MELROSE in exchange for cash, a seller note and Series B Preferred Stock of BERK as detailed under a definitive agreement to be mutually negotiated by both BERK and MELROSE. The parties will work together in good faith to negotiate and enter into an Acquisition Agreement and to consummate BERK’s acquisition of MELROSE’s shareholder interests (collectively, the “Future Transaction”) within 90 days of the date this Initial Agreement that is fully executed by the parties. The final terms will be negotiated and mutually agreed upon by the parties upon the successful completion of due diligence by both parties. Based on these preliminary offered terms, BERK will need to raise cash on hand to consummate the Future Transaction.

2. **Transaction Structure**. A Future Transaction would be structured as an acquisition of 100% of the issued and outstanding member interests of MELROSE from the owners of equity interests of MELROSE (the “**Owners**”). MELROSE will provide standard representations common and customary for transactions of this nature, including, without limitation, that all of the assets, tangible or intangible, used in, or arising out of, the conduct of the business operations of MELROSE, are owned by MELROSE or otherwise held by MELROSE under valid leases or licenses, MELROSE has no subsidiaries and there are no other securities convertible or exchangeable into Shares of common stock, nor any agreements of any kind relating to the issuance of any Shares of common stock or other securities of MELROSE under the terms of any options, warrants or the like, except for the Option agreements which have been provided.

|  |
| --- |
|  |

3. Purchase Price.

a. Upon execution of this Initial Agreement, BERK will issue MELROSE a non-refundable deposit of 100,000 Series B Preferred Shares convertible 1-1000 into one hundred (100) million Common Shares of BERK. The Series B Preferred Shares shall bear a RESTRICTED LEGEND and be subject to the SEC’s Rule 144 with regard to transfer or sale.

b. The Total Purchase Price of the Future Transaction will include $1,000,000 cash, a $500,000 seller note secured by the assets of a to-be-formed HVAC integration services subsidiary to include MELROSE’s business, and 650,000 Series B Preferred Shares (including the down payment shares) which will be based on Series B Preferred Shares in an amount and valuation based on common stock priced at $0.002 (i.e., $2.00 per Series B Preferred Share based on a 1-1000 conversion ratio into common shares for each Series B Preferred Share).

c. The Total Purchase Price is expected to include an earn-out formula based on 5% of consideration paid for any and all future mergers or acquisitions of HVAC install companies sourced by MELROSE for a period of one year. Such earnout shall be paid in Series B Preferred Shares as consideration valued using the 50-day moving average closing bid price of BERK common stock as of the closing date of said transactions.

d. Transaction costs will be only for matters required for auditing the Seller and not including other accounting services. BERK will inform MELROSE as to whether an audit will be required within five (5) business days after the date a Future Agreement is fully executed by both parties.

4. **Due Diligence**. Upon the execution and delivery of this LOI by the parties hereto, the authorized representatives of each party will be granted full and immediate access and opportunity during reasonable business hours to examine the business, properties, affairs and books and records relating to the other party, subject to Section 11 below in this Initial Agreement and the Confidentiality and Non-Disclosure Agreement dated the 18th day of December 2020 entered into between BERK and MELROSE’s advisors, if any, for the benefit of MELROSE . All access, interviews, and inspections of MELROSE’s facilities, employees, contractors, customers, and vendors shall require the prior approval of XXXXXX, President of MELROSE and its affiliates and successors in interest. All information and documents relating to each other obtained by BERK or MELROSE and its representatives in connection with such examination shall be afforded confidential treatment, shall not be disclosed to others except as legally required in connection with a potential future transaction and in obtaining the necessary approvals related thereto, if any, and shall not be used for any purpose unrelated to a potential future transaction.

5. **Acquisition Agreement**. If mutually agreeable, the parties shall proceed to negotiate, prepare, and execute definitive agreements for the proposed acquisition of all of the Shares and the other transactions contemplated herein (collectively, the “**Acquisition Agreement**”). BERK will provide MELROSE with an initial draft of the Acquisition Agreement on or before the date that is no later than 45 days after the date this Initial Agreement is fully signed by both parties. The Acquisition Agreement shall contain terms, conditions and representations, warranties and covenants that are normal and appropriate for such a transaction of the type contemplated. Neither party intends to be bound by any oral or written statements nor any correspondence concerning the Acquisition Agreement arising during the course of negotiations, notwithstanding that the same be expressed in terms signifying a partial, preliminary or interim agreement between the parties.

|  |
| --- |
| Page 2 of 5 |

6. Certain Other Agreements.

a. Each party will bear its own costs and expenses in connection with the transactions contemplated hereby, including without limitation, fairness opinions (which are acceptable to each of the parties) attorneys’ and accountants’ fees, travel and living expenses and all other out-of-pocket expenses, provided, that, notwithstanding the foregoing, BERK will reimburse MELROSE the costs of an audit if an audit is required for the closing of the acquisition of MELROSE by BERK

b. The facts and economic terms of this Initial Agreement or the Acquisition Agreement shall not be disclosed without the prior written consent of each party unless required by law.

c. In the event that any action is filed in relation to this Initial Agreement, it is agreed that all claims, disputes and controversies arise out of or relating in any way to this Letter of Intent will, to the fullest extent permitted by law, be resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The venue for such arbitration shall be conducted in the State of Pennsylvania. This Initial Agreement shall be governed by and construed and enforced in accordance with the laws of the state of mutual agreement (California or Pennsylvania or TBD).

7. Additional Conditions of the Acquisition Agreement (if consummated). The Parties shall not agree to any Acquisition Agreement unless the following provisions have been met:

a. Each party, in their sole determination, concluding that the proposed future transaction makes economic sense.

b. The parties agreeing to a mutually acceptable consideration and transaction structure.

c. All necessary approvals, consents and filings shall have been obtained or made and all applicable legal requirements shall have been satisfied.

d. Approval by the Board of Directors and shareholders of each Company if required.

e. There shall not have been from the date of this Initial Agreement any material adverse change in the business, operations, financial condition or properties of the parties, or any event, which may result in such material adverse change.

f. MELROSE completing an audit of its financial records for 2019-2020 that is acceptable to BERK, in the event that an audit is deemed to be necessary to complete the acquisition.

g. BERK shall offer employment to certain agreed key employees of MELROSE.

h. MELROSE and key employees will agree to non-solicitation and non-competition agreements for a period not to exceed two years.

i. BERK shall only be liable for known and disclosed agreed liabilities. Any liabilities not otherwise agreed shall be subject to offset against payment of the Deferred Purchase Price and/or the Earn-Out Amount, not to exceed in the aggregate (including indemnification obligations) 5% of the Deferred Purchase Price.

k. BERK will ensure that sufficient MELROSE staff are retained and available to assist with PPE and virus cleaning product/service orders.

Page 3 of 5

8. Termination. BERK’s Exclusive Purchase Option for MELROSE shall expire at 12:00am midnight of the 90th day after execution of this Initial Agreement, unless mutually extended by BERK and MELROSE.

9. No Public Announcement. Each of the parties agrees not to make any public announcement with regard to the transaction contemplated by this Letter of Intent without the prior written consent of the other, the consent for which is at the total discretion of such other party.

10. Confidential Information. The parties agree that (except as may be required by law) they will not disclose or use and they will cause their officers, directors, employees, representatives, agents, and advisors not to discuss the proposed transaction with third parties and will not disclose or use, any Confidential Information (as hereinafter defined) with respect to either party furnished, or to be furnished by such parties in connection herewith at any time or in any manner and they will not use such information other than in connection with the proposed transaction. For the purposes of this paragraph, “Confidential Information” means any information provided to the Buyer by or on behalf of the Shareholders or MELROSE with respect to the Proposed Transaction, including but not limited to information obtained in accordance with Paragraph 4 hereof. If the Proposed Transaction is not consummated, each party will promptly return or delete all documents, contracts, records, or properties to the proper owner thereof. The provisions of this paragraph will survive the termination of this Letter of Intent. Because damages to either party resulting from violation of the provisions of this paragraph would be considerable but difficult to ascertain, either party may enforce the provisions of this paragraph by means of an injunction in the appropriate court of competent jurisdiction in the State of Pennsylvania (and enforcement thereof may be had in any other court of competent jurisdiction) and be entitled to any other rights or remedies available at law of equity to such party under the law of a state of mutual agreement (California or Pennsylvania or TBD).

11. Non-Solicitation.

a. Each party agrees that, for a period of two (2) years from the date this Initial Agreement is fully executed by the parties, neither they nor any of their affiliates will, without the prior written consent of the other party, directly or indirectly, solicit or hire for employment any person who is currently, or at any time during the period commencing on the date hereof through the date this Letter of Intent is terminated in accordance with Section 8 hereof, an officer or employee of the other party or any of its subsidiaries, provided that, nothing in this Section 11 shall preclude a party from (i) engaging in general solicitations of employment by means of general advertisements during the restriction period, or (ii) hiring anyone who (a) initiates discussions regarding such employment on an unsolicited basis, (b) responds to any public advertisement, or (c) has been terminated by a party prior to commencement of employment discussions. The provisions of this paragraph will survive the termination of this Letter of Intent. Because damages to either party resulting from violation of the provisions of this paragraph would be considerable but difficult to ascertain, either party may enforce the provisions of this paragraph by means of an injunction in the appropriate court of competent jurisdiction in Philadelphia, Pennsylvania (and enforcement thereof may be had in any other court of competent jurisdiction) and be entitled to any other rights or remedies available at law of equity to such party under the law of a state of mutual agreement (California or Pennsylvania or TBD); or

b. BERK agrees that, for a period of two (2) years from the date this Letter of Intent is fully executed by the parties, neither BERK nor any of their affiliates will, directly or indirectly, solicit provide, sell, solicit in order to provide or sell, or market products or services that compete with the products or services provided by MELROSE to any customer or client of MELROSE the identity of which BERK obtained pursuant to its review of the business, properties, affairs and books and records of MELROSE.

Page 4 of 5

Except for the provisions contained in Paragraphs 3(a) (“nonrefundable deposit), 6, 8, 9, 10 and 11 above, this Letter of Intent is not intended to be a complete statement of, or a binding agreement between BERK and MELROSE nor intended to create any obligation or rights in either party to sell or purchase the outstanding member interests of MELROSE, or enter into any other transaction, it being agreed and understood that a binding commitment with respect to such transaction will only exist upon the execution and delivery of, and to the extent set forth in, a definitive agreement.

This proposed Initial Agreement herein shall expire at 5:00 p.m. Eastern USA time, on February 10, 2021. Please sign and date this Initial Agreement in the spaces provided below to confirm our mutual understandings and your agreement to the binding provisions set forth in this Letter of Intent and return a signed copy to the attention of the undersigned. Counterparts and PDF or electronic transmission signatures are acceptable as originals.

BERK CORP.

By:

Printed Name and Title: Sunny Olin, CEO

Date: February 7, 2021

Acknowledged and Agreed to:

MELROSE

By:

Printed Name and Title: XXXXXX, PRESIDENT & OWNER

Date:

|  |
| --- |
| Page 5 of 5 |

PDD#8

Exhibit 10.2

[Form of Letter of Intent]

[●], 2020

**Bengar Group Inc.**

XXXXX

Prenscof, AR 72234

Attention: [●]

**Re: Letter of Intent**

Dear [●]:

We are pleased that you have decided to enter into a transaction whereby one or more controlled affiliates of and/or funds managed by [●] (the “Investor,” “us” or “our”) would provide capital to Bengar Group Inc. (“Bengar,” the “Company” or “you”) as further described in this binding letter of intent (“LOI”). Each of the Investor and the Company shall be referred to herein from time to time individually as a “Party” or, collectively, as the “Parties.”

Concurrently herewith, the Investor, various other interested parties and you are executing a support agreement (the “Plan Support Agreement”) in respect of a proposed plan of reorganization and settlement (the “Settlement”) of claims and disputes between the Company and the Freiberg Debtors (as defined below), including, without limitation, the claims alleged in the adversary proceeding captioned Freiberg Holdings, Inc. v. Bengar Group Inc., Case No-19-08279 (RDD) on terms set forth in the termsheet attached to the Plan Support Agreement (the “Termsheet”). For the avoidance of doubt, the obligation of the Parties to consummate the Transaction (as defined below) shall be conditioned on the consummation and effectiveness of the Settlement.

For purposes of this LOI, the term “Freiberg Debtors” means Freiberg Holdings, Inc., Freiberg Services, LLC (“Services”) and the subsidiaries of Services that are debtors and debtors-in-possession in the chapter 11 cases pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) and jointly administered under Case No. 19-65698 (RDD), and the term “Plan of Reorganization” means the plan of reorganization of the Freiberg Debtors confirmed by the Bankruptcy Court.

|  |  |  |
| --- | --- | --- |
|  | **A.** | **Transaction** |

The Investor agrees, pursuant to the definitive documentation described below (and, if applicable, pursuant to the second paragraph of Section H below), to purchase from the Company, and the Company agrees to sell and issue to the Investor, upon the terms and subject to the conditions stated in this LOI and the Definitive Documents (as defined below), an aggregate of [●] shares (the “Shares”) of the Company’s common stock, par value $0.0001 per share (the “Common Stock”) at a price per share of $6.33 in cash (the “Purchase Price”) through

1

a private placement in reliance upon the exemption from securities registration afforded by the provisions of Section 4(a)(2) of the Securities Act of 1933 (the “1933 Act”), and Rule 506 of Regulation D (“Regulation D”) as promulgated by the U.S. Securities and Exchange Commission under the 1933 Act (such transaction, the “Transaction”). The Company covenants and agrees that it shall not pay any Special Dividends (as defined below) in the period following the date hereof and prior to the Closing Date (as defined below). As used herein, “Special Dividend” shall mean any dividend in excess of the amounts permitted to be distributed to the Company by Bengar Group LP and further distributed by the Company, in each case, pursuant to the portion of the penultimate paragraph of Section 7.05 of the Credit Agreement, dated as of April 24, 2015, among the Company, Bengar Group, LP, Bengar Group Finance Inc., LMO Capital LLC, Bank of America, N.A. (as Administrative Agent) and the lenders and other parties thereto, as amended through the date hereof and as in effect prior to the Reversion Date (as defined therein), beginning with the words “(B) any dividend or distribution (including any cash dividend or distribution) on or in respect of (x) Parent’s Capital Stock” and ending with the words “or (y) in or after the last fiscal quarter of such taxable year.” The number of Shares of Common Stock to be issued to the Investor and the per Share price therefor shall be adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction for which the record date occurs on or prior to the Closing Date (as defined below).

|  |  |  |
| --- | --- | --- |
|  | **B.** | **Timing** |

Upon the satisfaction of the conditions set forth in the Definitive Documents, or if applicable, this LOI, the Transaction will be consummated immediately before, and concurrent with, the effective date of the Settlement (the “Closing Date”).

|  |  |  |
| --- | --- | --- |
|  | **C.** | **Definitive Documents** |

The Parties agree to negotiate in good faith to memorialize the Transaction in a securities purchase agreement and other definitive documentation consistent with the terms and conditions set forth herein (“Definitive Documents”). The Definitive Documents shall contain limited representations and warranties covenants, and conditions precedent consistent with Section F below. Promptly after the date hereof, the Parties shall make all filings required or necessary and take all actions reasonably necessary under applicable law, including the HSR Act (as defined below), to consummate the Transaction. The Investor represents and warrants as of the date hereof and as of the Closing Date, and will represent and warrant in any Definitive Documents, that the Investor: (1) understands that the Shares have not been registered under 1933 Act and, therefore, cannot be transferred or resold unless they are registered under the 1933 Act or unless an exemption from registration is available; (2) is an “accredited investor” as such term is defined in Regulation D under the 1933 Act; (3) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Shares; (4) is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Shares; and (5) is buying with investment intent and not with a view to distribution in a manner that would violate the 1933 Act.

2

|  |  |  |
| --- | --- | --- |
|  | **D.** | **REIT Limitations; Other Investors** |

Notwithstanding anything to the contrary herein, (i) the Investor will not be permitted to acquire any Shares of Common Stock pursuant to the Definitive Documents or otherwise that would result in any person owning (or being treated as owning) more than 9.8% of the Company’s Common Stock in violation of the stock ownership limitations in the Company’s charter, and (ii) for the avoidance of doubt, to the extent that the Investor is prohibited from acquiring any Shares of Common Stock pursuant to clause (i), the Investor shall procure another purchaser for such Shares of Common Stock that is not so prohibited from acquiring such Shares of Common Stock. If the Investor is prohibited from acquiring Shares pursuant to clause (i) above, it may as set forth in the following paragraph designate one or more other purchasers of Shares acceptable to the Investor to acquire such number of Shares as necessary so that the Investor and each such designated purchaser will be in compliance with the stock ownership limitations in the Company’s charter.

The Company (a) will use its reasonable best efforts to provide the Investor with such information as is within its possession or control regarding the ownership of the Company’s stock for the purpose of ensuring compliance with the stock ownership limitations in the Company’s charter and (b) shall give the Investor no less than 7 business days’ written notice of the Closing Date. The Investor, after undertaking commercially reasonable diligence and consulting with knowledgeable tax counsel, shall provide the Company, 3 business days before the Closing Date, with a written representation, dated 3 business days before the Closing Date, that, immediately following the Closing Date, as a consequence of the Investor’s acquisition of Shares pursuant to the Transaction, no person shall own (or be treated as owning) more than 9.8% of the Company’s Common Stock in violation of the stock ownership limitations in the Company’s charter (the “Ownership Representation”). If the Investor is unable to deliver the Ownership Representation with respect to the full number of Shares contemplated by clause (A) above, the Investor shall notify the Company, no later than 3 business days before the Closing Date, of (x) the number of Shares in respect of which the Investor is unable to deliver an Ownership Representation and (y) the other purchaser(s) designated by the Investor to acquire the number of Shares identified pursuant to the preceding clause (x) (each, a “Designated Purchaser”), and the provisions of this paragraph shall apply to each Designated Purchaser *mutatis mutandis*. No later than two business days after the receipt by the Company of an Ownership Representation from the Investor, if the Company believes that the Ownership Representation received from the Investor is incorrect, the Company shall provide written notice (the “Company Disagreement Notice”) to the Investor specifying in reasonable detail (i) the reasons for such belief and (ii) the number of Shares of Common Stock as to which the Company believes cannot be issued to the Investor without resulting in a violation of clause (i) of the preceding paragraph (such Shares, “Excess Shares”). If the Company has not delivered a Company Disagreement Notice with respect to the Investor, (A) the Company and the Investor shall promptly notify the other party if the Company or the Investor, as the case may be, becomes aware prior to the Closing Date of any facts or circumstances which could result in the Ownership Representation being or becoming incorrect on the Closing Date, (B) the Investor shall bring down its Ownership Representation on the Closing Date, and (C) clause (i) of the preceding paragraph shall not apply with respect to the Investor unless the Company notifies the Investor, prior to the Closing, that the Company has actual knowledge that such Ownership Representation, as brought down to the Closing Date, is or will be incorrect, in which case (1)

3

the Closing may be postponed for up to 10 business days, and (2) the Company and the Investor shall either (x) use their commercially reasonable efforts to take such actions as will permit the Investor to give, on the Closing Date, an Ownership Representation as to which the Company does not have actual knowledge that such Ownership Representation is incorrect or (y) negotiate in good faith to reach agreement acceptable to each party on a waiver of the ownership limitations in the Company’s charter (a “Disagreement Notice Resolution”); provided that, for the avoidance of doubt, nothing herein or in the Definitive Documents shall be deemed to constitute a waiver of the stock ownership limitations in the Company’s charter with respect to any Shares of Common Stock issued to or thereafter owned by the Investor, or any other shares of Common Stock (or other equity securities) owned (or treated as owned) by the Investor at any time, which limitations shall remain in full force and effect with respect to the Investor (subject to any waiver agreed in accordance with the preceding clause (y)). If the Company has delivered a Company Disagreement Notice to the Investor and has not reached a Disagreement Notice Resolution with the Investor, (i) the Company shall not issue the Excess Shares to the Investor, and (ii) the Investor shall designate another investor (a “Substitute Investor”) to acquire the Investor’s Excess Shares on the Closing Date. If a Designated Purchaser designated by an Investor fails to provide the Ownership Representation at the time specified above or is otherwise prohibited from purchasing Shares on the Closing Date (“Non-Compliant Purchaser”), the Investor shall designate a Substitute Investor to acquire the Non-Compliant Purchaser’s Shares. Any Substitute Investor designated to acquire a Non-Compliant Purchaser’s Shares or an Investor’s Excess Shares must provide the Ownership Representation to the Company immediately prior to consummation of the Transaction.

To the extent that any Designated Purchaser or Substitute Investor does not pay the purchase price for the Shares allocated to such person on the Closing Date, (the “Defaulting Investor Shares” and any such investor, a “Defaulting Investor”), the Closing may be postponed for up to 10 business days and the Investor shall be required to fund, or cause to be funded, such purchase price on behalf of such Defaulting Investor, and, the Investor shall be entitled to exercise all remedies available to it and to the Company against such Defaulting Investor for such breach (other than any remedy which would permit the Investor to acquire any Shares of Common Stock issued to such Defaulting Investor if such Shares could not have been issued to such Investor in compliance with clause (i) in the first paragraph of this Section D). In addition to any other rights or remedies the Investor may have against the Defaulting Investor, but subject to compliance with clause (i) of the first paragraph of this Section D, the Investor shall be entitled to direct the Company to issue on the Closing Date the Defaulting Investor’s Shares to another Substitute Investor. Any Substitute Investor designated to acquire the Defaulting Investor Shares must provide the Ownership Representation to the Company immediately prior to the consummation of the Transaction.

For the avoidance of doubt, except as otherwise expressly provided in this Section D, the Company expressly agrees that nothing in its charter limits the rights of the Investor to purchase the Shares pursuant to this LOI; provided that, for the avoidance of doubt, nothing herein or in the Definitive Documents shall be deemed to constitute a waiver of the stock ownership limitations in the Company’s charter with respect to any Shares of Common Stock issued to or thereafter owned by the Investor (or if applicable, any Designated Purchaser or Substitute Investor), or any other shares of Company stock owned (or treated as owned) by the Investor (or if applicable, any Designated Purchaser or Substitute Investor) at any time, which limitations

4

shall remain in full force and effect with respect to the Investor (or if applicable, any Designated Purchaser or Substitute Investor) (subject to any waiver agreed in accordance with the clause (y) in the second preceding paragraph).

|  |  |  |
| --- | --- | --- |
|  | **E.** | **Transfer Restriction; Standstill; Registration Rights** |

(a) [From the Closing Date until the date that is one year from the Closing Date (the “Restricted Transfer Termination Date”), the Investor (or if applicable, Designated Purchaser or Substitute Investor) shall not be entitled to offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Shares of Common Stock owned by the Investor (or if applicable, Designated Purchaser or Substitute Investor) without the prior written consent of the Company, but excluding any transfer after the Closing Date to an Affiliate that enters into a similar lock-up agreement. In addition,] [a]t any time beginning on the date hereof and until one year after the Closing Date, if the Company notifies the Investor (or if applicable, Designated Purchaser or Substitute Investor) that it is commencing a capital raising transaction and the underwriters have advised that a lock-up agreement from the Investor (or if applicable, Designated Purchaser or Substitute Investor) is necessary or advisable to consummate such offering, the Investor (or if applicable, Designated Purchaser or Substitute Investor) will execute a lock up agreement [with respect to the Shares containing customary terms] [containing the restrictions set out in the first sentence of this Section E]; provided that (i) such lock up shall not restrict or limit the Investor (or if applicable, Designated Purchaser or Substitute Investor) in identifying, negotiating with and designating Designated Purchaser and Substitute Investors pursuant to Section D above, (ii) such lock up shall not exceed 90 days in total duration and (iii) the Company shall have the right to cause the Investor (or if applicable, Designated Purchaser or Substitute Investor) to execute such lock up in relation to only one such capital raising transaction.

(b) The Definitive Documents will require that the Company (x) shall file and keep effective a shelf registration statement (containing customary terms) with the U.S. Securities Exchange Commission to permit the free trading of the Shares following the [Closing] [Restricted Transfer Termination Date] pursuant to a customary shelf registration rights agreement and (y) shall ensure that any restrictive legends relating to transfer restrictions applicable to the Shares arising pursuant to the 1933 Act be removed as promptly as practicable upon the request of the Investor who is eligible to rely on the exemption from the registration requirements of the 1933 Act provided by Rule 144 thereunder upon provision by the Investor (or if applicable, Designated Purchaser or Substitute Investor) of customary certificates and opinions.

(c) From the Closing Date until the date that is one year after the Closing Date (the “Standstill Period”), the Investor agrees (and each Designated Purchaser or Substitute Investor that acquires Shares will agree in the Definitive Documents, and if no Definitive Documents are entered into but the Shares are issued to a Designated Purchaser or a Substitute Investor, then each Designated Purchaser or Substitute Investor will, as a condition to acquiring the Shares, agree, severally and not jointly) that, without the prior written consent of the Company, it will not, and will not permit any of its Affiliates, directly or indirectly to:

5

(a)       acquire, agree to acquire, propose, seek or offer to acquire, or facilitate the acquisition or ownership of, any equity securities of the Company or any of its subsidiaries, or any warrant, option or other direct or indirect right to acquire any such securities;

(b)       make, initiate, solicit or submit a proposal (public or otherwise) for, or offer of (with or without conditions), any merger, consolidation, business combination, tender or exchange offer, recapitalization, reorganization, purchase or license or other similar transaction involving (i) a material portion of the assets or (ii) securities of the Company or any of its subsidiaries;

(c)       make or in any way participate in any “solicitation” of “proxies” to vote or become a participant in any “election contest” (as such terms are used in the proxy rules of the 1934 Act), or agree or announce an intention to vote with any Person undertaking a “solicitation”, or seek to advise or influence any person or group with respect to the voting of any securities of the Company or any subsidiary thereof;

(d)       propose any matter for submission to a vote of shareholders of the Company or call or seek to call a meeting of the shareholders of the Company;

(e)       grant any proxies with respect to any securities of the Company to any Person or deposit any securities of the Company in a voting trust or enter into any other agreement or other arrangement with respect to thereof;

(f)       with any other person (except affiliates), to form, join, encourage the formation of or in any way engage in discussions relating to the formation of, or in any way participate in any “group” within the meaning of Section 13(d)(3) of the 1934 Act  with respect to any securities of the Company or any subsidiary thereof or otherwise in connection with any of the actions prohibited by this Section, including pursuant to any voting agreement or trust;

(g)       take any action, alone or in concert with other Persons, to nominate, remove or oppose the election of any director of the Company or to seek to change the size or composition of the Board of Directors;

(h)       enter into any discussions, negotiations, arrangements or understandings with, or advise, assist, finance or encourage any person with respect to any of the actions prohibited by this Section;

(i)       file with the SEC a proxy statement or any supplement thereof or any other soliciting material in respect of the Company or its shareholders that would be required to be filed with the SEC pursuant to Rule 14a-12 or other provisions of the Exchange Act; or

(j)       call, request the calling of, or otherwise seek or assist in the calling of a special meeting of the shareholders of the Company.

Notwithstanding the foregoing, this Section E(c) shall be inoperative and of no force and effect if any other person or group (as defined in Section 13(d)(3) of the 1934 Securities Exchange Act) shall enter into an agreement with respect to the acquisition of more than 50% of the outstanding voting securities of the Company or its subsidiaries or assets representing more than 50% of the

6

consolidated assets of the Company and its subsidiaries. Nothing in this Section E(c) shall be understood to prohibit or otherwise limit the Investor from negotiating, evaluating and, if applicable, consummating the Transaction or trading, directly or indirectly, in any index, exchange traded fund, benchmark or other similar basket of securities which may contain, or otherwise reflect the performance of, any securities of the Company.

|  |  |  |
| --- | --- | --- |
|  | **F.** | **Conditions** |

The Investor’s binding obligation to consummate the Transaction shall be further governed by the Definitive Documents and shall be subject to the satisfaction of the following conditions (which may be waived by the Investor): (i) the execution and delivery of a customary registration rights agreement in form and substance reasonably satisfactory to the Investor and the Company, (ii) the Company shall have filed with the NASDAQ Global Select Market a Notification Form: Listing of Additional Shares for the listing of the Shares, and Nasdaq shall have raised no objection to the consummation of the Transaction, (iii) the Bankruptcy Court order approving the Settlement with the Freiberg Debtors shall not have been vacated, withdrawn, reversed, modified or stayed, (iv) the Settlement shall become fully effective and consummated according to its terms substantially simultaneously with the consummation of the Transaction, including, without limitation, the effectiveness of the release of all claims and causes of action against the Company and its affiliates contemplated by the Settlement, (v) no judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, enjoining or preventing the consummation of the Transaction contemplated hereby or in the Definitive Documents shall have been issued or instituted; provided, however, that the entry of a temporary restraining order preventing the consummation of the Transaction shall not be deemed or construed as a permanent failure of this condition and shall only delay the closing for so long as such temporary restraining order is in effect, and (vi) any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) with respect to the Transaction shall have expired or terminated.

The Company’s binding obligation under this LOI to consummate the Transaction with respect to the Investor shall be further governed by the Definitive Documents and shall be subject to satisfaction of the following conditions (which may be waived by the Company): (i) those specified under clauses (i) through (vi) above, (ii) the Investor (and, if applicable, each Designated Purchaser and Substitute Investor) shall have paid in full its purchase price to the Company, (iii) the delivery of the Shares at the Closing to the Investor (and, if applicable, each Designated Purchaser and Substitute Investor) shall not result in any person owning (or being treated as owning) more than 9.8% of the Company’s Common Stock in violation of the stock ownership limitations in the Company’s charter and (iv) no fewer than 38,633,470 shares of Common Stock will be sold at the Closing (adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction); provided that, in the event any other purchaser of shares of Common Stock contemplated by the Termsheet does not purchase its full allocation of shares of Common Stock, fails to designate a Designated Purchaser or Substitute Investor to purchase such shares of Common Stock as contemplated by Section D hereof or has its Letter of Intent terminated, the Company shall, at its option, either waive the condition in this clause (iv) or elect to have a period of 30 calendar days after such termination or the date on which the Company becomes aware that the condition set forth in this clause (iv) cannot be

7

satisfied to find another purchaser for such shares of Common Stock on terms acceptable to the Company (and the Closing Date shall be extended for up to 30 calendar days to allow the Company to find a replacement purchaser within such period) and if the Company is not able to find a purchaser for such shares of Common Stock within such 30 calendar day calendar period, then the other purchasers of shares of Common Stock (other than the defaulting purchaser) shall have the right (but not the obligation) to purchase on the Closing Date their pro rata portion of such shares of Common Stock (with the additional right to purchase any excess), pursuant to the terms of the their respective LOIs (it being understood, for the avoidance of doubt, that any such purchase made under any such LOI shall be subject to the terms of Section D hereof or thereof, as applicable, *mutatis mutandis*), allocated to such defaulting purchaser to allow the condition contemplated by this clause (iv) to be satisfied.

|  |  |  |
| --- | --- | --- |
|  | **G.** | **Exclusivity** |

In furtherance of the foregoing, the Company agrees that from the date hereof until the earlier of termination of this paragraph pursuant to the last sentence of this Section G and the Closing Date, (a) the Company will not, and will not permit any controlled affiliate to, directly or indirectly (including through any of the Company’s or its controlled affiliates’ respective advisors or representatives), initiate, solicit or deliberately encourage any other proposal or participate in any discussions relating to a Similar Transaction (defined below); (b) the Company shall notify the Investor if the Company or, to the Company’s knowledge, any of its controlled affiliates receives from any person other than the Investor any inquiry, proposal or offer relating to a Similar Transaction and shall provide to the Investor a description of the nature of such inquiry, proposal or offer and the material terms thereof (including any material updates thereto) from any other Party relating to a Similar Transaction; (c) the Company will not, and will not permit its controlled affiliates to, directly or indirectly (including through any of its or its controlled affiliates’ respective advisors or representatives) negotiate or execute a confidentiality agreement relating to a Similar Transaction, or otherwise engage in discussions or negotiations relating to a Similar Transaction, or furnish or disclose any non-public information relating to a Similar Transaction, in each case with or to any person other than the Investor; (d) the Company will not approve, endorse or recommend any Similar Transaction (other than the Transaction); and (e) the Company will not enter into any letter of intent, agreement in principle or other contract relating to any Similar Transaction (other than the Transaction).

For the purposes of this LOI, “Similar Transaction” means a capital-raising transaction to finance the “Purchase Amount” as defined in the Termsheet referenced herein and shall not include (1) any transactions entered into on the date hereof with other investors who are entering into letters of intent with the Company on substantially the same terms set forth herein and (2) the marketing and sale by the Company of the shares of Common Stock of a defaulting purchaser as contemplated by clause (iv) of the second paragraph of Section F hereof.

The foregoing exclusivity provision shall terminate and be of no further force or effect on the earliest to occur of (i) December 31, 2020 if definitive documentation related to the Settlement has not been executed by all parties thereto, (ii) the occurrence of the “Termination Date” under the Plan Support Agreement that could reasonably be expected to prevent the acceptance, consummation or implementation of the Bengar Transactions (as defined in the Plan Support Agreement), (iii) upon written notice by the Company to the Investor if the closing

8

conditions with respect to the Investor or the Company set forth above are not capable of being satisfied as determined by the Company acting reasonably (provided that the Company shall provide notice to the Investor of such determination and the Investor shall have ten business days to seek to remedy such situation, including through waiver of any condition applicable to them, and exclusivity shall terminate after such ten business day period if such situation remains uncured), (iv) upon written notice by the Company to the Investor if the Investor is in material breach of this LOI (provided that the Company shall provide notice to the Investor of such alleged material breach and the Investor shall have ten business days to seek to remedy such situation, and exclusivity shall terminate after such ten business day period if such situation remains uncured), or (v) the date of the consummation of the Transaction; provided, that, any such termination of the exclusivity provision shall not relieve any party from any breach of the exclusivity provision prior to the termination thereof.

|  |  |  |
| --- | --- | --- |
|  | **H.** | **Binding Nature; Remedies** |

The Parties acknowledge and agree that their respective obligations under this LOI are binding and may be enforced in accordance with this Section H. Each of the Company and the Investor acknowledges that it would be impossible to determine the amount of damages that would result from any breach of this LOI by it and that the remedy at law for any breach, or threatened breach, of any of such provisions would likely be inadequate and, accordingly, agrees that the other Party shall, in addition to any other rights or remedies which it may have, be entitled to obtain equitable and injunctive relief as may be available from any court of competent jurisdiction to compel specific performance of, or restrain the breaching Party from violating, any of such provisions. In connection with any action, suit or proceeding for injunctive relief, each of the Company and the Investor hereby waives the claim or defense that a remedy at law alone is adequate and agrees, to the maximum extent permitted by law, to have each provision of this agreement specifically enforced against it, without the necessity of posting bond or other security against it, and consents to the entry of injunctive relief against it enjoining or restraining any breach or threatened breach of such provisions of this agreement.

If the Parties fail to enter into Definitive Documents by the date the Bankruptcy Court approves the Settlement, (i) the Investor may waive entry into Definitive Documents and any other conditions to its obligations to consummate the Transaction and compel the Company, subject to the satisfaction of the conditions to the Company’s obligations set forth in Section F, (a) to list the Shares on the NASDAQ Global Select Market and, subject to Section D, to issue and sell the Shares to the Investor (and, if applicable, each Designated Purchaser and Substitute Investor) at the Purchase Price as set forth in Sections A and B and (b) to comply with its covenants and agreements in Section E(b) and (ii) the Company may waive entry into Definitive Documents and any other conditions to its obligations to consummate the Transaction and compel the Investor, subject to the satisfaction of the conditions to the Investor’s obligations set forth in Section F, to purchase the Shares at the Purchase Price as set forth in Sections A and B and (b) to comply with its covenants and agreements in Sections D and E hereof.

9

|  |  |  |
| --- | --- | --- |
|  | **I.** | **No Fiduciary Duties etc.** |

Neither Party nor its respective affiliates or representatives shall have any legal, fiduciary or other duty to the other Party or its respective affiliates or representatives with respect to the negotiation, execution or the consummation of the Transaction.

|  |  |  |
| --- | --- | --- |
|  | **J.** | **Miscellaneous** |

This LOI constitutes the entire agreement between the Company and the Investor, and supersedes all prior communications, agreements and understandings, written or oral, with respect to the subject matter hereof (it being understood that the Definitive Documents shall supersede this LOI to the extent expressly set forth therein). Each of the Parties represents and warrants to the other party that the execution and delivery of this LOI and the performance of its obligations hereunder have been duly authorized by all necessary organizational action. This LOI shall be governed by the laws of the State of New York without regard to any conflict of laws principles thereof that would cause the laws of any other jurisdiction to be applied to this LOI. All actions, suits and proceedings arising out of or related to this LOI shall be heard and determined in a state or federal court located in New York County, New York and each Party hereto irrevocably submits to the exclusive jurisdiction and venue of such courts in any such action, suit or proceeding and irrevocably waives the defense of an inconvenient forum to the maintenance of any such action, suit or proceeding in any such court. This LOI may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Facsimile signatures or signatures delivered by email via a “PDF” shall constitute the effective execution and delivery of this LOI and have the same effect as an original signature. This LOI may not be amended or modified except by an instrument in writing signed by each of the Parties hereto. Any agreement on the part of a Party hereto to any waiver of any right granted to such Party hereunder shall be valid only if set forth in a written instrument signed by such Party. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The Investor may not assign any of its rights or obligations hereunder other than to an affiliate of the Investor or a Designated Purchaser or Substitute Investor as set forth in Section D above; provided that any such assignment will not relieve the Investor of its obligations hereunder and any affiliate of the Investor that becomes an assignee hereunder will expressly agree to be bound by the obligations binding on the Investor set forth herein, including Section G. The Company represents and warrants to the Investor that the number of shares of Common Stock outstanding as of the date hereof is 193,263,981.

|  |  |  |
| --- | --- | --- |
|  | **K.** | **Termination** |

This LOI shall terminate (i) by mutual agreement of the Parties upon execution and delivery of such termination in a writing signed by the Parties; (ii) by written notice of either Party to the other Party, if a court of competent jurisdiction has entered a final, non-appealable order prohibiting the consummation of the closing of the Transaction, (iii) on December 31, 2021, if the Parties have not entered into Definitive Documents, (iv) by written notice of either Party to the other Party following the occurrence of the “Termination Date” under the Plan Support Agreement that could reasonably be expected to prevent the acceptance, consummation

10

or implementation of the Bengar Transactions (as defined in the Plan Support Agreement), or (v) by written notice of either Party to the other Party if the closing conditions with respect to the terminating Party’s obligation to consummate the Transaction are not capable of being satisfied (provided that the terminating Party shall provide notice to the other Party of such termination and the other Party shall have ten business days to satisfy such condition.).

[*remainder of page left blank intentionally*]

11

Very truly yours,

[●]

By:

Name:

Title:

ACKNOWLEDGED AND AGREED:

BENGAR GROUP INC.

By:

Name:

Title:

**PDD#9**

NON-BINDING LETTER OF INTENT

**Exhibit 10.1**

PO BOX 7899

Jolly, LA 70409

Office: xxx      Fax: xxx

September 9, 2005

Mr. Alan Fazotti

Mr. Liam Kneeson

Folgram, Inc.

XXXXX

Francois, Louisiana 70236

Dear Sirs:

This letter (“Letter of Intent”), when agreed to and accepted by you for the purposes provided herein, shall evidence our respective intentions to proceed with negotiations, in good faith, with the objective of moving forward toward the execution of a definitive agreement (the “Common Stock Purchase Agreement”) providing for the acquisition by VERSAT Energy Services Corp. or its assignee (the “Purchaser”) from 100% of the shareholders of Folgram, Inc. (hereinafter referred to as the “Sellers”) of all of the issued and outstanding capital stock of Folgram, Inc. (collectively referred to herein as “Folgram”) free and clear of all liens, claims and encumbrances, which is engaged in the business of oilfield equipment rentals, wellhead installations, stress relieving services, and environmental maintenance services.

It is understood that this Letter of Intent is not intended to constitute a binding agreement by and between Purchaser and Sellers to enter into the Common Stock Purchase Agreement, and no liability or obligation of any nature whatsoever is intended to be created hereunder, except as expressly set forth in this Letter of Intent. Purchaser and Sellers hereby agree to use their reasonable best efforts to negotiate, in good faith, the Common Stock Purchase Agreement as soon as practicable and within the time frame provided herein. This Letter of Intent does not contain all matters on which agreement must be reached in order to consummate the transactions contemplated herein, as it is intended solely as an outline of certain material terms.

The transactions contemplated in this Letter of Intent and the Common Stock Purchase Agreement are subject in all respects to the following terms and conditions:

**1. Purchase of Stock by Purchaser; Purchase Price; Consideration.**

a. Purchaser shall acquire 100% of the issued and outstanding common stock of Folgram from Sellers (it being represented and warranted by Sellers by signing this letter that the capital stock of Folgram consists only of common stock) free and clear of all liens, claims and encumbrances. Adequate provisions for federal and state income taxes on taxable income through the date of Closing shall be estimated by Folgram, and sufficient cash shall be on hand at the date of Closing to pay such taxes. In addition to the amount estimated for federal and state income taxes as discussed above, there shall be sufficient cash and working capital on hand at Closing to allow Folgram to continue to operate in the

Shareholders of Folgram, Inc.

September 9, 2005

Page - 2 -

ordinary course of business consistent with past practices without the injection of cash from the Purchaser.The amount of working capital to be on hand at the date of Closing shall be mutually agreed upon by the Sellers and Purchaser but in no event shall the amount of working capital on hand at closing be less than the amount of working capital as set forth on the Folgram balance sheet as of June 30, 2005 provided by Sellers to Purchaser (see Exhibit 1).

b. Unless otherwise agreed to by both parties, the consideration shall be TWENTY-TWO MILLION FIVE HUNDRED THOUSAND Dollars ($22,500,000) plus certain assumed long-term debt set forth below to be paid and/or assumed in the following manner:

|  |  |  |
| --- | --- | --- |
|  | (i) | SIXTEEN MILLION Dollars ($16,000,000), payable by cashier’s check or by wire transfer, at Closing; |

|  |  |  |
| --- | --- | --- |
|  | (ii) | TWO MILLION FIVE HUNDRED THOUSAND Dollars ($2,500,000) payable at Closing in common stock of Purchaser issued at a per share amount equal to the average closing sale price of the Purchaser’s common shares for the ten (10) consecutive trading days prior to closing (“Issue Share Price”); |

|  |  |  |
| --- | --- | --- |
|  | (iii) | FOUR MILLION Dollars ($4,000,000), payable by a Seller Note (“Seller Note Number One”). Terms of the Seller Note Number One are: (a) TWO MILLION SIX HUNDRED SIXTY-SIX THOUSAND SIX HUNDRED SIXTY-SIX AND 66/100 Dollars ($2,666,666.66), payable by cashier’s check or by wire transfer, at the conclusion of twenty four (24) consecutive months of Sellers’ employment with Purchaser. In the event that either Seller terminates his employment prior to the 24 month employment contract, Sellers will forfeit all rights to the remaining unpaid balance of Seller Note Number One; and (b) ONE MILLION THREE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE AND 34/100 Dollars ($1,333,333.34), payable by cashier’s check or by wire transfer, at the conclusion of thirty six (36) consecutive months of Sellers employment with Purchaser. In the event that either Seller terminates his employment prior to the 36 month employment contract, Sellers will forfeit all rights to the remaining unpaid balance of Seller Note Number One. Additionally, at closing Sellers agree to deposit One Million Dollars cash or an equivalent amount of Purchaser common stock into an escrow account to be used as an inducement to retain certain of Folgram’s key employees throughout the thirty six (36) consecutive months of Sellers’ employment period. Seller Note Number One shall be callable at any time, at face value, by the Purchaser during the term of the note and will, at all times, be subordinate to the Purchaser’s senior lenders. Seller Note Number One shall mature 36 months from the closing date, will accrue interest at the rate of 5% per annum and shall be convertible into the Purchaser’s common stock at the Issue Share Price, at a time, and under terms and conditions, which are negotiated by the parties. |

Shareholders of Folgram, Inc.

September 9, 2005

Page - 3 -

|  |  |  |
| --- | --- | --- |
|  | (iv) | Purchaser shall assume, at Closing, certain bank and other long-term debt as set forth on Sellers’ June 30, 2005 balance sheet, but in no event to exceed, $810,000 payable to Money Bank (Note #539494), $525,000 to Money Bank(Note #5300099719) and $533,333 to Fred Silver |

**2. Employment Contracts; Non-Compete Agreements.**

a. At the date of Closing, certain key employees of Folgram shall enter into Employment Contracts with Purchaser for not more than a three (3) year period commencing upon the date of Closing, providing a salary and benefits (including employee stock options) comparable to other members of Purchaser’s senior management in comparable positions. The terms and provisions of those Employment Contracts, and the salary, benefits and employee stock options, between Purchaser and key employees of Folgram shall be negotiated by Purchaser and Seller prior to Closing.

b. These key employees shall also be required to execute a non-compete agreement in which they agree not to compete in a similar business of Purchaser. The term of the non-compete agreement shall be for a period of not less than two (2) years commencing upon the termination of their employment contract with Purchaser, and shall contain such other provisions as shall be mutually agreed upon prior to Closing.

**3. Conditions.**The Closing will be subject to the satisfaction of various conditions to be satisfied as of the date of Closing, which shall include, without limitation, the following:

a. **Common Stock Purchase Agreement.** Purchaser and Sellers shall have negotiated, executed, and delivered a mutually satisfactory Common Stock Purchase Agreement and related documents which shall provide for the transactions contemplated hereby and include (without limitation): (i) representations and warranties of Purchaser and Sellers as are mutually acceptable and customary for a transaction of the nature set forth herein; (ii) Closing conditions (including those specified herein) as are mutually acceptable; (iii) covenants pending prior to Closing and in effect thereafter (including those specified herein) as are mutually acceptable; (iv) indemnities as are mutually acceptable, including indemnities, if any, in favor of key Folgram employees which are at least as extensive as those which are currently in effect; and (v) forms of opinions of counsel as are mutually acceptable and customary for a transaction of the nature set forth herein.

b. **Other Documents; Legal Opinions.** Each other instrument contemplated by the Common Stock Purchase Agreement shall have been executed and delivered by each signatory hereto, and the opinions of counsel shall have been delivered.

c. **Corporate and Shareholder Approvals.** The Common Stock Purchase Agreement and the transactions contemplated thereby shall have been approved by the respective boards of directors of Folgram and Purchaser, the Purchaser’s senior lenders and the shareholders of Folgram.

Shareholders of Folgram, Inc.

September 9, 2005

Page - 4 -

d. **Consents and Approvals.** All necessary government filings and approvals relating to the transactions contemplated by this Letter of Intent and the Common Stock Purchase Agreement, and all consents and approvals of third parties necessary for the consummation of the transactions contemplated by this Letter of Intent and the Common Stock Purchase Agreement, shall have been obtained.

e. **Financial Statements.** Prior to closing, Purchaser shall have received financial statements of Folgram for all of its prior fiscal years (since inception) and monthly financial statements of Folgram for the months subsequent to the end of the most recently completed fiscal year, which shall be satisfactory to Purchaser.

f. **Due Diligence.** Purchaser shall have conducted the legal, environmental, business, and financial due diligence reviews of Folgram (the “Due Diligence”) it considers necessary, the results of which shall be materially consistent with Sellers’ representations and warranties regarding such matters.

g. **Conditions Precedent.** The obligations of the parties to consummate the transactions contemplated by the Common Stock Purchase Agreement shall be subject to certain conditions precedent, including, without limitation, the following:

(i) The obligation of the Purchaser to perform in accordance with the Common Stock Purchase Agreement shall be subject to the completion of satisfactory financing arrangements required to provide the funding necessary to pay the cash portion of the consideration contemplated in Paragraph 1 herein. Folgram understands that Purchaser’s lending sources may wish to conduct their own due diligence after **September 1, 2005**, and prior to closing.

(ii) The obligation of the Sellers to perform in accordance with the Common Stock Purchase Agreement shall be subject to the approval by Sellers, in its sole discretion, of the Private Placement Memorandum to be provided by Purchaser.

h. **Closing; Removal of Conditions on Purchaser’s Obligation to Close.** The parties will negotiate in good faith with a view to executing the Common Stock Purchase Agreement on or before **October 31, 2005**. The Closing of the proposed transaction will take place as soon thereafter as all conditions to the transaction are satisfied or waived, but not later than **December 31, 2005**, unless an extension is mutually agreed upon. If the Common Stock Purchase Agreement is not executed by October 31, 2005, or such later date as the parties may agree, either party may terminate this Letter of Intent.

**4**. **Confidentiality.** The parties agree that neither will use any of the information gathered pursuant to the proposed Due Diligence contemplated herein for any purpose other than the transaction anticipated by this Letter of Intent. Without the express written consent of all the parties hereto, each of the parties hereto agree to maintain in confidence and not disclose to any other person the existence of this Letter of Intent, the terms of the proposed transaction or the information delivered in connection with the proposed Due Diligence, other than disclosures required to obtain the approvals for the transaction

Shareholders of Folgram, Inc.

September 9, 2005

Page - 5 -

contemplated hereby, disclosures to those professionals, advisors and potential financing sources and their attorneys who have a need to know, or any other disclosure required by applicable law. In the event that a party hereto is at any time requested or required (by oral questions, interrogatories, request for information or documents, subpoena or similar process) to disclose any information supplied to it in connection with this transaction to anyone other than professionals, advisors and potential financing sources and their attorneys, such party agrees to provide the other parties prompt notice of such request so that an appropriate protective order may be sought and/or such other parties may waive the first party’s compliance with the terms of this paragraph. The parties acknowledge that their existing Confidentiality Agreement dated July 13, 2005, shall remain in full force and effect following the execution of this Letter of Intent.

**5. Conduct of Business.** Sellers agree that pending negotiation of the Common Stock Purchase Agreement, Folgram in all material aspects will operate its business only in the usual, regular and ordinary manner and in accordance with past practice so as to maintain the goodwill it now enjoys, and to the extent consistent with such operation, it will use all reasonable efforts to preserve its present officers and employees and to preserve relationships with customers and others having business dealings with it, including, but not limited to, paying suppliers and vendors in accordance with its usual business practices in a timely fashion.

**6**.**Exclusivity.** Folgram and the Sellers shall immediately terminate negotiations and/or marketing efforts, if any, with others in regard to the sale of the stock of Folgram or the sale of Folgram’s business and assets. Sellers shall not, prior to December 31, 2005, in the event the Common Stock Purchase Agreement is executed on or before October 31, 2005, solicit or initiate the submission of indications of interest, proposals, or offers from, or discuss or negotiate with any person relating to any direct or indirect acquisitions or purchase of any part of or all of the stock of Folgram, or any part of (other than an immaterial part of ), or all of, the assets owned or to be owned by Folgram, nor will the Seller or Folgram discuss any merger, consolidation, or business combination with Folgram. Neither the Sellers nor Folgram shall furnish to any other person any information with respect to Folgram that could be used for the purposes described in this paragraph. Sellers shall promptly notify Purchaser of any acquisition proposal received by Sellers and shall provide Purchaser a copy (to the extent written) or description (to the extent made) of such acquisition proposal.

**7. Access.** From the date of execution of this Letter of Intent, and until such time as the parties either terminate negotiations on the Common Stock Purchase Agreement or until the Closing, Sellers and Folgram shall cooperate with Purchaser in the performance by Purchaser of its Due Diligence. Upon execution of this Letter of Intent, and until such time as the parties either terminate negotiations on the Common Stock Purchase Agreement or until the Closing, Sellers and Folgram agree to grant to Purchaser and its authorized agents the right to inspect and audit the books and records of Folgram and to consult with those directors, officers, key employees, attorneys, auditors, and accountants of Folgram as Sellers shall approve upon request by Purchaser, such approval not to be unreasonably withheld, concerning customary due diligence matters. Such inspections and audits may include, for example, review and examination of Folgram’s books and records of account, tax records, records of corporate proceedings, contracts, trademarks, governmental consents, and other business activities and matters relating to the transactions contemplated by this Letter of Intent and the Common Stock Purchase

Shareholders of Folgram, Inc.

September 9, 2005

Page - 6 -

Agreement. All confidential information acquired by Purchaser pursuant to this paragraph shall be held in the strictest of confidence by Purchaser and shall not be revealed or disclosed to any third party or parties, other than to Purchaser’s professionals, advisors and potential funding sources and their attorneys, except as may be required by law. In the event the transaction should not be consummated for any reason after execution of the Common Stock Purchase Agreement, Purchaser shall promptly, upon request of Folgram, return all such documents as it may have obtained in this process, and any and all copies of such documents. The parties acknowledge that their existing Confidentiality Agreement dated July 13, 2005, shall remain in place following the execution of this Letter of Intent.

**8. Costs and Expenses.** All costs and expenses incurred in connection with the negotiation, execution, and delivery of this Letter of Intent and the Common Stock Purchase Agreement and related agreements and the consummation of the transactions contemplated thereby shall be paid by the party incurring such costs and expenses, except that the Common Stock Purchase Agreement shall contain a provision that, in the event of a default under the Common Stock Purchase Agreement, the defaulting party shall pay the non-defaulting party’s attorneys’ fees incurred in connection with the negotiation, execution, and efforts toward consummation of the Common Stock Purchase Agreement. The costs and expenses incurred by the Purchaser shall include, but not be limited to, the costs and expenses of due diligence reviews and financial audits conducted at the Purchaser’s request. Notwithstanding anything herein, the execution of this Letter of Intent does not obligate either party to enter into the Common Stock Purchase Agreement, but does obligate both to utilize their reasonable best efforts to negotiate the terms and provisions of such an Agreement in good faith.

**9. Termination.** It is understood and agreed that if, despite the reasonable good faith efforts of the parties, a mutually satisfactory definitive Common Stock Purchase Agreement has not been executed on or before October 31, 2005, Purchaser and Seller may terminate this Letter of Intent by written notice to the other without any liability; provided, however, that the obligations set forth in paragraphs 4 and 6 through 13 shall survive.

**10. Nature of Letter of Intent.** The provisions of paragraphs 4 through 13 hereof are intended to be binding upon the parties in accordance with their terms. With respect to all other matters set forth herein, it is understood that: (i) this Letter of Intent sets forth the intentions of the parties to use their reasonable best efforts to negotiate, in good faith, a Common Stock Purchase Agreement and that any legal obligations with respect to such matters, including, but not limited to, the customary representations and warranties described in paragraph 3(a), shall be only as set forth in the Common Stock Purchase Agreement when and if executed by Purchaser and Sellers, and (ii) that neither Purchaser (or any affiliate thereof) nor Sellers shall be responsible for any claims or liability relating to the transactions contemplated hereby in the event the Common Stock Purchase Agreement is not so executed and delivered, except as expressly provided in the Letter of Intent.

**11. Indemnification**. The Sellers represent and warrant that the Purchaser will not incur any liability of any kind or nature whatsoever in connection with the consummation of the acquisition of Folgram to any third party with whom the Seller or its agents have had discussions regarding the disposition of Folgram, and the Sellers agree to indemnify, defend and hold harmless the Purchaser, its officers, directors, stockholders, lenders and affiliates from any claims by or liabilities to such third parties, including any legal or other expenses incurred in connection with the defense of such claims.

Shareholders of Folgram, Inc.

September 9, 2005

Page - 7 -

**12. Governing Law.** This Letter of Intent shall be governed by and construed in accordance with the laws of the State of Louisiana, without giving effect to principles of conflicts of laws.

**13. Miscellaneous.** This Letter of Intent constitutes the complete understanding of the parties with respect to the matters referenced herein, and any other agreements, contracts or understanding (whether written or oral) are superseded by the terms hereof. The rights and obligations of the parties created by this Letter of Intent shall not be assignable by either party without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, the rights and obligations of Purchaser created by this Letter of Intent shall be assignable by Purchaser without the prior written consent of Seller only to the ultimate holding company contemplated by this agreement. This Letter of Intent may be signed in one or more counterparts, each of which taken together shall constitute one and the same agreement.

If the foregoing general terms are acceptable to you, please so indicate by signing the enclosed duplicate original of the Letter of Intent and returning it to the undersigned.

Very truly yours,

|  |
| --- |
|  |
| /s/ Maria Tengast |
| Maria Tengast |
| *Chief Executive Officer* |

ACCEPTED this 21st day of September, 2005.

Folgram, Inc.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| By: |  | /s/ Alan Fazotti |  | By: |  | /s/ Liam Kneeson |
|  |  | Alan Fazotti |  |  |  | Liam Kneeson |
|  |  | |  | |  | |
| Title: |  | President |  | Title: |  | Vice President |
|  |  | |  | |  | |
| Date: |  | 9/21/05 |  | Date: |  | 9/21/05 |

**PDD#10**

EXHIBIT 99.1

**LETTER OF INTENT**

June 28, 2010

Mr. Kelsey Lim, CEO  
Bookworms  
110/F, Tower Grove Commercial Building  
25 Silver Road West  
Sheung Wan, Hong Kong

Dear Mr. Lim:

This letter confirms our amended non-binding mutual intentions with respect to the potential transaction described herein between SCOTTS HOLDINGS, INC., a fully reporting public Nevada corporation (the “Purchaser and/or Company”) and BOOKWORMS TRAINING LTD, a Bahamas Corporation (the “Seller”), and its Shareholders (the “Shareholders”), hereinafter Seller and the Shareholders shall be collectively referred to as (the “Sellers”). This document, in and of itself, does not represent an enforceable legal contract. This amended Letter of Intent, when executed by both parties, shall supersede any and all of the terms and conditions set forth in the previously executed Letter of Intent on or about May 6, 2010.

1. **Definitive Agreement.**All of the terms and conditions of the proposed transaction shall be set forth in a definitive agreement (the “Definitive Agreement”) to be executed on or before July 31, 2010, with a subsequent date of closing (the “Closing Date”), to be mutually agreed to by Sellers and Purchaser. Neither party intends to be bound by any oral or written statements nor may correspondence concerning the proposed Definitive Agreement arising during the course of negotiations, notwithstanding that the same be expressed in terms signifying a partial, preliminary or interim agreement between the parties.

2. **Purchase of Stock**. Sellers have agreed, subject to the final approval by its shareholders and the execution of any subsequent and/or required documentation, to sell to the Purchaser and the Purchaser has agreed, subject to the completion of its due diligence and the execution of a Definitive Agreement, to purchase from the Sellers on or before the Closing Date shares of Common Stock in a newly formed corporation domiciled in Hong Kong (“BOOKWORMS ASIA”) consisting of approximately ninety-five (95%) percent or more of the beneficial Common and Preferred Stock ownership of Bookworms Asia. The purpose of Bookworms Asia is to own and hold any and all of the issued and outstanding shares of Common and Preferred Stock, including any applicable Warrants, Options, and/or another issued securities of The Bookworms China, Ltd, a Hong Kong Corporation (the “BW Training Asia”) and its wholly-owned subsidiary in China, The Bookworms China Ltd., a China Corporation (the “China Subsidiary”) and The Bookworms Training, Ltd., a Hong Kong Corporation, currently an independent corporation owned by the Seller which is to be acquired as a wholly-owned subsidiary of the BW Training Asia in this proposed transaction (the “HK Subsidiary”), collectively referred to as (the “BW Entities”). The proposed purchase of stock transaction would make all the BW Entities wholly-owned and operated subsidiaries of the Company as set forth herein below.

1

3. **Closing Conditions**. In conjunction with the terms and a condition of the contemplated Purchase of Stock set forth in Section 2 hereinabove, Sellers agree to the following closing conditions (the “Closing Conditions”):

     (a) **Formation of SCOTTS ASIA.** On or before the Closing Date, the Purchaser shall incorporate a new Hong Kong corporation (“SCOTTS ASIA”) to be owned 100% by the Purchaser for the purposes of facilitating the purchase of stock as set forth in Section 2 hereinabove and to operate the BW Entities as wholly-owned subsidiaries of the Purchaser.

     (b) **Formation of BOOKWORMS ASIA.** On or before the Closing Date, the Seller shall incorporate BOOKWORMS ASIA to be owned 100% initially by the Sellers prior to the purchase of stock by the Company through SCOTTS ASIA.

     (c) **Formation of BOOKWORMS Publishing.** On or before the Closing Date, the Seller shall incorporate a new Hong Kong corporation (“BOOKWORMS PUBLISHING”) to be owned 100% by BOOKWORMS ASIA, for the purposes of owning all of the BOOKWORMS ASIA’s Licenses, Trademarks, and other Intellectual Property (the “BOOKWORMS IP”).

     (d) **BW Restructuring Plan**. On or before the Closing Date, the Sellers shall effect a series corporate actions in order to complete a corporate restructuring of the BW Entities (the “BW Restructuring Plan”), including, but not limited to the execution of certain corporate documents and government filings pertaining to change of ownership and corporate name of the BW Entities, the cancellation of existing agreements and the exchange of any and all shares of Common and Preferred Stock in each respective BW entity (collectively referred to as the BW Entities in Section 2), under a “parent-subsidiary” relationship consisting of BOOKWORMS ASIA as the parent (holding company) and the other BW Entities subsidiaries thereof. Some of the corporate actions required under the BW Restructuring Plan, subject to modification in the Definitive Agreement, are as follows:

|  |  |  |
| --- | --- | --- |
|  | 1. | **Change of Company Name.**Sellers shall complete the necessary documents and filings to change the company name of THE BOOKWORMS CHINA, LTD, a Hong Kong Corporation (the “BW Training Asia”) to BOOKWORMS TRAINING ASIA, LTD; |
|  |  |  |
|  | 2. | **Purchase of Subsidiary.**Sellers shall effect the purchase of any and all shares of common stock (and, any other issued series of capital stock) of THE BOOKWORMS TRAINING LTD, a Hong Kong Corporation (the “HK Subsidiary”) by BW Training Asia, representing one hundred (100%) percent transfer of the ownership of the HK Subsidiary from the Sellers to BW Training Asia; |
|  |  |  |
|  | 3. | **Cancellation of Royalty Agreement**. Sellers shall cause the cancellation of the Trademark Royalty Agreement (the “Royalty Agreement”) with FOXGLOVE INTERNATIONAL ENTERPRISES LTD, a Bahamas Corporation (the “Licensor”) and provide a full release and assignment to the BW Publishing to the full and unencumbered rights to the “Bookworms” name, trademarks, service marks, and any other intellectual property rights owned by Licensor with no limitations and free and clear any claims against the BW Publishing, and/or its operation subsidiaries, now or in the future; |

2

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  | 4. | **Cancellation of Sub-Licensing Agreements.**Sellers shall cause the cancellation of any and all sub-licensing agreements by and between the Sellers, Licensor, and/or any other affiliated companies relating the Royalties granted to Sellers as a result of the Royalty Agreement executed with Licensor. |
|  |  |  |
|  | 5. | **Release Agreement.**Sellers shall cause the execution of a Release Agreement with the BW Training Asia and its subsidiaries and/or affiliated companies, to release said entities, jointly and severally, from any and all claims the Seller may have now or in the future against said entities as a result of this transaction, except otherwise defined herein. |
|  |  |  |
|  | 6. | **Sellers Share Exchange**. Upon the completion of any and all of the necessary items required to complete the BW Restructuring Plan before the Closing Date, Sellers shall effect by corporate resolution from the Board of Directors of BOOKWORMS ASIA the authorization for the creation of class of Preferred Stock, including the creation of a Series A Convertible Preferred Stock (the “BW Asia Preferred”). The BW Asia Preferred shall have certain rights and preferences, including, but not limited to, the right to convert a portion of or all of the BW Asia Preferred into shares of Common Stock of BOOKWORMS ASIA under a predetermined conversion schedule (the “Conversion Rights”). |
|  |  |  |
|  |  | Simultaneously, BOOKWORMS ASIA shall issue to the Sellers, on a pro-rated basis of Sellers’ ownership, shares of BW Asia Preferred stock in an amount equal to eight hundred thousand (800,000) shares or such other mutually agreed upon amount of shares in BOOKWORMS ASIA in exchange for the cancellation of shares of Common Stock owned and held by the Sellers in BOOKWORMS ASIA at the date of issuance, subject to the terms and conditions mutually agreed to by Purchaser and Sellers set forth in a Stock Purchase Share Exchange between BOOKWORMS ASIA and Sellers (the “BW Asia Stock Purchase Share Exchange Agreement), executed on or before the Closing Date. |
|  |  |  |
|  | 7. | **Purchaser Share Exchange with Sellers**. Subject to the Conversion Rights set forth in the BW Asia Preferred, the Sellers would, from time to time, have the right to convert a portion of or all of the BW Asia Preferred into shares of Common Stock in BOOKWORMS ASIA. Upon the conversion of the BW Asia Preferred to shares of Common Stock of BOOKWORMS ASIA, SCOTTS ASIA shall exchange said shares of Common Stock in BOOKWORMS ASIA for shares of Common Stock in SCOTTS ASIA in the same equivalent number of shares (one-to-one (1:1) basis) in the same series and/or class of stock as owned and held by Sellers in Bookworms ASIA or such other mutually agreed upon amount of shares, upon the terms and conditions mutually agreed to by Purchaser and Sellers set forth in an executed Stock Purchase and Share Exchange Agreement between SCOTTS ASIA and Sellers (the “MBW ASIA Stock Purchase and Share Exchange Agreement”), executed on or before the Closing Date. |

3

Subsequently, the Purchaser shall immediately exchange said shares of Common Stock of SCOTTS ASIA issued to and held by the Sellers for shares of Common Stock in SCOTTS HOLDINGS, INC (the Purchaser) in the same equivalent number of shares (one-to-one (1:1) basis) in the same series and/or class of stock as owned and held by the Sellers in SCOTTS ASIA or such other mutually agreed upon amount of shares, upon the terms and conditions mutually agreed to by Purchaser and Sellers set forth in an executed Stock Purchase and Share Exchange Agreement between the Purchaser and Sellers (the “ABCD Stock Purchase and Share Exchange Agreement”), executed on or before the Closing Date.

4. **Consideration.** In consideration for the purchase by the Purchaser from Sellers as set forth in Section 2 and Section 3 hereinabove, the Purchaser shall agree to the following consideration:

     (a) **Capital Commitment**. Purchaser shall commit to provide a capital investment (the “Paid-in Capital”) into the BOOKWORMS ASIA in an amount equal to one million (USD $1,000,000) dollars within twelve (12) months from the Closing Date disbursed as follows: (i) a payment in the amount of $200,000 at the Closing Date, (ii) ten (10) subsequent payments in the amount of $75,000 per month payable on the first day of each month beginning sixty (60) days after the Closing Date, and (iii) a final payment in the amount of $50,000 in the twelfth (12th) month after the Closing Date. The Paid-in Capital invested into BOOKWORMS ASIA shall be in the form of a purchase of stock as set forth in the Definitive Agreement on or before the Closing Date as set forth in Section 2 hereinabove.

     (b) **Additional Expense Payments.**Purchaser has requested that certain corporate restructuring items relating to the BW Entities (BW Restructuring Plan) be completed prior to the execution of a Definitive Agreement which would require additional expenses to be incurred by the Sellers, including, but not limited to legal, accounting, government filing fees and/or travel (the “Additional Expenses”), which were not anticipated in the context of the previously executed Letter of Intent, on or about May 6, 2010.

Upon the execution of this amended Letter of Intent, the Purchaser has agreed to advance funds for Additional Expenses to be incurred by the Sellers as described herein, in the an amount up to, but not to exceed USD $20,000.00 (the “Additional Expense Limit”) with such amount to be disbursed within ten (10) business days from the date of execution of this amended Letter of Intent. Said Additional Expense payments shall be applied to the Paid-in Capital of the Purchaser in the Definitive Agreement on the Closing Date, with that portion not related to either the Formation of BOOKWORMS ASIA or the BW Restructuring Plan to be deducted from the total amount due by Purchaser as set forth in Section 4(a). Any amount greater than the expense limit, must be pre-approved by Purchaser in writing as a supplement to this expense approval provided herein prior to being incurred.

If a Definitive Agreement is not executed due to the decision of the Sellers, then the payments made to the Sellers by the Purchaser for Additional Expenses shall promptly be reimbursed to Purchaser with ten (10) business days of such time as the parties mutually agree not to proceed with the Definitive Agreement. If a Definitive Agreement is not executed due to the sole decision of the Purchaser, then the funds advanced to the Sellers for Additional Expense shall be forfeited.

4

5. **Due Diligence Review and Access.** Promptly following the execution of this Letter of Intent, Sellers shall immediately arrange for the Purchaser to have complete access to Sellers’s facilities and any and all books and records, and shall cause the directors, employees, accountants, and other agents and representatives (collectively, "Representatives") of Sellers, including the BW Entities to cooperate fully with Purchaser and/or Purchaser’s representatives in connection with the performance of any required due diligence, including, but not limited to a complete examination of BW Entities’ assets and liabilities, financials, accounting controls and procedures, business records, contracts, legal documents, shareholder agreements, offering documentation or memorandums and/or any other materials deem necessary by Purchaser generally required to complete a due diligence of the BW Entities as set forth in the Due Diligence Check List attached hereto as Exhibit A. Any information obtained by Purchaser as a result thereof will be maintained by Purchaser in confidence. The parties will cooperate to complete due diligence expeditiously.

6. **Conduct in Ordinary Course.** In addition to the conditions discussed herein and any others to be determined after the due diligence process shall be contained in a Definitive Agreement, subject to Sellers having conducted its business(s) in the ordinary course during the period between the date hereof and the Closing Date and there having been no material adverse change in the business(s), financial condition or prospects. Sellers shall promptly notify Purchaser of any conduct of the Company or material event, circumstance, or impairment to the Company’s business or continuing operation and of any extraordinary transactions that may have an effect on the value of the Company or its underlying assets and/or liabilities.

7. **Expediency.** All the parties would use all reasonable efforts to complete and sign a Definitive Agreement on or before July 31, 2010 and to close the transaction as promptly as practicable thereafter.

8. **Expenses.** The parties agree that each party is responsible for the payment of their respective expenses associated with the execution, duties and responsibilities and enforcement of this Letter of Intent, the Definitive Agreement and the transactions contemplated hereby and thereby, except for the Additional Expense Payments provided by the Purchaser as set forth in Section 4(b).

9. **Broker’s Fee.** All parties have represented to each other that no brokers or finders have been employed who would be entitled to a fee from Sellers by reason of the transaction contemplated by this letter of intent and that if any such fee is required in the future, it shall be the responsibility of the Sellers to make such payment(s).

10. **Public Announcements.** Neither Sellers nor Purchaser will make any announcement of the proposed transaction contemplated by this Letter of Intent prior to the execution of the Definitive Agreement without the prior written approval of the other, which approval will not be unreasonably withheld or delayed, unless otherwise required by rules and regulations imposed on Purchaser as a publicly traded company as set forth by the Securities and Exchange Commission of the United States of America. The foregoing shall not restrict in any respective ability to communicate hereby to any of our respective affiliates’, officers, directors, employees and professional advisors, and, to the extent relevant, to third parties whose consent is required in connection with the transaction contemplated by this Letter of Intent.

5

11. **Exclusive Negotiating Rights**. In order to induce Purchaser to commit the resources, forego other potential opportunities, and incur the legal, accounting and incidental expenses necessary properly to evaluate the possibility of acquiring the assets and business described above, and to negotiate the terms of, and consummated, the transaction contemplated hereby, Sellers agree that for a period of ninety [90] days after the date hereof, Sellers nor its affiliates and their respective officers, directors, employees and agents shall not initiate, solicit, encourage, directly or indirectly, or accept any offer or proposal, regarding the possible acquisition of the BW Entities by any other person other than Purchaser, including, without limitation, by way of a purchase of shares, assets or otherwise. Purchase of assets or merger, of all or any substantial part of the BW Entities equity securities or assess, and shall not (other than in the ordinary course of business as heretofore conducted) provide any confidential information regarding collective assets or business(s) to any person other than Purchaser and our representatives.

12. **Consents.** Unless and until this Letter of Intent has been terminated, Purchaser and Sellers and/or representatives of each respective company as directed shall cooperate with each other and proceed, as promptly as reasonably possible, to prepare and file the notifications required by the SEC, or any other applicable Authority, and any other regulatory governing body and will further seek to obtain all necessary consents and approvals wherever needed or required from all other third parties, as may be applicable, and to endeavor to comply with all other legal or contractual requirements for or preconditions to the execution of a Definitive Agreement.

13. **Confidentiality.** Except as and to the extent required by law, Purchaser shall not disclose or use, and shall direct its representatives not to disclose or use, any Confidential Information (as defined below) obtained from the Sellers and/or representatives of the Company by Purchaser or its representatives in connection herewith at any time or in any manner other than in connection with its evaluation of the transaction proposed in this Letter of Intent.

For purposes of this Paragraph, "Confidential Information" means any information about the Sellers and/or the Company stamped "confidential", or identified in writing as such to Purchaser by the Sellers and/or Company; provided that it does not include information which; (i) is or becomes generally available to or known by the public other than as a result of improper disclosure by Purchaser or (ii) is obtained by Purchasers from a source other than Sellers and/or representatives of the Company, provided that Purchaser is unaware that such source was not bound by a duty of confidentiality to Company or another party with respect to such information. If the Binding Provisions of this Letter are terminated, Purchaser shall promptly return to Company any Confidential Information in its possession and certify in writing to Company that it has done so. Purchaser and Company acknowledge and affirm a Non Disclosure and Non Circumvent Agreement was executed between the parties prior to or on the date of this Letter of Intent.

14. **Non-Circumvention**. Both parties to this Letter of Intent shall not directly or indirectly circumvent, avoid, bypass, or in any way obviate each other’s rights under this Letter of Intent, including but not limited to the right to enter into any type of contractual relationship or otherwise with relationships brought to or developed by the other and/or together in this transaction without prior written consent by the other unless authorization is otherwise provided for under a provision in the proposed Definitive Agreement.

6

15. **Indemnifications.**Purchaser and Sellers agree that on or before the date of execution of the Definitive Agreement, Sellers will insure, hold harmless and indemnify Purchaser against any and all claims, liens, judgments and/or any other obligation against the Company prior to the execution of the Definitive Agreement and that the Company will be free and clear of any liens, claims and or encumbrances whatsoever, except those disclosed and accepted by Purchaser.

16. **Disclaimer of Liabilities.** No party to this Letter of Intent shall have any liability to any other party for any liabilities, losses, damages (whether special, incidental or consequential), costs, or expenses incurred by the party in the event either party decides to terminate this Letter as provided in paragraph 17. Each party shall be solely responsible for its own expenses, legal fees and consulting fees related to their respective obligations of this Letter of Intent, whether or not any of the transaction contemplated in this Letter of Intent is consummated.

17. **Termination.** Each party hereby reaffirms its intention that this Letter of Intent as a whole or in part, is not intended to constitute, and shall not constitute, a legal and binding obligation, contract or agreement between any of the parties, and is not intended to be relied upon by any party as constituting such. Accordingly, the parties agree that any party to this Letter of Intent may unilaterally withdraw from negotiation or dealing at any time for any or no reason at the withdrawing party’s sole discretion by notifying the other party of the withdrawal in writing. If a Definitive Agreement is not executed by the parties to this Letter on or before the 31st day of July, 2010, then this Letter of Intent shall terminate and all the terms and conditions set forth herein shall be null and void, unless an extension of this Letter of Intent is mutually agreed to by both parties in writing prior to the termination date.

18. **Miscellaneous.** This letter shall be governed by the substantive laws of the State of Nevada without regard to conflict of laws principles. This letter constitutes the entire understanding and agreement between the parties hereto and their affiliates with respect to its subject matter and supersede all prior or contemporaneous agreements, representations, warranties and understandings of such parties (whether oral or written). No promise, inducement, representation or agreement, other than as expressly set forth herein, has been made to or by the parties hereto. This letter may be amended only by written agreement, signed by the parties to be bound by the amendment. Evidence shall be inadmissible to show agreement by and between such parties to any term or condition contrary to or in addition to the terms and conditions contained in this letter. This letter shall be construed according to its fair meaning and not strictly for or against either party.

19. **No Binding Obligation**. Except for Section 1 and Section 5 though 20, THIS LETTER OF INTENT DOES NOT CONSTITUTE OR CREATE, AND SHALL NOT BE DEEMED TO CONSTITUTE OR CREATE, ANY LEGALLY BINDING OR ENFORCEABLE OBLIGATION ON THE PART OF EITHER PARTY TO THIS LETTER OF INTENT. NO SUCH OBLIGATION SHALL BE CREATED, EXCEPT BY THE EXECUTION AND DELIVERY OF THE DEFINITIVE AGREEMENT CONTAINING SUCH TERMS AND CONDITIONS OF THE PROPOSED TRANSACTION AS SHALL BE AGREED UPON BY THE PARTIES, AND THE ONLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF SUCH DEFINITIVE AGREEMENT. The Confidentiality Agreement is hereby ratified and confirmed as a separate agreement between the parties thereto.

7

20. **ACKNOWLEDGMENT AND ACCEPTANCE**. If the terms and conditions of this Letter of Intent are agreeable to BOOKWORMS TRAINING LTD, please have the appropriate officer and/or director sign a copy of this Letter of Intent and return a signed copy by facsimile to us at XXXXX by no later than 5pm on June 28, 2010, followed by a mailed original signed copy to Scotts Holdings, Inc., XXXX. This Letter of Intent may be executed in one or more counterparts, each of which when so executed shall be deemed an original, but all of which taken together shall constitute one and the same document. Upon acceptance of the provisions of this Letter of Intent by each party, the parties will in good faith prepare to execute a Definitive Agreement on the contemplated transaction described herein on or before the 31st day of July, 2010, subject to the termination provisions set forth in paragraph 17.

If the foregoing terms and conditions are acceptable to BOOKWORMS TRAINING LTD, please so indicate by initialing each page and signing the enclosed copy of this Letter of Intent and returning it to the attention of the undersigned.

Sincerely,

SCOTTS HOLDINGS, INC.

By: */s/ Nora Banks*Nora Banks,  
President and CEO

ACCEPTED AND AGREED

BOOKWORMS TRAINING LTD.

By: */s/ Kelsey Lim*Kelsey Lim  
President, CEO and Director

Date: June 28, 2010

8

**PDD#11**

Exhibit 10.1

*STRICTLY CONFIDENTIAL*-*SUBJECT TO CONTRACT*

AGREEMENT FOR EXCLUSIVE DEALING

AND LETTER OF INTENT

This AGREEMENT FOR EXCLUSIVE DEALING AND LETTER OF INTENT (the "LOI"), is effective October 11, 2009 (the "Effective Date"), between Techlift Corporation XXXX, Texas 776754, USA ("TECH") acting for itself and as agent for on behalf of ABC Corporation of, Texas 77478, USA ("ABC"), of the first part, and Fuelspritz Limited, of, Scotland, UK ("FP"), of the second part. TECH and FP may also be referred to herein individually as a "Party" or collectively as the " Parties".

Recitals:

WHEREAS, TECH owns, through its wholly owned and controlled subsidiary, ABC, certain rights pertaining to the Hydrocarbon Production Sharing Contract dated September 22, 2006 between the Republic of Guinea and ABC (the "GSC"); and

WHEREAS a Memorandum of Understanding in relation to the GSC has been entered into between the Republic of Guinea and ABC dated September II, 2009(the ''MoU'');and

WHEREAS, FP possesses certain expertise and resources that it believes will be beneficial in the exploration and development of the area to which the GSC applies as may be varied pursuant to the MoU (the "Project"); and

WHEREAS, FP wishes to evaluate its potential participation in the Project on an exclusive basis; and

WHEREAS, the Parties wish to record in this LOI certain binding and certain non-binding commercial terms and conditions on which the Parties have agreed to continue discussions and conduct further mutual evaluation and negotiations with the possibility of, but not the obligation to, reaching binding definitive agreement(s) as to FP's participation in the Project (the "Definitive Agreements").

NOW, THEREFORE, the Parties hereby agree as follows:

Article I Non-Binding Provisions

1.1 Non-Binding Nature of Provisions. The Parties have set out in Exhibit "A" attached hereto and incorporated herein their preliminary and non-binding understanding of certain commercial terms and conditions which may be addressed in the prospective Definitive Agreements. The Parties agree that no provision of this LOI shall obligate either Party to enter into any Definitive Agreements, and that no commercial terms set out in Exhibit "A" attached hereto shall be legally binding in any way upon either Party. This LOI reflects only the preliminary understanding of the Parties with respect to the potential due diligence and negotiation with respect to a transaction regarding the Project, and is not intended to, shall not be construed to, and does not constitute an agreement of either Party to (a) perform due diligence, negotiate, or consummate any transaction regarding the Project, or (b) enter into any Definitive Agreements with respect to the Project.

1.2. Further, the Parties expressly acknowledge and agree that this Article I of this LO!I (other than this Article 1.2), is not intended to be legally binding and that neither Party shall have any obligation to the other with respect thereto unless and until both Parties execute mutually agreed and duly authorized Definitive Agreements. Further, it is understood that the Definitive Agreements contemplated in this LOI are subject to review and approval in accordance with the policies and procedures established by the each Party's respective board of directors for transactions of this nature.

1.3 It is envisaged that the Definitive Agreements will include (i) a sale and purchase agreement in respect of the transfer of the FP Working Interest (as hereinafter defined) (the "SPA");

(ii) a deed of assignment of the GSC, validly transferring title to the FP Working Interest to FP (the "GSC Assignment") with all requisite governmental approvals; and (iii) a joint operating agreement based on the AIPN International Operating Agreement (the *"JOA').*It is also intended that, subsequent to execution of the Definitive Agreements, the Parties will enter into an amendment to, or restatement of, the GSC as required by, incorporating the relevant terms of, and superseding, the *MoU*(the ''GSC Amendment/Restatement' ). TECH will provide within seven (7) working days of the Effective Date an initial draft of the SPA, the GSC Assignment and the *JOA*for review and evaluation by FP. The Parties will work jointly in preparing the GSC Amendment/Restatement to the GSC. It is further envisaged that the Parties will work together in a cooperative fashion on all other technical, commercial and strategic matters and will attempt to incorporate such cooperation into the relevant provisions of the *JOA*and the GSC Amendment/Restatement.

1.4 It is further envisaged that TECH*/ABC*shall enter into an agreement on substantially equivalent terms and conditions to those set forth herein with a major oil company with the technical and financial capability to operate the project (the "Major") in relation to a working interest other than the FP Working Interest, and that such Major shall also become a party to the *JOA*and assume the operatorship of the project in due course. In the event that *TECH /ABC*is unable to secure the participation of a Major (as envisaged by Article 1.4*),*prior to 30 November 2009, or such later date as may be agreed in writing, TECH shall notify FP accordingly in writing and FP shall have the right, at its sole option, to notify TECH in writing that it is willing to accept the assignment of an increased FP Working Interest of up to fifty percent (50%) on the same terms and conditions, *mutatis mutandis,*as those set forth in this LOI, other than financial consideration (which shall be subject to the mutual agreement of the Parties), and in addition, subject always to all necessary governmental and third party approvals, assume the operatorship of the GSC from ABC (the "FP Option"). The FP Option shall be built into the terms of the SPA.

Article II Binding Provisions

The following provisions shall be binding upon the Parties:

2.1. Exclusive Dealing. TECH agrees that it and its Affiliated Companies including, without limitation ABC, will negotiate exclusively with FP with regard to the prospective acquisition by FP of an undivided twenty three percent (23%) working interest in and under the GSC and the initial Contract Area (as such term is defined in the GSC) (the "FP Working Interest"), or, in the circumstances envisaged by Article 1.4,an increased FP Working Interest of up to fifty percent (50%). More specifically, TECH shall, and shall procure that its Affiliated Companies including, without limitation, ABC shall: (i) not initiate, or otherwise participate in, directly or indirectly, a solicitation of any other offer or proposal for the sale, assignment or transfer, directly or indirectly, through merger, consolidation or otherwise, of the FP Working Interest, which means any interest in the GSC and/or

the Contract Area that is or would be inclusive of the FP Working Interest; and (ii) cease negotiations and discussions with any other persons that have indicated an interest in, or have submitted an offer to acquire any interest in the FP Working Interest or any interest in the GSC and/or Contract Area that is or would be inclusive of the FP Working Interest. The obligations of TECH and its Affiliated Companies including, without limitation, ABC, to deal exclusively with FP herein will commence on the Effective Date and continue until the earlier to occur of the Termination Date or the Parties ' execution of mutually agreed and duly authorized Definitive Agreements.

2.2 Due Diligence: Obligation to Negotiate in Good Faith. During the time period commencing on the Effective Date and continuing until the earlier to occur of the Termination Date or the Parties' execution of mutually agreed and duly authorized Definitive Agreements, the Parties will conduct due diligence with respect to the prospective transaction described herein, and shall negotiate in good faith regarding such prospective transaction.

2.3 Term of this LOI. Unless otherwise extended by mutual agreement in writing, this LOI shall terminate at midnight local time in Houston, Texas, on 31 December 2009, unless the mutually agreed and duly authorized Definitive Agreements have been entered into on or prior to such date, such date of termination being herein referred to as the "Termination Date".

TECH may not unilaterally terminate this LOI prior to the Termination Date. If the LOI terminates as a result of Definitive Agreements not having been executed prior to the Termination Date , neither Party shall have any obligation or liability to the other except to the extent that, prior to the Termination Date, a Party has breached any of the binding provisions of this LOI.

2.4 Confidentiality. The terms and conditions of the Confidentiality Agreement entered into by FP and ABC on September 8, 2008 (the "CA"), are incorporated by reference into this LOI and shall apply with regard to all information exchanged or developed hereunder. Notwithstanding the foregoing , neither Party shall be prohibited from making any disclosure if it is necessary to do so in order to comply with the applicable laws, rules, or regulations of any governmental entity, court, or stock exchange having jurisdiction over such Party or any of its Affiliated Companies (which term shall have the same meaning herein as defined in the CA.

2.5 FP Participation Prior to Execution of Definitive Agreements. Notwithstanding any other provisions hereof, FP shall be entitled to participate fully with TECH/ABC in the evaluation of technical data leading to direction and interpretation of geological and geophysical data during that period of the LOI prior to the execution of Definitive Agreements and, furthermore, shall participate fully during such period in the preparation for negotiations with the Ministry of Mines, Energy and Hydraulics of the Republic of Guinea (the "Ministry") regarding the terms of the GSC Amendment/Restatement; shall be kept fully appraised of the progress of such negotiations; and, subject to Ministry consent, shall be entitled to participate in such negotiations. Such negotiations shall be commenced as soon as reasonably practicable following the Effective Date.

2.6 Press Releases. Neither Party may issue press releases, public communications or public statements regarding the existence or terms of this LOI and matters arising in relation hereto unless and until the other Party has been furnished with a copy of such statement in advance and has given written approval, which shall not be unreasonably withheld and which shall be timely given, in no case exceeding twenty-four (24) hours. Notwithstanding the foregoing, neither Party shall be prohibited from making any disclosure if it is necessary to do so in order to comply with the applicable laws, rules, or regulations of any governmental entity, court, or stock exchange having jurisdiction over such Party or any of its Affiliated Companies.

2.7 Choice of Law. This LOI and the transactions contemplated herein, and any dispute pursuant hereto shall be subject to and construed in accordance with, and governed by, the laws of the State of Texas without reference to the conflict of laws principles thereof. Any dispute arising out of or relating to this LOI, including any question regarding its existence, validity or termination, which cannot be amicably resolved by the Parties, shall be settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators or, if both Parties agree, by a sole arbitrator, appointed in accordance with the said Rules. The arbitration proceedings shall be held in London, England and shall be conducted in the English language. Awards shall be reduced to writing, and shall be final and binding on the Parties without the right of appeal. The Parties undertake to carry out the award without delay. Judgement upon the award may be entered in any court having jurisdiction. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.

2.8 Costs and Expenses. Each Party shall be liable for its own legal, accounting and other costs and expenses incurred by it in connection with the undertakings associated with this LOI, including, without limitation, the negotiation and execution of Definitive Agreements.

2.9 Counterparts. This LOI may be executed and delivered by the Parties (in original form or by facsimile or emailed pdf scan) in counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute the same instrument, provided that this LOI shall not be effective until each Party has executed and delivered a counterpart.

2.10 Entire Agreement. This LOI constitutes the entire understanding among the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and prior agreements and understandings relating to such subject matter.

2.11 Amendments. This LOI may not be amended nor any rights hereunder waived except by written mutual agreement of the Parties.

2.12 Assignment. This LOI and the rights and obligations herein may not be assigned by a Party, in whole or in part, without the prior written consent of the other Party.

2.13 No Third party Beneficiaries. This LOI is intended to benefit only the Parties hereto and their respective permitted successors and assigns.

2.14 Notices. All notices and communications with respect to this LOI shall be in writing. Any communication or delivery hereunder shall be deemed to have been duly made and the receiving Party charged with notice (i) if personally delivered, when received, (ii) if sent by telecopy or facsimile transmission, on the first business day on or after which such facsimile is successfully transmitted and received,(iii) if mailed, three businessdaysaftermailing,certifiedmail,returnreceiptrequested,or(iv)if sent by overnight courier, the first business day on or after such notice is sent by overnight courier.

All notices shall be addressed as follows:

If to FP: Scotland,

If to TECH: Texas

Any Party may, by written notice so delivered to the other Party, change the address or individual to which delivery shall thereafter be made.

2.15 Compliance With U.S. and International Laws Governing Sanctions and Corrupt Practices. Each Party represents that, to the best of its knowledge and belief, it is not subject to economic or other sanctions imposed under the laws of the United States or treaties or conventions of the United Nations and is eligible to receive exports from the United States under the laws of the United States.

*[Execution Page Follows}*

The Parties have executed this **AGREEMENT FOR EXCLUSIVE DEALING AND LETTER OF INTENT**as of the Effective Date.

**TECHLIFT CORPORATION**

By: /s/ Mizzi Veneer

Mizzi Veneer

Chief Executive Officer

**FUELSPRITZ (E&P) LIMITED**

By: /s/ Caroca Manush

Caroca Manush

Technical & Commercial Director

EXHIBIT "A"

Essential Commercial Terms

This Exhibit sets forth certain essential business terms for a prospective transaction which is being considered by the Parties. These terms are set forth solely for the purpose of furthering discussions between the Parties, and is not intended to, and shall not be construed to, create any legally binding obligation enforceable against either Party.

Agreements:

SPA to be negotiated and executed by TECH, ABC and FP (or its nominated Affiliated Company), in respect of the acquisition by FP of the FP Working Interest as more particularly described below.

GSC Assignment assigning the FP Working Interest to FP, such that *FP*becomes a party to the GSC, to be negotiated and executed by ABC, FP (or its nominated Affiliated Company), any third parties to the GSC, and the Government of the Republic of Guinea, or such alternative means of effecting and documenting the transfer of the FP Working Interest to FP as may be mutually agreed in writing by TECH, ABC and FP.

*JOA*(including Accounting Procedure) in respect of the GSC and Contract Area to be negotiated and executed by ABC, FP (or its nominated Affiliated Company) and any third party co-venturers.

The foregoing agreements constitute the "Definitive Agreements".

GSC Amendment/Restatement, to be negotiated by ABC, FP (or its nominated Affiliated Company), any third party co-venturers, and the Government of the Republic of Guinea incorporating, *inter alia,*the relevant terms of, and superseding, the MoU, and to be executed by all parties to the GSC.

Assignor: ABC Corporation.

Assignee: FP  Fuelspritz (E&P) Limited (or its nominated Affiliated Company). As described in Article 1.4 above.

Option:  FP Working Interest: An undivided twenty three percent (23%) working interest in the GSC and Contract Area to be assigned by the GSC Assignment contemporaneously with execution of the *JOA,*subject to government and third party approvals and consents as required, which interest may be increased to up to a maximum of fifty percent (50%) pursuant to the FP Option.

Contract Area:  Contract Area, as such term is defined in the GSC, it being understood and acknowledged that such Contract Area is subject to variation pursuant to the MoU.

Consideration:  US$20,000,000 payable as follows:

(i) US$5,000,000 payable, in cash, following execution of all Definitive Agreements and, where applicable, their entry into full legal effect pursuant to the laws of the Republic of Guinea.

(ii) US$15,000,000 payable, at FP's sole option, in either cash or in new ordinary shares of UK£O.15 each in Fuelspritz plc issued and allotted to TECH (or its stated nominees), to the value ofUS$15,000,000, such shares to be valued at the average mid point closing price for the five (5) trading days immediately preceding the day on which the payment referred to above is made , such payment or share issue to be made following execution of the GSC Amendment/Restatement and its entry into full legal effect pursuant to the laws of the Republic of Guinea. Any shares so issued shall be issued by Fuelspritz plc credited as fully paid and shall rank *pari passu*with the existing ordinary shares in Fuelspritz plc in all respects. No additional restrictions or encumbrances shall be applied to such shares by Fuelspritz plc which would prevent their immediate sale by HOY on the open market.

In the event of exercise of the FP Option, the sum payable pursuant to (ii) above shall be as may be mutually agreed by the Parties.

Right of First Refusal:  The right of first refusal applicable to ABC pursuant to Article 2.3 of the MoU shall be passed on to FP pro rata to the FP Working Interest.

Indemnity:  TECH/ABC shall indemnify and hold harmless FP in respect of any and all claims and liabilities in respect of the period prior to the date of assignment to FP of the FP Working Interest.

Conditions Precedent:  All necessary approvals and consents by the Government of the Republic of Guinea and relevant third parties for the acquisition of the Working Interest by FP including, without limitation, approval of the Definitive Agreements, the GSC Amendment/Restatement, and any and all other ancillary documents of transfer and recordation.

**PDD#12**

LETTER OF INTENT

Exhibit 10.2

**HERERA MINING CORP.**

Silva, Nevada 89675

March 11, 2014

**STRICTLY PRIVATE AND CONFIDENTIAL**

Wellfound Resources Corporation

XXXXX

Benston ID 86543 USA

Dear Sirs/Mesdames,

**Re: Proposed Business Combination**

This letter of intent sets out the general terms and conditions in furtherance of the proposed business combination among Herera Mining Corp. (“**Wolfpack**”) and Wellfound Resources Corporation (“**Wellfound**”) pursuant to which Wellfound will acquire all of the shares of, or otherwise combine with Wolfpack.

The purpose of this letter is to set out indicative transaction terms (the “**Proposed Transaction**”) in order that , among other things, the parties may proceed to negotiate and settle the terms of a definitive agreement (the “**Definitive Agreement**”).

The parties will mutually agree on the final structure for proceeding with the Proposed Transaction following completion of due diligence and a review of tax, accounting, corporate and securities law issues.

**1.**

**Indicative****Terms**

The indicative terms of the Proposed Transaction are set forth in Schedule A attached hereto.

**2.**

**Bridge Loan**

Immediately following execution of all relevant loan documentation (which is anticipated to include a grid promissory note, deed of trust and financing statement) (collectively, the “**Loan Documents**”) in forms acceptable to the parties (and, with respect to the deed of trust and financing statement, in a form appropriate for recording in the applicable public office) and receipt of all applicable regulatory approvals (including approval of the stock exchange(s) on which each Wolfpack and Wellfound trade, as necessary), Wolfpackwill make available to Wellfound, on a non-revolving basis, US$1,000,000 (the “**Loan**”) to fund the working capital needs of Wellfound during the interim period prior to completion of the Proposed Transaction.  This Loan will be funded from funds other than the current treasury of Wolfpack, which is

- 2 -

currently estimated to be US$4,900,000 or the funding will be replaced to augment the treasury of Wolfpack to the pre-loan level in order for the transaction to proceed.

The Loan will be evidenced by a grid promissory note in a form satisfactory to the parties, and will be drawn by Wellfound in an initial amount of US$500,000, to be transferred by wire to Wellfound’s account following satisfaction of the terms contained elsewhere in this Section 2, and thereafter in tranches of US$250,000, subject to the delivery by Wellfound to Wolfpack of a funding request.

The Loan will bear interest at a rate equal to 5% per annum for the first six months and 10% thereafter (compounded annually) and mature and be repayable in full, with accrued interest, on the earlier of: (a) completion of the Proposed Transaction; and (b) one year and one day following the date on which the initial US$500,000 is drawn.  No payments of interest or principal will be due and payable prior to the maturity date.  Wellfound may prepay the principal and accrued interest at any time and from time to time prior to maturity without notice or penalty.

In the event that the Proposed Transaction for any reason does not complete prior to the maturity date, Wolfpack will have the right, at its option, to elect to receive all or a portion of the principal amount of the Loan and interest accrued thereon as at the maturity date in common shares of Wellfound at a price equal to: (a) with respect to the principal amount of the Loan, the closing price of the Wellfound shares on the day immediately prior to the date on which Wellfound publicly announces the Loan; and (b) with respect to the accrued interest, the market price of the Wellfound shares at the time of settlement. For greater certainty, in the event Wolfpack elects to receive cash in lieu of shares and Wellfound does not have cash to settle the Loan, then Wolfpack may elect to exercise its security, as set forth below.

Repayment of the Loan will be secured in favour of Wolfpack by Wellfound’s right, title and interest in and to the Seven Troughs property located in Madison County, Nevada (the “**Project**”) together with all of the assets comprising the Project, including the drill and core data owned directly or indirectly by Wellfound in relation thereto (collectively, the “**Data**”). Wellfound will execute a deed of trust and financing statement in this regard in favor of Wolfpack, which documents Wolfpack will have the right to register against Wellfound’s interest in the Project in the appropriate public registries.

In the event Wellfound decides for any reason to terminate discussions regarding the Proposed Transaction prior to execution of the Definitive Agreement, Wellfound will, in consideration for Wolfpack making the Loan, assign to Wolfpack a 0.25% net smelter returns royalty in the Project.

The Loan or outstanding portion thereof, as appropriate, shall become due and payable in full if: (a) the Project is sold in whole or in part; (b) there is a Change of Control (to be defined on mutually accepted terms) in Wellfound; or (c) there is an Event of Default (as defined below).

The promissory note will include positive and negative covenants customary for loans of this nature and mutually agreed upon by the parties including but without limitation, the following:

- 3 -

(a) with respect to positive covenants: (i) compliance with laws, (ii) maintenance of corporate existence, (iii) access to financial books and records on prior notice during regular business hours, (iv) maintenance of the Project in good standing and free from any claims, and (v) payment of taxes; and (b) with respect to negative covenants and in each case except with the consent of the lender or as otherwise contemplated in connection with the Proposed Transaction: (i) incur additional indebtedness, (ii) grant or suffer to exist any liens against the Project, other than those granted in connection with the Loan; (iii) merge or consolidate; or (iv) disposition of all or any interest in the Project.

The promissory note will also include events of default customary for transactions of this type (including a to be agreed cure period), including, but not limited to (each, an “**Event of Default**”): (a) material adverse change; (b) non-payment (which shall not be subject to any cure period); (c) false representations and warranties; (d) breach of covenants; (e) bankruptcy; (f) change of control; (g) unsatisfied judgments; (h) invalidity of security interests; and (i) abandonment of the Project.

Wellfound represents and warrants to Wolfpack that, except for the Permitted Liens (as defined below), Wellfound owns the Project and Data free and clear of any and all encumbrances, claims, liens or security interests of others.  No security agreement, financing statement or other public notice with respect to all or any part of the Project and Data that evidences an encumbrance, lien or security interest securing any indebtedness of Wellfound is on file or of record in any public office, except such as are Permitted Liens.

“**Permitted Liens**” means: (i) liens for real property axes that are not yet due and payable or are being contested in good faith; (ii) rights reserved to any governmental authority to regulate the affected properties; (iii) in the case of any leasehold interests, rights of the relevant lessors or sublessors and obligations reflected in the respective leases; (iv) in respect of unpatented mining claims the paramount title of the United States of America or any other governmental authority, if any; (v) any matter that is reflected in public real property records; and (vi) any defect in title not created by or through Wellfound that does not materially and adversely individually or in the aggregate affect the aggregate value of Wellfound’s properties or the ability of Wellfound to realize the economic benefits thereof.

**3.**

**Exclusivity**

In connection with the evaluation of the Proposed Transaction and in consideration for the time expended and expenses incurred by each of them with respect to the Proposed Transaction, each of the parties agrees to deal exclusively and in good faith with the other party in regards to the Proposed Transaction, including without limitation, the settling of the form of the Definitive Agreement during the period (the “Exclusivity Period”) from the date of this letter of intent until the earlier of (i) 11:59PM PDST on April 22, 2014, (ii) the date of the execution of a mutually acceptable Definitive Agreement, or (iii) the date, if any, upon which the parties mutually agree in writing to terminate discussions.

- 4 -

During the Exclusivity Period, and with the exception of the completion by the parties of the Pre-Merger Transactions (as defined below) contemplated in Schedule A hereof, neither Wolfpack or Wellfound will, and each of such will cause its subsidiaries and its and their respective directors, officers, employees, representatives, advisors and agents (collectively, “Agents”) not to, in each case, directly or indirectly:

(a)

solicit, initiate, encourage, facilitate or accept any inquiry, proposal or offer (an “Acquisition Proposal”) from any person (other than the parties hereto) with respect to any of the following transactions (“Alternative Transactions”) between such party or any of its affiliates and any person:

(i)

the acquisition or purchase by any person or group of persons acting jointly or in concert of any capital stock or other voting securities, or securities convertible into or exercisable or exchangeable for any capital stock or other voting securities, of such party or any of its affiliates representing 10% or more of the outstanding voting securities of such party or such affiliate, on a fully diluted basis, or of all or a material portion of the assets of such party or any of its affiliates;  provided however, that Wolfpack acknowledges and agrees that the above exclusivity provisions do not and will not require that Wellfound cease any current discussions and negotiations with potential joint-venture partners for any of its Nevada properties, with the exception of Nine Valleys and the South Benston Projects (including Farview Mountain), and do not and will not prevent Wellfound from entering into a joint-venture arrangement in connection with any of its Nevada properties, with the exception of Nine Valleys and South Benston, as such joint-venture may be approved by the board of directors of Wellfound and subject to the consent of Wolfpack under Section 5 hereof;

(ii)

a merger, recapitalization, restructuring, reorganization, amalgamation, arrangement, joint venture or other business combination involving such party or any of its affiliates; or

(iii)

any other extraordinary business transaction involving or otherwise relating to such party or any of its affiliates;

(b)

participate in any discussions, conversations, negotiations or other communications with any person with respect to an Alternative Transaction;

(c)

enter into any agreement, arrangement or understanding with respect to an Alternative Transaction or pursuant to which such party may be required to delay, abandon, terminate or fail to consummate the Proposed Transaction; or

(d)

furnish any information to any person in connection with a proposed Alternative Transaction or otherwise assist, facilitate or encourage the making of, or cooperate in any way regarding, any Acquisition Proposal.

- 5 -

In addition, each of the parties agrees to cease and terminate immediately, and to cause its Agents to cease and terminate immediately, any existing negotiations, discussions, conversations or other communications with respect to any Alternative Transaction.

Each party shall promptly advise all other parties of its receipt of any Acquisition Proposal and any request for information that may reasonably be expected to lead to or is otherwise related to any Acquisition Proposal, the identity of the person making such Acquisition Proposal or request for information and the terms and conditions of such Acquisition Proposal and shall refrain from engaging in any communication that may encourage the continuation or pursuit of such Acquisition Proposal.

**4.**

**Confidentiality**

The parties agree to treat this agreement and all terms and conditions hereof, and all data, reports, records, and other information, coming into the possession of the parties and their employees, affiliates and agents by virtue hereof (collectively, the “**Confidential Information**”) as confidential, except if disclosure of such Confidential Information is required by applicable law or by any government authority.  Such Confidential Information will not be otherwise disclosed to any person without the prior consent of the affected party or parties, which consent will not be unreasonably withheld.

The foregoing consent requirement will not apply to a disclosure to:

(a)

comply with any applicable laws, or any government authority having jurisdiction, including but not limited to disclosure obligations under the rules of applicable stock exchanges and Wellfound’s obligations to file current reports on Form 8-K upon the occurrence of certain definitive events;

(b)

a director, officer or employee of a party;

(c)

an affiliate of a party; or

(d)

an agent of a party that has a bona fide need to be informed.

The obligations of confidentiality and prohibitions against use under this letter of intent will not apply to information that the disclosing party can show by reasonable documentary evidence or otherwise:

(a)

as of the date hereof, was in the public domain, other than as a result of a breach of this ‎‎Section 4;

(b)

after the date hereof, was published or otherwise became part of the public domain through no fault of the disclosing party or an affiliate thereof (but only after, and only to the extent that, it is published or otherwise becomes part of the public domain); or

- 6 -

(c)

was information that the disclosing party or its affiliates were required to disclose pursuant to the order of any government authority or judicial authority.

**5.**

**Conduct of Business**

During the Exclusivity Period, each of the parties agrees that it will advise the other party, on an ongoing basis, of its business operations and except as expressly contemplated hereby will not enter into any material agreement or any agreement with any insider, issue any securities (other than pursuant to the exercise of options or warrants outstanding as of the date hereof or the issuance of stock options to newly hired employees or as required by agreements in force and effect prior to the date hereof) or incur any material expenditures outside the ordinary course of business without the prior consent of the other party, such consent not to be unreasonably withheld.  The Definitive Agreement will contain similar restrictions.

**6.**

**Due Diligence**

Promptly following the execution hereof, each party will commence its due diligence investigation of the other party and their respective properties.  Each party will make available to the other party all such information concerning itself and its business, affairs and properties as the others may reasonably request for purposes of determining if they wish to proceed with the Proposed Transaction.  Each party will, prior to 5:00 PM PDST April 7, 2014,confirm to the other party in writing whether or not it is satisfied with the results of its due diligence investigation.  If all parties are satisfied with their due diligence, all parties will be committed to negotiate in good faith and execute the Definitive Agreement and proceed with the Proposed Transaction described herein subject only to the other conditions in this letter of intent and the Definitive Agreement. Alternatively, if a party is not satisfied with the results of its due diligence investigation, no party will have any further obligations hereunder.

**7.**

**Costs of Proposed Transaction**

All fees and expenses incurred in connection with the Proposed Transaction will be borne by the party incurring such expenses.

**8.**

**Binding Effect**

It is understood that this letter of intent merely constitutes a statement of the parties’ mutual intentions with respect to the Proposed Transaction, it does not contain all matters upon which agreement must be reached for the Proposed Transaction to be consummated, and therefore this letter of intent does not constitute (except as specifically set forth below) a binding commitment of any of the parties with respect to the Proposed Transaction or any other matter.  A binding commitment with respect to the Proposed Transaction will result only after the parties are satisfied with the results of their respective due diligence and the parties have executed the Definitive Agreement, which agreement will be subject to the conditions expressed herein and therein.  Notwithstanding the two preceding sentences, upon acceptance hereof as described below, the provisions of Sections 2 to 8, inclusive (collectively, the “**Binding Provisions**”) shall be legally binding upon and enforceable against the parties hereto.

- 7 -

**9.**

**Miscellaneous**

This letter of intent constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto.

No amendment to this letter of intent will be valid or binding unless set forth in writing and duly executed by each of the parties hereto. No waiver of any breach of any provision of this letter of intent will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.  Any agreement as to the extension or waiver of any provision of this letter of intent by any party will be valid only if in writing signed by such party.

No assignment or transfer of any party’s rights or obligations under this letter of intent shall be made except with the prior written consent of the other parties.  Any assignment or transfer purported to be made in violation of the preceding sentence shall be null and void.  The Binding Provisions shall be binding on and enure to the benefit of the parties and their successors and permitted assigns.

The parties hereto agree that monetary damages would not alone be sufficient to remedy any breach by a party hereto of any term or provision of this letter of intent and that each party hereto will also be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach hereof and in addition to any other remedy available pursuant to this letter of intent or at law or in equity. Each party hereto further waives any requirement for the deposit of security or posting of any bond in connection with any equitable remedy.

Time shall be of the essence of this letter of intent.

This letter of intent will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any conflicts or choice of laws provisions thereunder.

This letter of intent may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this letter of intent by any party by electronic transmission will be as effective as delivery of a manually executed copy of this letter of intent by such party.

*[Remainder of this page left intentionally blank; execution page follows]*

- 8 -

If the foregoing is acceptable to you, please so indicate by executing the duplicate copy of this letter which is enclosed for return to us on or before 11:59 p.m. (Pacific Standard time) on March 11, 2014.

Yours truly,

**HERERA MINING CORP.**

/s/ Jose Iglesias, Director

By:

Authorized Signatory

Agreed to as of the \_\_\_ day of March, 2014.

**WELLFOUND RESOURCES CORPORATION**

/s/ Mary Gallagher

By:

Authorized Signatory

**SCHEDULE A**

**Indicative Terms**

|  |  |
| --- | --- |
|  |  |
| Pre-Transaction Reorganizations: | Immediately prior to completion of the Proposed Transaction:  ·  Wellfound will use its best efforts to divest itself of the XYZ Project, located in Derport, Montana; and  ·  Wolfpack will use its best efforts to divest itself of its Uranium assets.  ·  It is anticipated that these divestitures will result in the shareholders of the respective companies receiving these interests in one form or another on an exclusive and pre-merger basis with no benefit to the other party.  The mechanism by which the above will be accomplished will be identified and agreed to before 5:00 PM (PDST) April 7,,2014. |
| Transaction: | Wellfound will acquire all of the outstanding shares of Wolfpack in exchange for common shares in the capital of Wellfound in accordance with an exchange ratio that will result, on completion of the Proposed Transaction, in former Wolfpack shareholders holding, as a group, approximately 50% of the outstanding Wellfound shares. |
| Structure: | The parties will mutually agree on the final structure for proceeding with the Proposed Transaction following completion of due diligence and a review of tax, accounting, corporate and securities law issues. |
| Convertible Securities: | From execution of the Definitive Agreement until closing, the parties will use reasonable commercial efforts to cause their respective directors, officers and employees to exercise outstanding stock options.  Prior to closing of the Proposed Transaction all unexercised options will be exercised, cancelled, terminated or repriced on terms to be agreed by the parties in the Definitive Agreement, acting reasonably.  Holders of unexercised warrants of Wolfpack will have their warrants converted into warrants of Wellfound. |
| Pre Close Financing: | It is anticipated that Wolfpack will arrange financing in advance of closing in the amount of approximately US$1,000,000, in the form of marketable securities, cash or a combination thereof.  Any participant investing at least US$250,000 will be granted a right of first refusal to maintain their pro-rata ownership in its entirety (not just as to this specific investment) in any subsequent financing. For greater certainty, completion of such financing is not a condition precedent to completion of the Proposed Transaction but may affect the final ownership ratio. This financing in combination with the debt forgiveness as a result of the closing of the Proposed Transaction will result in a net effective cash infusion to Wellfound of approximately US$6,700,000, consisting of the current treasury of Wolfpack less operating expenses in the amount of US$200,000, plus the proceeds of the Loan and the new financing contemplated herein. |
| Reverse Stock Split: | The Proposed Transaction will include a reverse stock split in a range reasonably determined to assure a mutually agreed upon per-share target price following the reverse stock split. Concurrent with the closing of the Proposed Transaction, Wellfound shall undertake the agreed upon reverse stock split of the common stock as determined by the parties. |
| Name Change: | Wellfound will seek approval from its shareholders for a name change in the proxy materials mailed to its shareholders in connection with the Proposed Transaction, authorizing Wellfound to change its name in the event the parties agree upon a new name at closing. |
| Board of Directors: | Upon closing of the Proposed Transaction, the current board of directors of Wellfound will be reconstituted to consist of 6 directors, three of whom will be nominated by Wolfpack and three of whom will be nominated by Wellfound. |
| Officers: | The president and chief financial officer of Wellfound will be individuals to be approved by mutual agreement of the parties prior to execution of the Definitive Agreement. |
| Employees: | New management of Wellfound will, prior to closing, determine those employees of each of Wolfpack and Wellfound it wishes to retain.  Such employees will be eligible to receive stock options of Wellfound following closing as determined by new management and the new board of Wellfound. |
| Definitive Agreement: | Final terms of the Proposed Transaction will be set out in the Definitive Agreement.  The Definitive Agreement will contain, subject to the results of due diligence, representations and warranties for the benefit of each of the parties, conditions relating to shareholder and regulatory approvals, material adverse changes and compliance with the Definitive Agreement as are in each case customary in comparable transactions of this nature. |
| Conditions to Closing of the Transaction: | Closing of the Proposed Transaction is subject to a number of conditions being satisfied or waived by one or more of the parties at or prior to closing, including the following;  ·  execution of a mutually acceptable Definitive Agreement on or before April 22, 2014;  ·  satisfactory completion of due diligence by each of the parties prior to execution of the Definitive Agreement;  ·  receipt of all required shareholder approvals, together with any requisite minority approvals;  ·  accuracy of the representations and warranties of each of the parties contained in the Definitive Agreement as of the date made and the closing date;  ·  the covenants of the parties in the Definitive Agreement required to be satisfied before closing must have been satisfied or waived;  ·  no material adverse change with respect to the parties having occurred;  ·  receipt of appropriate fairness opinions, if required;  ·  no injunction or order in effect by any governmental authority prohibiting the Proposed Transaction; and  ·  the receipt of all required regulatory, stock exchange, creditor, court and third party approvals, consents, permits, waivers, exemptions and orders. |
| Exclusivity: | The Definitive Agreement will contain mutually binding exclusivity provisions similar in effect to those set out in the letter of intent to which this term sheet is attached.  The Definitive Agreement will contain customary “fiduciary out” provisions for the board of directors of each of the parties in the case of a superior proposal with the other party receiving a matching right.  There will be a break fee in the amount of US$500,000 payable by a party electing to terminate the Definitive Agreement to accept a superior proposal. |
| Completion Date: | Anticipated to occur approximately three to four months from the date of execution of the Definitive Agreement. |
| Board Approval: | Prior to public announcement, the boards of each of the parties will have approved the Proposed Transaction. |

**PDD#13**

LETTER OF INTENT

**Exhibit 10.1**

**[CE Letterhead]**

September 12,2006

Mr. Farza Manoor

Manoor Computer Associates, Inc.

XXXX

Gerston, Alabama 376665

Dear Farza:

On behalf of Computer Equipment, Inc., a Delaware corporation (“CE”), we are pleased to submit the following offer for CE or its designee (the “Purchaser”) to acquire substantially all of the assets of the software systems and service business (the “Business”) owned and operated by Manoor Computer Associates, Inc. (the “Seller”). In connection with the proposed acquisition (the “Acquisition”), CE is prepared to move quickly with the appropriate due diligence and toward the negotiation and execution of a definitive asset acquisition agreement (the “Definitive Agreement”) among the Purchaser, the Seller and you as the sole shareholder of the Seller (the “Shareholder”).

This letter agreement, when executed by the Setter and returned to us, will confirm our agreement in principle with respect to the Acquisition upon the terms and subject to the conditions set forth herein.

1. Purchase Price and Structure. The Acquisition will be structured as a purchase of substantially all of the assets of the Seller including, but not limited to: (a) the furniture, fixtures, equipment, inventory, supplies, software and software systems, vehicles and other tangible personal property (the “Fixed Assets”), provided that the Shareholder shall be able to keep his personal items and possessions now located in the Seller’s offices; (b) all of the Business’s work in progress and raw materials not yet used, which would include any billings or invoices to customers in 2006 for services to be performed by the Seller during 2007 (collectively, the “WIP”); (c) the land, building and other improvements located at 3209 and XXX, Alabama (the “Real Property”); and (d) the name “Manoor Computer Associates,” the right to use the “Manoor” name as part of the Purchaser’s continuation of the Business and all other intangible property including contracts, licenses, permits, processes, trade secrets and goodwill of the Business (collectively the “Intangible Assets”) (the Fixed Assets, the WIP, the Real Property, and the Intangible Assets together called the “Purchased Assets”). It is not contemplated that the Purchaser would assume any liabilities of the Seller relating to the Business, other than the Seller’s obligations to customers under customer contracts and a copier lease and any other equipment leases or other obligations of the Seller that the Purchaser may desire to assume. Subject to appropriate due diligence and the Definitive Agreement, the purchase price (the “Purchase Price”) for the Purchased Assets will be Four Million Fifty Thousand and no/100 Dollars ($4,050,000.00). The Purchase Price shall be payable to the Seller as follows: $100,000 as an earnest money deposit to be applied to the Purchase Price at Closing

as described in Section 2 hereof; $3,425,000.00 in cash or other immediately available funds at the closing of the sale of the Purchased Assets, with the balance of the Purchase Price of $525,000 being evidenced by a promissory note (the “Note”) which will provide for payments of principal over five (5) years in equal quarterly installments of $26,250 per quarter, commencing March 31, 2007, plus interest on the unpaid principal balance, which shall be computed in arrears for each quarterly payment using three (3) month LIBOR as published in *The Wall Street Journal*, in effect on the first business day at the beginning of such quarter. The Note shall be secured by a first mortgage or deed of trust on the Real Property.

2. Earnest Money Deposit. Within three (3) business days following the execution of this letter agreement by CE and the Seller, CE shall deliver to the Seller the sum of One Hundred Thousand and no/100 Dollars ($100,000.00) to be held by the Seller as an earnest money deposit (the “Deposit”) against the Purchase Price. At the Closing (as defined below), the Deposit shall be applied as a credit against the cash portion of the Purchase Price payable by the Purchaser. In the event that the Acquisition does not close through no fault of the Seller or the Shareholder, the Deposit shall be retained by the Seller as full consideration for its time and expenses in pursuing the Acquisition. In the event that the Acquisition does not close as a result of the fault or refusal of the Seller or the Shareholder, the Deposit shall be immediately returned to CE.

3. Conditions. Consummation of the Acquisition shall be subject to: (a) the negotiation and execution of the Definitive Agreement and related documents, which shall include non-competition agreements by the Seller and the Shareholder, a consulting agreement with the Shareholder relating to his providing assistance and advice to the Purchaser for a reasonable transition period after the Closing in exchange for reasonable compensation for his services and reimbursement of his expenses associated therewith, and an employment agreement with Jeff Mackin; (b) the receipt of any necessary consents, assignments or approvals from third parties and governmental agencies, and the making of any necessary government filings; (c) the receipt by the Purchaser and the Seller prior to the execution of the Definitive Agreement of the approval of the Shareholder and the respective Boards of Directors of the Seller and the Purchaser; (d) the receipt by the Purchaser of financing acceptable to the Purchaser to complete the Acquisition; (e) the Purchaser’s satisfaction that it will, at closing, receive the Purchased Assets free and clear of any and all encumbrances; (f) receipt by the Purchaser, or the receipt by the Purchaser from its independent auditor of reasonable assurances of the timely production of, audited and unaudited financial statements of the Seller (the “Required Financial Statements”) for such periods as required by generally accepted accounting principles (“GAAP”) and the rules and regulations of the Securities and Exchange Commission (the “SEC”); (g) the Seller having an adjusted EBITDA for 2006 (pretax income excluding compensation and certain other expenses for the Shareholder) of an amount reasonably in line with the representations by Seller to CE of expected EBITDA for 2006 as being approximately $600,000 to $700,000, provided that if the adjusted EBITDA for 2006 is significantly less than $600,000, CE and the Seller agree that they will negotiate in good faith to determine if some ratable adjustment to the Purchase Price can be made, rather than simply terminating this letter agreement; (h) the receipt by the Purchaser of appropriate legal opinions of the Seller’s counsel; and (i) satisfactory completion by the Purchaser prior to the execution of the Definitive Agreement of customary due diligence investigations concerning the Seller and the Purchased Assets, including but not limited to the investigations described below, the results of which are acceptable to the Purchaser in its sole discretion.

2

The Purchaser intends to commence its due diligence investigations promptly upon the execution of this letter agreement. Such investigations will include the following activities:

(1) At the Purchaser’s expense, conduct a Phase I environmental assessment of the Real Property and, depending on the results of such assessment, conduct a Phase II environmental assessment of the Real Property; provided that, the Seller must consent in advance to any Phase II assessment;

(2) At the Purchaser’s expense, conduct a title, judgment and lien search on the Seller and the Real Property;

(3) At the Purchaser’s expense, obtain an MAI appraisal on the Real Property; and

(4) At the Purchaser’s expense, conduct an audit of the Seller’s financial statements in preparation of the Required Financial Statements which will need to be audited, which audit shall be performed by CE’s independent auditors or other auditors selected by CE.

CE also desires that Mark Spotz and Heather Brown enter into employment agreements with the Purchaser at the Closing, but agrees that employment of these two individuals shall not be a condition to Closing.

4. Allocation of Purchase Price. Subject to modification in the Definitive Agreement based on the results of the Purchaser’s due diligence, CE and the Seller agree that the Purchase Price shall be allocated to the Purchased Assets of the Business as follows: Fixed Assets, $75,000; WIP, at the Seller’s cost, if any, as reflected on the Seller’s books at Closing; Real Property, $450,000; $10,000 to the non-competition agreements of the Seller and the Shareholder; and Intangible Assets, balance of the Purchase Price. CE agrees that in the event that the allocation of the Purchase Price to the Purchased Assets as finally determined in the Definitive Agreement is audited by the Internal Revenue Service and/or the Alabama Department of Revenue as being inconsistent with Section 1060 of the Internal Revenue Code, CE will pay or reimburse all of the professional expenses incurred by the Seller or its Shareholder in connection with such audit and will indemnify the Seller and its Shareholder against any additional taxes, penalties and interest assessed against the Seller or its Shareholder as a result of such audit. The Seller agrees that in the event of such audit, CE will have the right to control and direct the handling thereof, including any settlement of tax deficiencies, penalties and interest.

5. Preparation of Definitive Agreement; Due Diligence. Commencing immediately upon the execution of this letter agreement, the parties hereto will cooperate with each other and use their best efforts to negotiate, prepare, and execute the Definitive Agreement and all related documents as soon as possible. The parties hereto agree to negotiate the Definitive Agreement

3

and all related documents in good faith. In connection with the negotiation and preparation of the Definitive Agreement and all related documents, upon reasonable advance notice, the Seller will cause its officers, directors, employees, and agents to afford to the Purchaser and its advisors access at all reasonable times to the officers, directors, employees, agents, properties, books, records and contracts of the Seller relating to the Business and will furnish the Purchaser with all financial, operating and other data and information concerning the Seller as the Purchaser and its advisors may reasonably request.

The Definitive Agreement shall contain customary representations and warranties by the Seller and the Shareholder concerning the condition of the Business, the Purchased Assets and operations of the Seller and their respective abilities to consummate the transactions contemplated hereby. It shall also provide for the payment by the Seller of all sales taxes, use taxes, transfer taxes, filing fees and similar taxes, fees, charges and expenses required to be paid in connection with the sale of the Purchased Assets to the Purchaser. The Definitive Agreement shall contain customary representations and warranties of the Purchaser concerning its abilities to consummate the transactions contemplated hereby. The Definitive Agreement shall also provide for the survival of the representations and warranties of the parties for specified periods of time, to be mutually agreed upon by the parties and that the indemnification obligations of the parties with respect to breaches of representations and warranties shall be limited to minimum and maximum amounts, to be mutually agreed upon by the parties. The Definitive Agreement shall provide that the Purchaser and its affiliates will be indemnified by the Seller and the Shareholder against (i) all liabilities and obligations that are not expressly assumed by the Purchaser under the Definitive Agreement, and (ii) any damages, liabilities or expenses arising from any breach by the Seller or the Shareholder of any representation, warranty, covenant or other provision contained in the Definitive Agreement, or in any related agreement or document. The Definitive Agreement shall contain a customary indemnity from the Purchaser to the Seller and the Shareholder for any damages, losses, claims, liabilities, costs, and expenses resulting from the operation of the Purchased Assets after the consummation of the Acquisition.

6. Financing. The Purchaser intends to fund all amounts due at Closing from the proceeds of debt financing to be obtained by the Purchaser, and the Acquisition is contingent on the Purchaser’s obtaining such financing. The Purchaser agrees to seek such financing promptly after the execution of this letter and shall keep the Seller informed of the status of its efforts to secure such financing.

7. Expenses. Unless otherwise provided herein, each party shall bear its own legal, accounting, and other fees and expenses in connection with this letter agreement, the negotiation of the Definitive Agreement and all related documents and the consummation of the Acquisition. The Seller and CE each represent and warrant that neither has agreed to pay, or taken any action that will result in any person or entity becoming entitled to receive, any brokerage fee, finder’s fee or other similar fee or commission with respect to the proposed acquisition transaction.

8. Conduct of the Business. During the period from the date of this letter agreement to the Closing (unless the Definitive Agreement shall not have been executed and delivered by the parties within the period set forth in Section 12 hereof), the Seller shall carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore

4

conducted and in compliance in all material respects with all applicable laws and regulations and, to the extent consistent therewith, use commercially reasonable best efforts to preserve intact its business organization, keep available the services of its current officers and employees and preserve its relationships with customers, suppliers, licensors, licensees, distributors and others having business dealings with it. The Seller agrees to immediately notify the Purchaser of any material change in the business or condition of the Seller.

9. Public Communication. The parties agree to consult with each other prior to, and otherwise cooperate in the preparation and issuance of, any statements or communication to the public or the press regarding the proposed transaction. No party shall issue any statement or publication without the other party’s prior written consent, unless required or advisable, under the Securities Exchange Act of 1934 and the regulations promulgated thereunder (collectively, the “1934 Act’”) or as may otherwise be required under GAAP or by law. Each party shall give adequate prior notice to the other party of any such statement or communication in order to provide time for such consultation and cooperation. The Seller and CE acknowledge that this letter agreement will be publicly filed with the SEC by CE, and its terms disclosed, in CE’s reports required under the 1934 Act, and may likewise be filed and its terms disclosed with the SEC and state blue sky authorities in CE’s registration statements and prospectuses and other filings relating thereto.

10. Confidentiality. Without the prior written consent of the other party, each party agrees that it will not, and will direct its officers, directors, representatives, agents and employees not to, disclose to any person any facts related to these discussions and negotiations and any agreements or understandings reached by the party, except as may be required by the 1934 Act, GAAP or otherwise by law. The parties also acknowledge and agree to maintain as confidential all information received from the other party in connection with this Acquisition, as provided in that certain Confidentiality Agreement entered into by the parties on June 14, 2006. The Seller and CE further acknowledge that they are aware, and that they will advise their respective representatives who are informed as to the matters which are the subject of this letter, that the United States securities laws prohibit any person who has received from an insider material, nonpublic information concerning the matters which are the subject of this letter from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

11. Other Transaction Proposals. Following the date of execution of this letter agreement, the Seller will not, directly or indirectly through any director, employee, affiliate, representative, agent, or otherwise: (i) solicit, initiate, encourage, or assist in the submission of any inquiries, proposals, or offers from any corporation, partnership, person, or other entity or group relating to any acquisition, lease, operation, or purchase of any assets of, or any equity interest in, the Business (each an “Acquisition Proposal”); (ii) participate many discussions or negotiations regarding an Acquisition Proposal or furnish to any person or entity any information concerning the Business or the Acquisition; or (iii) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other person to make or enter into an Acquisition Proposal. If the Seller receives any inquiry, proposal, or offer to enter into any transaction of any type referred to above, the Seller agrees to inform the Purchaser

5

promptly of the terms thereof and the identity of the party making such inquiry, proposal, or offer. If the Seller has already received any such inquiries, proposals or offers, the Seller agrees that following the execution hereof, it will not pursue those inquiries, proposals or offers.

12. Termination. The Purchaser and the Seller will use their best efforts to execute the Definitive Agreement within forty-five (45) days following the date on which this letter agreement is executed and delivered by all of the parties hereto and to close the Acquisition by January 1, 2007 (the “Closing”). If the Definitive Agreement is not executed by the time indicated above, then the obligations of the parties under Sections 2, 5, 8 and 11 hereof shall terminate.

13. Statement of Intention Only. It is understood that this letter agreement merely constitutes a statement of the parties’ mutual intentions with respect to the Acquisition, does not contain all matters upon which agreement must be reached for the Acquisition to be consummated and therefore does not constitute a binding commitment with respect to the Acquisition. A binding commitment with respect to the Acquisition will result only from the execution of the Definitive Agreement, subject to the conditions expressed therein. Notwithstanding the two preceding sentences of this Section 13, upon acceptance hereof as described below, the provisions of the first three sentences of Section 5 and Sections 2, 7, 8, 9, 10,11,12, 14, 15 and this Section 13 shall be legally binding upon and enforceable against the parties hereto.

14. Governing Law. This letter agreement shall be governed by and construed according to the laws of the State of South Carolina without regard to the conflicts of law principles thereof.

15. Amendment or Modification. This letter agreement may be amended and modified only as may be agreed upon in a written instrument executed and delivered by the Seller and CE.

16. Term of Offer. The term of the offer made by the Purchaser in this letter agreement shall expire at 5:00 p.m., Eastern Daylight Time on September 15, 2006 unless sooner accepted by Seller by signing below and returning an executed copy of this letter agreement to CE prior to the time of expiration.

6

Please indicate your confirmation of this letter agreement in principle and your agreement to the commitments set forth herein by executing the enclosed copy of this letter.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Very truly yours, | | |
|  | | |
| COMPUTER EQUIPMENT, INC. | | |
|  |  | |
| By: |  | /s/ Cathy DeMills |
|  |  | Cathy DeMills |
|  |  | President and Chief Executive Officer |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| AGREED TO AND ACCEPTED | | |
|  | | |
| MANOOR COMPUTER ASSOCIATES, INC. | | |
|  |  | |
| By: |  | /s/ Farza Manoor |
| Its: |  | President |
| Date: |  | 9/13/6 |

**PDD#14**

EXHIBIT 10.1

**Exhibit 10.1**

**LETTER OF INTENT**

9/10/07

This Letter of Intent is intended to serve as an outline of the basic terms upon which Mercox, Inc., (“MCX”) a Delaware corporation publicly trading on the Pink Sheets market will purchase, through a wholly owned subsidiary, 100% of the issued and outstanding shares of Oliver, Inc., (“OLIVER”) through a merger transaction (the "Merger"). The terms and conditions set forth herein are based on preliminary and limited information provided by the parties and is subject to change pending the completion of the due diligence process, the approval of the Board of Directors and shareholders of both companies and the execution of definitive agreements.

***Structure of Acquisition***

Reverse Merger: Tax-free reorganization under Internal Revenue Code ss.368 (a)(1)(A) by means of the merger of Oliver into a company wholly owned by MCX ("Merger Sub"). The transaction between Oliver and MCX shall sometimes be referred to hereafter as the "Merger."

Surviving Entity: Oliver would be the surviving company of the merger with and into the Merger Sub and would be maintained as a separate wholly-owned subsidiary of MCX. MCX would have no other business other than the business of Oliver. MCX's name would be changed to "Federal Issuer Services Corporation" if available.

Consideration: MCX will exchange 100% of the common shares of Oliver for 97% of the total issued and outstanding of MCX upon closing. The total amount of issued an outstanding shares of both MCX and OLIVER are subject to adjustments, splits, reverse prior to the closing of definitive merger agreement. Further consideration of 1% of the total issued and outstanding of the companies’ common stock will be awarded to Schwartz Heslin in consideration for the costs incurred directly by Schwartz Heslin by MCX.

***Documentation and Process***

Closing in Escrow: Within 15 days of this Letter of Intent, the Company,  the Merger Sub and Oliver shall negotiate and execute a definitive merger agreement and related documents and certificates (the "Merger Documents"), which shall provide, as a condition of closing of the Merger.

If deemed necessary by the parties hereto, the parties shall prepare, as soon as reasonably possible, a Confidential Private Placement ("CPP") disclosure document (presenting the Company as if the Merger had already taken place and disclosing the merger and escrow agreements) to allow the Company and its placement agents to commence and timely close the Financing. However, the CPP delivery date may be extended upon the mutual agreement in writing of the parties hereto.

***Terms and Provisions***

The Merger Documents shall include normal provisions including, without limitation, representations, warranties, covenants, agreements and remedies as are appropriate to preserve and protect the economic benefits intended to be conveyed to and from the Company, Merger Sub, Oliver and the Investors pursuant hereto.

Rights: Until such time that a definitive merger agreement is entered into by both parties; both MCX and Oliver have the right to terminate this Letter of Intent at any time with or without cause.

Audit: Each party shall cooperate and commence an audit as soon as possible and otherwise take such action as may be necessary to allow the parties to file the required disclosures with the Securities and Exchange Commission as soon as possible after the Closing.

Audit and Legal Fee: Oliver will cover the costs of legal and accounting fees; additionally, Oliver will cover all costs necessary with the filing of all Securities and Exchange documents from 2003 to 2006. If necessary; both parties may elect to seek funds necessary to cover the costs of the audit, legal and compliance related issues under a private placement debt instrument. By mutual agreement, the officers, directors or affiliates of Oliver may choose to act as the source of such funds. Such debt instrument shall be secured by MCX’s common stock mutually agreed.

Access: In order to facilitate the transaction, MCX will provide written approval to a designated Advisor of Oliver, Inc. to obtain the necessary information at its expense, such information shall included but not be limited to transfer agent records, accountants records, work papers and letter of opinion, vendor information, NOBO listing information and DTC records.

Officers and Directors: Immediately upon the signing of this letter of intent, MCX will elect a designated party to act as Advisor to facilitate the transaction; additionally, upon the execution of the definitive merger agreement all current officers and directors of MCX will resign by election and replacement of the then current My ECGAR Board of Directors.

Conditions: Each party will be required to furnish to the other party copies of all corporate materials and or records upon request. Where records are not readily available, Oliver may opt to incur such expense to obtain records as necessary to complete its due diligence.

Disclosure of Letter of Intent: Immediately upon execution of this letter of intent, by mutual agreement, both parties may distribute a mutually agreed press release to the public at the expense of Oliver. Copies of this letter intent may not be distributed without the prior written consent of the other party.

Applicable Law: This Letter of Intent shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, without regard to conflicts of laws principles.

IN WITNESS WHEREOF, the parties hereto have each executed and delivered this Agreement as of the day and year first above written.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | **MERCOX INCORPORATED** |  |  |
|  |  |  |  |
| By: | Norbu Zen | Date: | September 10th, 2007 |
| Name: | Norbu Zen |  |  |
| Title: | President and Chief Executive Officer |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  | **OLIVER, INC.** |  |  |
|  |  |  |  |
| By: |  | Date: | September 10th, 2007 |
| Name: | Hans von Luck |  |  |
| Title: | Chief Executive Officer |  |  |

**PDD#15**

EXHIBIT 10.1

**Exhibit 10.1**

**LETTER OF INTENT FOR BUSINESS TRANSACTIONS**

April 20, 2016

Sharifa Khan

Stuff Marketing Inc.

Calistoga, CA 967775

Re: Cybersale Product US Distribution

Dear Mr. Yao-San:

This non-binding **letter of intent** (the “Letter of Intent”) is made by and between Stuff Marketing ( “Party A”) and E3 Enterprise (“Party B,” and together with Party A, each a “Party” and collectively the “Parties”) and sets forth the general terms and conditions of the Parties’ agreement to distribute Cybersale (Cybersale ) products in the North American markets exclusively(the “Proposed Transaction”). This letter contains non-binding provisions of understanding between Party A and Party B. Unless otherwise explicitly stated, it does not impose any legal obligations on either Party.

The Proposed Transaction requires additional documentation and approvals, including the preparation and approval of one or more final agreements (the “Final Agreements”) setting forth the terms and conditions of the Proposed Transaction in further detail. Before the Final Agreements are reached, We would like to confirm that we share an understanding of the principal terms and conditions of the Proposed Transaction, and that all Parties are willing to proceed in mutual good faith to work toward Final Agreements and a closing consistent with these terms.

Our proposal is as follows:

|  |  |  |
| --- | --- | --- |
|  | **1.** | **PROPOSED TRANSACTION.** |

Party A will do each of the following: Provide Cybersale product marketing materials in English, procure the products from Cybersale directly from Cybersale factory or through Cybersale EMS/ODM partner at FOB Hong Kong price, market these products through US distribution and retail channels.

Party B will do each of the following: Develop Cybersale products; provide product information in Japanese; supply products to Party A on-demand basis; provide shipping and logistics service of the products FOB Hong Kong; provide RMA service through its HK return center.

|  |  |  |
| --- | --- | --- |
|  | **2.** | **CONSIDERATION.** |

The consideration for the Proposed Transaction will be $10,000 as initial down payment for Party B products. Party A will pay for Party B product on cost-plus basis with a minimum gross margin of 30%. Party B will provide Party A 60-day payment term.

|  |  |  |
| --- | --- | --- |
|  | **3.** | **TIMING***.* |

The Parties shall execute the Final Agreements and close the Proposed Transaction on or before September (the “Closing Date”) [, subject to the extension contemplated by Section 6 below].

|  |  |  |
| --- | --- | --- |
|  | **4.** | **CONTINGENCIES.** |

Any obligation to consummate the Proposed Transaction under the terms of this Letter of Intent is based entirely on satisfaction of each of the following conditions:

|  |  |  |
| --- | --- | --- |
|  | a. | Execution of mutually acceptable Final Agreements under the laws of the state of Delaware. |

|  |  |  |
| --- | --- | --- |
|  | b. | Receipt of all applicable consents, approvals, and authorizations including board, partnership, third party, and regulatory approvals, if any, relating to the Proposed Transaction. |

|  |  |  |
| --- | --- | --- |
|  | c. | Completion by each Party and its business, legal, financial, and engineering representatives of a substantial due diligence investigation of all relevant business, legal, financial, engineering, and/or environmental documents, with results satisfactory to such Party, no later than July 29,2016 or as otherwise agreed by the mutual written agreement of the Parties (the “Due Diligence Completion Date”). |

|  |  |  |
| --- | --- | --- |
|  | **5.** | **NOTICE AFTER COMPLETION OF DUE DILIGENCE.** |

On or before the Due Diligence Completion Date, each Party shall notify the other Party in writing that it has completed substantial due diligence and is prepared to proceed with consummation of the Proposed Transaction (the “Notice of Intention to Proceed”). If a Party does not provide a Notice of Intention to Proceed to the other Party on or before the Due Diligence Completion Date, the other Party may cancel this proposal and, notwithstanding anything contained herein to the contrary, neither Party shall have any obligation or liability to the other Party. For the purposes of this Letter of Intent, the effective date of receipt of a Notice of Intention to Proceed will be the date of receipt as acknowledged in writing by the receiving Party.

|  |  |  |
| --- | --- | --- |
|  | **6.** | **EXTENSION OF TIME FOR CLOSING***.* |

If the Proposed Transaction is not completed by the Closing Date and each Party has been operating in good faith to complete its due diligence and negotiate the transaction documents in order to consummate the Proposed Transaction, the Parties shall evaluate the progress made towards closing and, if suitable progress is being made, discuss in good faith a revised Counting Period (as defined below) and Closing Date. If satisfactory progress has not been made towards closing, or if the Closing Date cannot occur by December 30th 2016, either Party in its sole discretion, may withdraw from the Proposed Transaction without any further obligation or liability to the other Party. Any Party withdrawing from the Proposed Transaction pursuant to the preceding sentence shall promptly inform the other Party in writing of such termination, notwithstanding any other provision contained herein. As used herein, the term “Counting Period” shall mean the period from the date of this proposal until the Closing Date, if on or before the Due Diligence Completion Date each Party has sent the Notice of Intention to Proceed in accordance with the terms of Section 5 above.

|  |  |  |
| --- | --- | --- |
|  | **7.** | **FINAL AGREEMENTS.** |

The Final Agreements will include customary covenants, conditions, representations, and warranties, which will be made as of the Closing Date. The Parties recognize that this is a non-binding **Letter of Intent** and that there may be additional elements for negotiation and inclusion.

|  |  |  |
| --- | --- | --- |
|  | **8.** | **ACCESS TO INFORMATION***.* |

While this Letter of Intent remains in effect, each Party and its advisors shall have reasonable access to the other Party’s books, records, and personnel files, and shall receive such financial and operational data and other information as that Party shall reasonably request. Any information so received shall be kept confidential by the receiving Party. On termination or expiration of this Letter of Intent, each Party shall return any and all printed information received from the other Party in connection with the Proposed Transaction.

|  |  |  |
| --- | --- | --- |
|  | **9.** | **EXCLUSIVE DEALING***.* |

In consideration of the effort and expense to be incurred by the Parties in connection with their due diligence review of the Proposed Transaction, each Party agrees that for a period of 120 days from the date of this Letter of Intent, such Party and its officers, directors, employees, and agents will not initiate, solicit, encourage (directly or indirectly), or accept any offer or proposal of any third party with respect to the Proposed Transaction, and shall not enter into any agreement, understanding, or transaction that would have an adverse affect on the ability of the Parties to consummate the Proposed Transaction.

|  |  |  |
| --- | --- | --- |
|  | **10.** | **EXPENSES***.* |

Unless and until otherwise agreed in writing, each Party shall be responsible for and bear all of its own costs and expenses (including any legal, accounting, broker, advisor, investment banking, or other fees and expenses or prior commitments in respect thereof) incurred in connection with the Proposed Transaction or this Letter of Intent, regardless of whether or not the Proposed Transaction is consummated. Except for breach of any confidentiality provisions hereof, neither Party shall have any liability to the other Party for any liabilities, losses, damages (whether special, incidental, or consequential), costs, or expenses incurred by the Party if negotiations between the Parties are terminated as provided in Section 13 below.

If the foregoing terms and conditions are in form and substance acceptable to you, please so indicate by signing this Letter of Intent in the space provided below and returning it to the attention of the undersigned. I look forward to working with you to complete the Proposed Transaction.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |

Sincerely,

Stuff Marketing Inc

By:

Sharifa Khan

Its: CEO

Calistoga, CA 9

AGREED AND ACCEPTED:

Cybersale Enterprise

Dated: By:

Haowen Zhen

Its: President

Tokyo, Japan

**PDD#16**

LETTER OF INTENT

EXHIBIT 10.1

September 5, 2007

**Letter of Intent to Purchase the Assets of  
Relay LLC, and CompServe Networks, LLC**

Attn: Mr. Clover Marx

|  |  |
| --- | --- |
| Re: | Letter of Intent for FastTrack, Incorporated, a Delaware corporation, (OTCBB: FAST) ("FASTTRACK"), to acquire the Assets of (the "Asset Purchase") Relay, LLC and CompServe Networks, LLC ("CompS" or "the Company"), both California, Limited Liability Companies. |
|  |  |

Dear Mr. Shippam:

This Letter of Intent ("LOI") will confirm the following general terms upon which our respective Board of Directors or similar governing body (collectively referred to as the "Parties") will adopt a Definitive Asset Purchase Agreement (the "Agreement"), and recommend that the CompS stockholders approve the Agreement, subject to the approval of a sufficient number of Comm. Adv. stockholders.

This LOI sets forth the material terms of the Asset Purchase and reflects the current, good faith intentions of FASTTRACK and CompS with respect thereto.

1.     The Asset Purchase.

(a)     The time of Closing shall be not later than October 15, 2007 (the "Closing Date"), unless extended by mutual consent of the parties.

(b)     FASTTRACK will pay the CompS Stockholders shares of common stock and cash as outlined below as compensation ("Purchase Price") for the purchase of all CompS assets, which Purchase Price shall be paid as follows:

i.     1,000,000 shares of FASTTRACK common stock shall be delivered to the CompS Stockholders within Five (5) days of the Closing Date, provided that CompS gross monthly retail billed revenues are at least $40,000.00 for the calendar month ending September 30, 2007. A proportionate number of shares will be withheld should monthly billed retail revenues fall short of $40,000.00. The stock value at time of transfer to CompS shall have a value of no less than $100,000. Should the value at the time of transfer have a value of less than $100,000 then FASTTRACK will issue additional stock to achieve a value at the time of transfer of no less than $100,000, provided that in no instance shall FASTTRACK issue more than 1,500,000 shares of common stock. Stock value will be determined by the OTC closing price of the stock of the day prior to transfer. No less than 1,000,000 shares will be issued regardless of stock price on the day of transfer.

ii.     $75,000 shall be wired pursuant to written instructions to the designated account of the Stockholders of CompS within five (5) days of the Closing Date, based on the same criteria as described in (i) above. A proportionate amount of this cash payment will be withheld should gross monthly billed retail revenues fall short of $40,000.00

iii.     $50,000 Note payable within 180 days of closing.

iv.     Earn-out Period and payment #1: **30% of net revenue increase** for the period ending 1 year from closing will be paid within 45 days of period ending 1 year from closing provided: revenues grow above $240,000 (from wireless, dial up, web hosting and VoIP combined, on networks built or owned in Nixon and Frances counties). Should Earn Out Period #1 ending revenues fall below $300,000 no Earn Out #1 payment will be paid. Earn out will be paid in cash or CA may elect to take Earn out in stock which will be calculated at 90% of market at the time of earn out calculation.

v.     Earn-out Period and payment #2: **30% of net revenue increase** for the period ending 2 years from closing and beginning 1 year from closing will be paid within 45 days of period ending 2 years from closing provided: revenues are greater at beginning of this Earn Out period than at the start of Earn Out Period #1 (from wireless, dial up, web hosting and VoIP combined, on networks built or owned in Nixon and Frances counties). Should Earn Out Period #2 ending revenues fall below $400,000, no Earn Out #2 payment will be paid. Earn out will be paid in cash or CA may elect to take Earn out in stock which will be calculated at 90% of market at the time of earn out calculation.

vi.     Earn-out Period and payment #3: **30% of net revenue increase** for the period ending 3 years from closing and beginning 2 years from closing will be paid within 45 days of period ending 3 years from closing provided: revenues are greater at beginning of this Earn Out period than at the start of Earn Out Period #2 (from wireless, dial up, web hosting and VoIP combined, on networks built or owned in Nixon and Frances counties). Should Earn Out Period #3 ending revenues fall below $600,000, no Earn Out #3 payment will be paid. Earn out will be paid in cash or CA may elect to take Earn out in stock which will be calculated at 90% of market at the time of earn out calculation.

vii.     Securities issued to the stockholders of CompS shall have "piggy back" rights on any registration statement filed by FASTTRACK subsequent to closing of this transaction.

2.     Definitive Agreement. The parties shall enter into a definitive Asset Purchase agreement containing the material provisions as set forth in this LOI. Both parties will endeavor to close this transaction as soon as possible. The Agreement shall specifically include, but shall not be limited, to the following:

(a)     Representations and warranties. Customary and usual representations and warranties and covenants by the parties, and the principal executive officer shall certify that these representations and warranties are true as of the Closing Date.

i.     None of the Parties to the Asset Purchase, nor their officers, directors, members or affiliates, promoter or control person, nor any predecessor thereof, have been subject to the following:

(A)     Any conviction in a criminal proceeding or being subject to a pending criminal proceeding (excluding traffic violations and other minor offenses) within the past five years;

(B)     Any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities; and

(C)     Any finding, ruling or judgment by a court of competent jurisdiction (in a civil action), the SEC or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated.

ii.     Each party shall have good title to all of its respective tangible and intangible assets including, but not limited to, intellectual properties necessary or required to successfully develop and commercially exploit its business enterprise as more fully described in its current business plan.

iii.     The CompS Stockholders own 100% of the issued and outstanding stock of CompS and shall indemnify FASTTRACK with respect to the Company's representations and warranties.

iv.     The Agreement will include representations and warranties with respect to the absence of undisclosed liabilities, liens and encumbrances of the assets of CompS and the financial condition and results of operations of CompS and with respect to the absence of any material adverse changes in CompS financial condition, earnings, and business operations with respect to the contemplated assets FASTTRACK is purchasing.

(b)     Opinions of Counsel. The delivery at Closing of favorable opinions of legal counsel for CompS regarding the customary and usual matters of law and fact covered under similar acquisitions and related agreements.

(c)     Opinions of Auditors. For the delivery at the Closing of financial statements reasonably acceptable to FASTTRACK, CompS shall deliver to FASTTRACK financial statements for the last two completed fiscal years as well as reviewed financial statements for the interim period(s) ended at the Closing Date prepared in accordance with Generally Accepted Accounting Principles. The cost of the audit will be borne by CompS.

(d)     Conditions Precedent. In addition, the Agreement shall contain the following conditions precedent:

i.     FASTTRACK shall have all SEC, state and federal filings and reports current, up to date, in proper form, and be, to the best of management's knowledge, in compliance with all state and federal regulations governing a public company.

ii.     For a period of at least sixty (30) days prior to the Closing Date, CompS will afford to the officers and authorized representatives of FASTTRACK full access to the properties, books and records of CompS in order that FASTTRACK may have a full opportunity to make such reasonable investigation as it shall desire regarding the affairs of CompS, and CompS will furnish FASTTRACK with such additional financial and operating data and other information as to the business and properties of CompS as FASTTRACK shall from time to time reasonably request. To the extent the state and federal filings and reports do not provide such information, CompS shall have similar access to the properties, books and records of FASTTRACK. Any such investigations and examinations shall be conducted at reasonable times and under reasonable circumstances, and each party hereto shall cooperate fully therein. The parties have entered into a Confidentiality, Restricted Use and Non-Solicitation Agreement and hereby acknowledge that all information exchanged by the parties which is not in the public domain shall be deemed confidential and proprietary and shall be subject to the provisions governing non-disclosure as set forth in such Agreement. No investigation by either party hereto shall, however, diminish or waive in any way any of the representations, warranties, covenants or agreements of the other party under the Agreement.

iii.     CompS will prepare a detailed listing of all outstanding liabilities, together with existing agreements and creditor consents for term payments of listed liabilities, which FASTTRACK agrees to assume and honor. This assumption of liabilities will not exceed $140,000.00 and shall generally match those liabilities and monthly payment amounts listed in Exhibit 1.

iv.     CompS shall have obtained and delivered to FASTTRACK all consents, waivers and approvals necessary to affect the Asset Purchase from the stockholders and Board of Directors of CompS.

v.     There shall not be any pending or threatened litigation regarding the Asset Purchase and the Agreement or any related transactions contemplated thereby or therein.

vi.     Customary legal opinions, closing certificates and other documentation in a form satisfactory to FASTTRACK and CompS, respectively, shall be delivered by the Parties.

vii.     There shall not be any material breach by the Parties of any representation or warranty contained in the Agreement, and the Parties shall be in compliance with each covenant contained in the Agreement.

viii.     FastTrack shall have completed the usual, customary and reasonable due diligence of CompS to FastTrack's satisfaction in its sole and exclusive judgment.

ix.     The Agreement shall contain additional mutually acceptable closing conditions to be determined by the Parties.

(e)     Conditions Subsequent. The Asset Purchase shall be subject to the occurrence of the following term and condition to occur within a reasonable time subsequent to the Closing:

i.     FASTTRACK shall file a Form 8-K with the SEC within four business days of entering into the Agreement disclosing the material terms of the Asset Purchase.

ii.     FASTTRACK and Clover Marx shall enter into an irrevocable 3 year employment contract which will pay Clover Marx a salary of $120,000 annually for three years. The agreement will contain a non-compete clause, with 5 year lock-out of Nixon and Frances Counties. FASTTRACK may cancel this employment contract at any time after year one by paying Clover Marx 70% of any unpaid portion of the employment contract within 30 days of termination of said employment agreement. Employment Agreement is attached hereto as Exhibit 2.

iii.     FastTrack will commit $300,000 of the $3 million dollars committed to FastTrack in the financing completed by Westside Capital (per publicly filed Form 8K on June 21, 2007), for the purpose of expansion and revenue growth into the Nixon and Frances broadband internet markets.

3.     Expenses. Each party shall pay its own legal, accounting and other expenses in connection with the Asset Purchase.

4.     Conduct of Business of CompS Prior to Closing.

          Until consummation or termination of the contemplated Asset Purchase, CompS will conduct business only in the ordinary course and no material assets of CompS shall be sold, encumbered, hypothecated or disposed of except in the ordinary course of business and only with the written consent of the other party which consent will not be unreasonably withheld.

5.     Miscellaneous Provisions:

(a)     On or before the Closing Date, FASTTRACK, CompS and all of the CompS Stockholders will have received all permits, authorizations, regulatory approvals and third party consents necessary for the consummation of the Asset Purchase, and all applicable legal requirements shall have been satisfied.

(b)     The Asset Purchase shall be consummated and the Agreement shall be executed as soon as practicable, and FASTTRACK shall instruct its legal counsel to immediately prepare all necessary documentation upon execution of this LOI.

(c)     Before Closing, the Board of Directors of FASTTRACK shall have approved the Asset Purchase and the Agreement. Prior to signing the LOI, CompS's shareholders shall have approved the transaction as outlined in the LOI.

(d)     All notices or other information deemed required or necessary to be given to any of the parties shall be given at the following addresses:

|  |  |  |
| --- | --- | --- |
|  | FASTTRACK: | FastTrack Inc. Attn: |
|  | |  |
|  | CompS: | Relay LLC |

(e)     No agent, broker, investment banker, person or firm is acting on behalf of the Parties or under their authority is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, in connection with any of the transactions contemplated herein.

(f)     The Agreement shall contain customary and usual indemnification, hold harmless provisions and investment representation language.

(g)     Except where the laws of another jurisdiction are necessarily applicable, the transactions which are contemplated herein and the legal relationships among the parties hereto, to the extent permitted, shall be governed by and construed in accordance with the laws (except for conflict of law provisions) of the State of California.

(h)     The substance of any press release or other public announcement with respect to the Asset Purchase, the Agreement and the transactions contemplated herein and therein, other than notices required by law, shall be approved in writing in advance by all parties and their respective legal counsel.

6.     Counterparts. This LOI may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all of such counterparts together shall constitute but one agreement.

7.     Amendments. Subject to applicable law, this LOI and any attachments hereto may be amended only by an instrument in writing signed by an officer or authorized representative of each of the parties hereto.

8.     Headings. The descriptive headings of the sections and subsections of this LOI are inserted for convenience only and do not constitute a part of this LOI.

9.     Waiver. No purported waiver by any party of any default by any other party of any term, covenant or condition contained herein shall be deemed to be waiver of such term, covenant or condition unless the waiver is in writing and signed by the waiving party. No such waiver shall in any event be deemed a waiver of any subsequent default under the same or any other term, covenant or condition contained herein.

10.     Entire Agreement. This LOI, together with the exhibits or other documents given or delivered pursuant hereto, sets forth the entire understanding among the parties concerning the subject matter of this LOI and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this LOI other than those set forth herein. No alteration, amendment, change or addition to this LOI shall be binding upon any party unless in writing and signed by the party to be charged.

11.     No Partnership. Nothing contained in this LOI will be deemed to or construed by the parties hereto or by any third person to create the relationship of principal and agent or partnership or joint venture.

12.     Joint Preparation. This LOI has been negotiated and prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the applicable rules of interpretation for arm's length agreements.

13.     Partial Invalidation. If any term, covenant or condition in this LOI or the application thereof to any party, person or circumstance shall be invalid or unenforceable, the remainder of this LOI or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is held invalid, shall be unaffected thereby and each term, covenant or condition of this LOI shall be valid and enforced to the fullest extent permitted by law.

14.     No Shopping. Prior to October 15, 2007 or the date of closing, in consideration of the resources to be committed to the transactions contemplated herein by FASTTRACK and its representatives and agents, neither CompS nor any of its officers, directors, shareholders, agents or representatives shall, directly or indirectly, solicit, initiate, encourage or participate in any negotiation or discussion or enter into any agreement in respect of or cooperate with any person regarding (including, without limitation, by way of furnishing any non-public information concerning, or affording access to, the business, properties or assets of CompS) any Asset Purchase Proposal, and any and all such discussions, other than those described in this letter, shall be immediately terminated. The term "Asset Purchase Proposal" means any proposal (other than a proposal by FASTTRACK) for the acquisition of all or a substantial portion of the stock or assets of CompS or for a merger, consolidation or other business combination pursuant to which any other person would acquire CompS or any substantial equity interest in CompS.

15.     Binding Effect; Break-up Fee. Subject to the provisions of Section 2 hereof, this LOI is binding on the parties hereto. In the event either party to this transaction terminates this LOI at any time before to the execution of a Definitive Agreement, it shall pay a break-up fee to the damaged party in the amount of $80,000 cash.

16.     Time is of the Essence. CompS shall sign this LOI no later than 5:00 P.M., Central Standard Time, September 5, 2007, as time is of the essence.

17.     Public Announcement. FASTTRACK and CompS mutually agree that neither party shall issue any press release or make any public announcement of the Asset Purchase or any other matter which is the subject of this LOI or any subsequent definitive Agreement without the prior consent of the other party, except where a public announcement is required by law as reasonably determined by such party or is in connection with such party's enforcement of its rights or remedies hereunder or there under for any breach by the other party. Notwithstanding the foregoing, CompS acknowledges that upon signing this LOI, FASTTRACK is required and shall file a Form 8-K with the SEC describing the material terms of the LOI and CompS hereby consents to such filing.

18.     Consents. FASTTRACK and CompS will cooperate with one another and proceed, as promptly as is reasonably practicable, to seek to obtain all necessary consents and approvals from lenders, shareholders, landlords 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 Asset Purchase and the Agreement.

19.      Efforts. FASTTRACK and CompS will negotiate in good faith and use their commercially reasonable efforts to arrive at a mutually acceptable definitive Agreement for approval, execution and delivery on the earliest reasonably practicable date. FASTTRACK and CompS will thereupon use their commercially reasonable efforts to affect the Closing and to proceed with the transactions contemplated by this LOI as promptly as is reasonably practicable.

20.     Confidentiality. FASTTRACK and CompS agree that (except as may be required by law) it will not disclose or use any "Confidential Information" (as hereinafter defined) with respect to the other, furnished, or to be furnished in connection herewith at any time or in any manner and will not use such information other than in connection with its evaluation of the Asset Purchase. For the purposes of this paragraph "Confidential Information "means any information identified as such in writing or, given the nature of the information or the circumstances surrounding its disclosure, which reasonably should be considered as confidential or proprietary. The parties agree to continue to be bound by that certain Confidentiality, Restricted Use and Non-Solicitation Agreement entered into on or about September 2007. If for any reason the Asset Purchase is not consummated, the receiving party will promptly return all documents to the party with provided such documents. The provisions of this paragraph shall survive the termination of this LOI.

     If the foregoing correctly sets forth the substance of the understanding of the parties, please execute this LOI in triplicate, retain one original copy for your records, and return the other original copies to Terence Sun at the address listed below. Also, please fax a signed copy to FASTTRACK, Inc. at (402) 392-7585.

|  |  |  |
| --- | --- | --- |
|  |  | Yours truly, |
|  |  |  |
|  |  | FastTrack Inc. / FastTrack, Incorporated |
|  |  |  |
|  |  |  |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Terence Sun |
|  |  | President |
|  |  | September 5, 2007 |

|  |  |  |
| --- | --- | --- |
|  |  | Accepted this 5th day of September, 2007. |
|  |  |  |
|  |  | CompServe Networks LLC / Relay, LLC |
|  |  |  |
|  |  |  |
|  |  | Clover Marx |
|  |  | Managing Director |

**Exhibit 1**

|  |  |  |
| --- | --- | --- |
| Debt Outstanding | Total | Monthly payment |
| A | 75,000 | 7,500 |
| B | 19,000 | 1,000 |
| C | 15,000 | 500 |
| D | 27,000 | 500 |
| Total | $    137,000 | $     9,500 |
|  |  |  |

**Exhibit 2**

**Employment Agreement**

**Exhibit 2 - Letter of Intent 9/5/07**

THIS AGREEMENT made as of, (Closing Date) 2007 between Fernspeak, Inc. with its principal place of business located at Omaha, NE 68376 (the "Employer") and, Clover Marx.(the "Employee").

WHEREAS the Board of Directors of the Employer considers it to be in the best interests of the Employer to enter into this Agreement with the Employee, and this Agreement has been duly approved by the Board of Directors of the Employer;

NOW THEREFORE this agreement witnesses that in consideration of the foregoing and the mutual covenants and agreements set out below and of other good and valuable consideration, the parties hereby agree as follows:

**Definitions.** Whenever used in this Agreement the following words and phrases shall have the following respective meanings:

**"Business Day"** shall mean the day upon which the principal office of all of the chartered banks in Nebraska are open for the transaction of business.

**"Date of Termination"** shall mean the date the Employee ceases to be employed by the Employer for whatever reason.

**"GAAP"**shall mean generally accepted accounting principles.

**"Guaranteed Amount"** shall mean an amount equal to number of months payment to be made to Employee in the event of termination without cause (ie. twelve (12) times the base monthly salary payable to the Employee by the Employer during the calendar month immediately preceding the Date of Termination.

**Employment.**

*Term and Position.* The Employer will continue to employ the Employee as until the Employee's employment is terminated in accordance with the provisions of this Agreement.

*Reporting Relationship and Responsibilities.*

*Service.* During the term of his employment with the Employer, the Employee will devote his full time, attention, and abilities to furthering the business of the Employer and will faithfully serve the Employer and use his best efforts to promote the interests of the Employer. The Employer agrees that the Employee will be free to hold equity interests in businesses which do not compete with the business of the Employer.

**Compensation.**

*Salary.* The Employee will receive a salary of One Hundred Twenty Thousand Dollars ($120,000) per annum payable in equal bi-weekly installments. The Employee's salary will be reviewed by Employee's immediate supervisor from time to time at the supervisors discretion, but in any event will be reviewed not later than January 1, 2009, and annually thereafter. Any salary review will be done with a view to assessing the Employee's achievement of overall objectives established from time to time by the Employee's supervisor and considering market rates of remuneration paid to Position of Employees of comparable international companies.

*Expenses.* The Employer will reimburse the Employee for all reasonable direct out-of-pocket expenses incurred in connection with the performance of his duties and responsibilities, or in carrying out any request made of the Employee by the Employer.

*Vacation.* During the term of his employment, the Employee will be entitled to such reasonable periods of vacation as per the Employer handbook, but not less than two (2) weeks every year. Such vacation shall be taken at such time as the Employee may from time to time reasonably decide, provided such time, in the opinion of Employee's immediate supervisor acting reasonably, does not materially interfere with the Employee's duties hereunder. The Employee shall adhere to the terms and conditions outlined in the Fernspeak, Inc. handbook.

*Benefits.* The Employee will be entitled to participate on equal terms and conditions in all insurance and other benefit plans which the Employer offers to its senior executives and will continue to receive all such benefits as he now enjoys.

**Termination.**

*Voluntary Resignation.* The Employee may terminate his employment with the Employer at any time by giving six (6) months' notice to the Employee's immediate supervisor.

*Termination for Just Cause.* The Employer may terminate the Employee's employment at any time for just cause, without notice or payment of any compensation.

*Termination of Employee's Employment Without Cause.* The Employer shall have the right to terminate the Employee's employment hereunder at any time without cause whereupon:

the Employer shall pay to the Employee an amount equal to the Guaranteed Amount;

if the Employee holds any options granted to him pursuant to the Employer's stock option plan for employees, the date to exercise such options shall be extended for the lesser of 1 months from the Date of Termination and the expiry date under such options;

the Employer shall pay to the Employee all outstanding and accrued salary and vacation pay to the Date of Termination within 30 days after the Date of Termination and reimburse the Employee for all proper expenses incurred by the Employee in carrying out his duties to the Employer prior to the Date of Termination;

if, at the Date of Termination, there were any memberships in any clubs, social, or athletic organizations paid for by the Employer that were for the regular use of the Employee, the Employer will not take any action to terminate such memberships, but need not renew any such membership that expires; and

prior to or contemporaneously with the payments set forth above, the Employee shall deliver a release in favor of the Employer, its subsidiaries, and their respective directors, officers, and shareholders in the form acceptable to Employer.

The Employer agrees to make payments contemplated herein irrespective of whether the Employee finds (or seeks) alternative employment.

*Constructive Dismissal.* In the event the Employer alters the Employee's remuneration, title, reporting relationship, or responsibilities to the extent that the Employee has been constructively dismissed, the Employer shall make all the payments and provide the benefits specified hereof, from and after the date of such constructive dismissal.

No Payment if Just Cause, Resignation, or Retirement. The Employer shall not have any obligation to make any of the payments described herein, other than the payment contemplated in this contract, or to extend the date for exercising any outstanding stock options, if:

the Employee's employment with the Employer has been terminated for just cause;

the Employee by reason of illness, mental or physical disability, or incapacity fails for an aggregate of six (2) months within any twenty-four (12) month period to perform his duties hereunder;

the Employee's employment terminates because of death or retirement.

**Covenants of the Employee*.***

*Employee's Acknowledgements.* The Employee acknowledges that:

the Employer and its subsidiaries have carried on and will hereinafter carry on the business of the Employer;

in the course of carrying out, performing, and fulfilling his responsibilities to the Employer, the Employee will have access to and will be entrusted with and receive confidential and proprietary information and trade secrets of the Employer ("Confidential Information") relating to the foregoing business, the disclosure of any of which to competitors or to the general public may be detrimental to the best interests of the Employer;

in the course of performing his obligations to the Employer hereunder, the Employee will be one of the key representatives of the Employer and as such will be significantly responsible for the maintaining or enhancing the goodwill of the Employer;

the right to maintain the confidentiality of such Confidential Information and the right to preserve the goodwill of the Employer constitutes proprietary rights which the Employer is entitled to protect.

*Non-Disclosure.* The Employee agrees that during his employment and for a period of twenty-four (24) months after he ceases to be employed by the Employer for any reason whatsoever, the Employee will not disclose, directly or indirectly, any Confidential Information or use any Confidential Information for any purpose whatsoever other than for the benefit of the Employer, provided that this does not apply to Confidential Information that has become public through no breach of this Agreement on the Employee's part.

**Non-Solicitation and Non-Competition.**

*Non-Competition and Non-Solicitation.* Employee covenants and agrees that during the period of his employment and for a period of 24 months from the Date of Termination, if the termination of the Employee's employment is caused by reason of his voluntary resignation as provided herein, or his retirement as provided for herein or his termination for just cause as provided for herein, the Employee will not, either alone or in conjunction with any individual, firm, corporation, association, or other entity (except for the Employer and its subsidiaries), whether as principal, agent, director, officer, employee, investor, consultant, or in any other capacity whatsoever: (i) carry on, be engaged in, concerned with, or interested in, or advise, lend money to, guarantee the debts or obligations of, or permit his name to be used or employed by, any person or persons, firm, association, syndicate, or corporation engaged in or concerned with the business being carried on by the Employer or its subsidiaries at the Date of Termination, including, without limitation, the business of within any State of the United States of America or Province or Territory of Canada (provided that the foregoing shall not prevent the Employee from purchasing as a passive investor up to 5% of the outstanding publicly-traded shares or other securities of any class of an issuer listed on a recognized stock exchange); or (ii) attempt, directly or indirectly, to solicit or approach any employee, customers, or suppliers of the Employee or any of its subsidiaries. In this contract, (I) "customer" shall mean any customer with which the Employer or its subsidiaries will have transacted business within a period of three (3) years prior to the Date of Termination, and (II) "supplier" shall mean any supplier with which the Employer or its subsidiaries which exist at the Time of Termination and any supplier with which the Employer or its subsidiaries have done business within a period of three (3) years prior to the Date of Termination. The Employee agrees that this section reflects separate covenants and each shall be severable one from the other. The Employee further acknowledges and agrees that all of the covenants and restrictions in this section are reasonable and valid and all defenses to the strict enforcement thereof by the Employer are hereby expressly waived.

*Breach by the Employee of Non-Competition and Non-Solicitation.* In addition to any other remedy available to the Employer, the Employee agrees that a breach of any of the provisions shall be regarded as a fundamental breach of the Employee's obligations hereunder entitling the Employer (i) to refuse to perform or to continue performing its obligations hereunder, including payment of the Guaranteed Amount and (ii) if paid, to seek repayment from the Employee.

*Injunctions.* The Employee hereby acknowledges and agrees that any breach whatsoever of the terms of this Agreement by him shall cause, and shall be deemed to be, a breach of his fiduciary obligations to the Employer and shall cause serious damages and injury to the Employer for which monetary damages would not, alone or in part, adequately compensate the Employer. Accordingly, the Employee agrees that if he should violate any of the terms if this Agreement, the Employer shall be entitled, either on its own initiative or with such others as it may decide, to all appropriate remedies, including an interim, interlocutory, or permanent injunction to be issued by any competent court enjoining and restraining the Employee from such wrongful acts.

*Severability.* Each of the sections contained herein shall be and remain separate from, independent of, and severable from all and any other sections herein except as otherwise indicated by the context of this Agreement. Any decision or declaration that one or more of the sections or subsections are null and void shall have no effect on the remaining sections or subsections in this Agreement.

*Notices.* Any notice in writing required or permitted to be given to the Employee shall be delivered personally or mailed by registered mail, postage prepaid, addressed to the Employee at his last residential address known to the Employee's immediate supervisor. Any such notice mailed shall be deemed to have been received by the Employee on the second business day following the date of mailing. Any notice in writing required or permitted to be given to the Employer shall be given by registered mail, postage prepaid, addressed to the Employer at . Any such notice mailed shall be deemed to have been received by the Employer on the second business day following the date of mailing. Such address for the giving of notices may be changed by notice in writing.

*Termination of Prior Agreements.* Any previous agreements, written or oral, express or implied, between the Employee and Employer relating to the employment of the Employee by the Employer are terminated and cancelled, and the Employee and the Employer release and forever discharge each other of and from all manners of action, causes of action, claims, and demands whatsoever under or in respect of any such prior agreement.

*Entire Agreement.* This Agreement constitutes the entire agreement between the parties hereto and contains all of the covenants, representations, and warranties of the respective parties. There are no oral representations or warranties between the parties of any kind. This Agreement may not be amended in any respect except by written instrument, signed by the parties. Any oral amendments or modifications will be of no force or effect and will be void.

***General.***

*Tendering Resignations.* The Employee agrees that after termination of his employment, he will tender his resignation from any position he may hold as an officer or director of the Employer or its subsidiaries. Doing so will not reduce the obligations of the Employer described herein.

*Delivery of Records.* Upon any termination of employment, the Employee shall, within five (5) business days, deliver or cause to be delivered to the Employer all books, documents, effects, monies, securities, or other property belonging to the Employer or its subsidiaries or for which the Employer or its subsidiaries are liable to others, which are in the possession, charge, control, or custody of the Employee.

*Benefit and Binding Nature of Agreement.* This Agreement shall enure to the benefit of and be binding upon the Employee and his heirs, executors, legal personal representatives, and administrators, and upon the Employer and its successors and assigns.

*No Derogation.* Nothing herein derogates from any rights the Employee may have under applicable law except as set forth in this Section. The parties agree that the rights, entitlements, and benefits set out in this Agreement to be paid to the Employee are in full satisfaction of all rights of the Employee under any statute, law or legislation in any other jurisdiction, and any rights or entitlements the Employee may otherwise have as a result of the termination of his employment whether against the Employer or any of the Employer's subsidiaries.

*No Oral Waiver.* Neither party may waive or shall be deemed to have waived any rights it or he may have under this Agreement (including under this Section) except to the extent that such waiver is in writing.

*Governing Law.* This Agreement shall be construed and interpreted in accordance with the laws of the State of Nebraska. Each of the parties hereto irrevocably attorn to the jurisdiction of the courts of the State of Nebraska with respect to any matters arising out of this Agreement. Each party irrevocably submits to the non-exclusive jurisdiction of any court (or arbitrator) sitting in the State of Nebraska over any suit, action, or proceeding arising out of or relating to this Agreement. To the fullest extent, the Employee and the Employer may do so under applicable law, each of them irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that he or it is not subject to the jurisdiction of any such court, any objection which he or it may now or hereafter have to the laying of the venue of any such jurisdiction or proceeding brought in any such court, and any such claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. The Employee agrees, to the fullest extent he may effectively do so under applicable law, that a final judgment (to which all appeals have been taken or the time limits for appeal have expired) in any suit, action, or proceeding brought in any such court shall be conclusive and binding upon him and may be enforced by a suit upon such judgment in the courts of any jurisdiction to which the Employee is or may then be subject.

*Legal Representation.* The Employee acknowledges to the Employer that he has been represented and has had opportunity to be represented by separate legal counsel in connection with the negotiation and finalization of this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

|  |  |
| --- | --- |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Name: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
|  |  |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Name: | Terence Sun |
|  |  |
| Its: | President |
|  |  |
| Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**PDD#17**

LETTER OF INTENT BY AND AMONG FARMO CORPORATION, LARMONT, LLC AND THE SELLERS LISTED THEREIN, DATED AS OF DECEMBER 3, 2021

**Exhibit 10.1**

**Letter of Intent**

**Farmo and Larmont, LLC**

**CONFIDENTIAL**

This Letter of Intent (this “Letter”) is entered into as December 3, 2021 (“Effective Date”), between Farmo Corporation (“Farmo”), Larmont, LLC (together with its subsidiaries, including, without limitation, Larmo Services, LLC, the “Company”), and the Sellers listed on the signature page hereto (“collectively, the “Sellers”). The Sellers, Farmo and the Company are collectively referred to as the “Parties” and each as a “Party”. This Letter confirms the intention of the Parties to enter into a transaction for the acquisition of the Company by Farmo (the “Transaction”) as described in more detail in Schedule 1. The Parties intend that this Letter create a binding obligation on each Party’s part to act in the utmost good faith to expeditiously negotiate, execute and deliver a definitive agreement (together with any ancillary documents, the “Definitive Documentation”) between the Parties to be consummated as soon as practicable, providing for a target closing date of December 31, 2021, or such other date as Farmo, the Company and the Majority Sellers shall agree to in writing, and all Parties hereto may rely justifiably on the binding nature of this Letter. The Definitive Documentation will be drafted by counsel for Farmo and will contain provisions such as representations and warranties, covenants, indemnifications and other provisions which are consistent with this Letter, which are acceptable to the Parties and customarily found in agreements of the kind contemplated by this Letter. For purposes of this Letter, the term “Majority Sellers” shall collectively refer only to Walter Mitty and Joshua Rutherford and shall not refer to any other Sellers and the term “Minority Sellers” shall refer to all other Sellers that are not Majority Sellers.

**1. Due Diligence Period and No-Shop.** In consideration of, among other things, the execution of this Letter and the expenditure of extensive time, effort, and expense by or on behalf of the Parties in negotiating this Letter, and otherwise proceeding in accordance herewith, the Company and the Sellers hereby agree for the period (the “Due Diligence Period”) beginning on the Effective Date and ending on the date (the “Exclusivity Termination Date”) which is the earlier of (a) March 31, 2022, and (b) the date on which this Letter is terminated in accordance with Section 3 hereof, that the Company and the Sellers shall, and the Company shall cause each of its affiliates, officers, managers, members, directors, employees, agents, legal counsel, financial advisors and other representatives (“Representatives”):

|  |  |  |
| --- | --- | --- |
|  | ● | to immediately terminate all existing discussions with any corporation, partnership, person or other entity or group (other than Farmo) concerning a Transaction or any similar transaction involving the sale of the Company, its securities or any of its material assets; |

|  |  |  |
| --- | --- | --- |
|  | ● | not to directly or indirectly, solicit, initiate or participate in any way in discussions or negotiations with, or provide any information to, any corporation, partnership, person or other entity or group (other than Farmo) concerning any Transaction or any similar transaction involving the sale of the Company, its securities or any of its material assets, in whole or in part, whether through direct or indirect purchase, joint venture, partnership, consolidation or other business combination, or otherwise; and |

|  |  |  |
| --- | --- | --- |
|  | ● | not to disclose to any person other than its Representatives, the proposed terms of, or the existence of, the Transaction, including, without limitation, drafts of the Definitive Documentation that Farmo provides to the Company and the Sellers in connection therewith. |

Page 1 of 9

During the Due Diligence Period, each Party shall allow the other Parties and their respective auditors, legal counsel and other authorized representatives all reasonable opportunity and access during normal business hours to inspect and investigate the assets and information concerning the business of the Parties for purposes of conducting due diligence.

**2. Prior MNDA and Confidentiality.**Farmo and the Company are parties to a Mutual Confidentiality and Non-Disclosure Agreement dated November 17, 2021 (the “Existing MNDA”). This Letter is confidential to the Parties and their representatives and is subject to the Existing MNDA, which continues in full force and effect. Notwithstanding the above, nothing in this Letter or the Existing MNDA shall prohibit: (i) a Party from disclosing Confidential Information of the other Party to the extent required by applicable law, rule or regulation (including a court order or other government order) or the rules and regulations of the SEC or any national securities exchange; or (ii) a Party from disclosing the existence or terms and conditions of this Letter to its attorneys and financial advisors, or current or potential lenders or other sources of financing.

**3. Term and Termination**. This Letter will terminate upon the earliest to occur of (the “Termination Date”):

(a) delivery to the Company and the Sellers of the written election of Farmo, which Farmo shall promptly and in good faith deliver to the Company if Farmo determines or evidences that it will no longer pursue the Transaction for any reason in its sole discretion upon expiration of the Due Diligence Period; or

(b) at 5:00 pm, Eastern Standard Time on the Exclusivity Termination Date, unless extended by mutual written agreement of Farmo and the Company.

“Term” shall mean the period of time from the Effective Date until the Termination Date.

Page 2 of 9

**4. Nature of Letter**. The Company and each Seller agrees that, notwithstanding anything to the contrary contained herein, only the agreements and obligations of the Company and the Sellers provided for in Sections 2, 5, 6 and 8 of this Letter shall survive any termination or expiration of this Letter. Notwithstanding the foregoing, the provisions set forth herein shall be binding upon the Parties. The Company and each Seller acknowledges that there may be material provisions and terms relating to the Transaction that have not yet been negotiated or agreed as between the Parties, and that the Company and the Sellers will not have any rights or any legally binding obligations with respect to such matters until the Definitive Documentation relating to the Transaction have been approved by each of Farmo, the Company and the Sellers and executed and delivered by each of them and/or their respective affiliates, as applicable. The transactions described in this Letter shall be subject to, among other things, (i) execution of Definitive Documentation mutually satisfactory to Farmo and the Company, (ii) the reasonable satisfaction of Farmo and the Company with conditions thereto (including those described in Schedule 1), (iii) satisfaction of Farmo (in its sole and absolute discretion) with: (A) the results of its due diligence, and (B) the financial and business condition of the Company and its affiliates.

**5. Costs**. The Parties will bear their own costs and expenses in connection with the execution and delivery of this Letter, the negotiation of the Transaction, and the execution of the Definitive Documentation.

**6. Termination Fee**. Each Party recognizes the time and cost associated with consummating the Transaction. In the event that Farmo fails to consummate the Transaction by the Exclusivity Termination Date or ceases negotiations pursuant to this Letter for any reason other than either (i) as a result of reasonably concluding during its diligence review of the Company during the Due Diligence Period that there exists a fact or set of facts that would reasonably be expected to result in a material adverse effect to the business or assets of the Company and its subsidiaries, taken as a whole, or (ii) as a result of the Company or the Sellers refusing or intentionally failing to consummate any of the transactions referenced herein or adhere to the material terms of this Letter, including, but limited to, the exclusivity provisions of Section 1 (provided such refusal or failure is not related to any breach by Farmo of this Letter or refusal to adhere to its material terms), then Farmo shall promptly pay to the Company an amount equal to $1,000,000.00 (the “Termination Fee”) plus any costs reasonably incurred in connection with enforcing the payment of such Termination Fee, which shall be the sole remedy of the Company or the Sellers arising from any termination of this Letter or otherwise in connection with any failure to close the Transaction.

In the event that the Company fails to consummate the Transaction by the Exclusivity Termination Date or ceases negotiations pursuant to this Letter for any reason other than as a result of Farmo refusing or intentionally failing to consummate any of the transactions referenced herein or adhere to the material terms of this Letter (provided such refusal or failure is not related to any breach by the Company or any of the Sellers of this Letter or refusal to adhere to its material terms), then the Majority Sellers shall promptly pay to Farmo an amount equal to the Termination Fee plus any reasonable costs incurred in connection with enforcing the payment of such Termination Fee, which shall be the sole remedy of Farmo arising from any termination of this Letter or otherwise in connection with any failure to close the Transaction.

Page 3 of 9

Notwithstanding anything to the contrary herein, the Parties acknowledge and agree that this Section 6 is binding upon each of the Parties and shall survive the termination of this Letter.

**7. Entire Agreement**. This Letter supersedes any prior written or oral communications or agreements between Farmo and the Company relating to its subject matter and constitutes the entire agreement of the Parties with respect thereto. This Letter may not be amended, except in a writing signed by each of Farmo and the Company. Except as otherwise set forth herein, the provisions contained in this Letter shall be binding upon the Parties until such time as the Parties execute and deliver the Definitive Documentation at which time the Parties shall be bound by the terms thereof.

**8. General Provisions**. This Letter will be construed under the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of law provisions. This Letter may be executed in one or more counterparts, each of which will be deemed to be an original and all of which taken together will constitute but one and the same instrument. No Party may assign its rights hereunder without the prior written consent of all of the other Parties.



*[Signature page follows]*

Page 4 of 9

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Agreed to as of the Effective Date. | | |  | |
|  | |  |  | |
| **FARMO** | |  | **COMPANY** | |
|  | |  |  | |
| FARMO CORPORATION | |  | LARMONT, LLC | |
|  | |  |  | |
| By: | /s/ HanHo Ping |  | By: | /s/ Walter Mitty |
| Name: | HanHo Ping |  | Name: | Walter Mitty |
| Title: | CEO |  | Title: | CEO |
|  | |  |  | |
| **SELLERS** | |  |  | |
|  | |  |  | |
| /s/ Walter Mitty | |  | /s/ Joshua Rutherford | |
| Name: Walter Mitty | |  | Name: Joshua Rutherford | |
|  | |  |  | |
| /s/ Warren Werner | |  | /s/ Scott Christensen | |
| Name: Warren Werner | |  | Name: Scott Christensen | |
|  | |  |  | |
| /s/ Sarah Fox | |  | /s/ Alicia Britton | |
| Name: Sarah Fox | |  | Name: Alicia Britton | |
|  | |  |  | |
| /s/ Mileva Bovic | |  |  | |
| Name: Mileva Bovic | |  |  | |

Page 5 of 9

Schedule 1

Summary of Terms and Conditions

This Schedule 1 summarizes the principal terms of the Transaction. Capitalized terms used but not defined herein and not defined are as defined in the Letter.

Closing Date The closing date (“Closing”) shall occur by December 31, 2021.

Transaction Overview Farmo will purchase 100% of Company’s outstanding equity interests (the “Interests”).

Closing Payment Aggregate purchase price payable to the Sellers pro rata at closing equal to $9.0 million on a cash-free, debt-free basis and subject to adjustment as provided below (the “Closing Consideration Amount”).

$5.0 million of the Closing Consideration Amount will be in the form of unregistered shares of Farmo common stock based on the 30-day VWAP up to and including the fifth business day prior to Closing (such price per share, the “Closing Share Price”), and $4.0 million of the Closing Consideration Amount will be paid in cash via wire transfer of immediately available funds to accounts designated in writing by the Sellers. The Farmo common stock issued at closing will not be subject to any contractual lock-up restrictions, and the Company will use its commercially reasonable efforts to assist Farmo (who shall use its commercially reasonable efforts) with removal of restrictive legends when permitted pursuant to Rule 144 under the Securities Act of 1933, as amended.

Closing Adjustments Target Net Working Capital to be mutually agreed upon by Farmo and the Company, which amount will be customary for transactions of this size and appropriate based on the working capital needs of the Company. If the adjustment is a positive number, the cash portion of the Closing Consideration Amount shall be increased by the amount of the adjustment; if the adjustment is a negative number, the cash portion of the Closing Consideration Amount shall be reduced by the amount of the adjustment. Additionally, the cash portion of the Closing Consideration Amount will be increased by cash on hand at closing and reduced by the amount of any indebtedness and unpaid transaction expenses (including, but not limited to, any severance or transaction bonus payments payable in connection with the Transaction) of the Company. If the adjustment is a positive number, the cash portion of the Closing Consideration. Amount shall be increased by the amount of the adjustment not to exceed $1,000,000; if the adjustment is a negative number, the cash portion of the Closing Consideration Amount shall be reduced by the amount of the adjustment not to exceed $1,000,000.

Page 6 of 9

Net Working Capital will be equal to Current Assets minus Current Liabilities. For purposes of the net working capital adjustment, “Current Assets” shall mean accounts receivable, inventory and prepaid expenses, but excluding (a) cash, (b) the portion of any prepaid expense of Farmo will not receive the benefit following the closing, (c) deferred tax assets and (d) receivables from any of the Company's affiliates, managers, employees, officers or members and any of their respective affiliates, determined in accordance with the Company’s historic accounting principles.

For purposes of the net working capital adjustment, “Current Liabilities” shall mean accounts payable, accrued taxes and accrued expenses, but excluding (a) payables to any of the Company's affiliates, managers, employees, officers or members and any of their respective affiliates, (b) deferred tax liabilities, (c) transaction expenses, and (d) indebtedness of the Company, determined in accordance with the Company’s historic accounting principles.

Earnout Payments In addition to the Closing Consideration Amount, the Sellers (on a pro rata basis) will be entitled to the following earn-outs based on revenue from the sales of Company products and services (including resales) following closing:

(i) If Farmo receives eligible revenues from the sale of Company products during the calendar year ended December 31, 2022 (A) greater than or equal to $13,000,000.00 and less than $14,000,000.00, then the Sellers shall receive an earn-out payment with a value of $750,000.00, or (B) greater than or equal to $14,000,000.00, then the Sellers shall receive an earn-out payment with a value of $1,500,000.00.

(ii) If Farmo receives eligible revenues from the sale of Company products during the calendar year ended December 31, 2023 (A) greater than or equal to $18,500,000.00 and less than $20,000,000.00, then the Sellers shall receive an earn-out payment with a value of $750,000.00, or (B) greater than or equal to $20,000,000.00, then the Sellers shall receive an earn-out payment with a value of $1,500,000.00.

Page 7 of 9

In each case, 40% of the applicable earn-out amounts shall be paid in the form of cash and the remaining 60% shall be paid in the form of shares of Farmo common stock, with the value per share equal to the 30-day VWAP up to and including the end of the applicable earn-out period. Each earn-out payment will be payable within 90 calendar days after the end of the applicable earn-out period. Farmo may set off against any earn-out payment to the extent that the Sellers are liable for any indemnification obligations.

During each applicable earn-out period, Farmo shall not intentionally, directly or indirectly, take any actions in bad faith that have the primary purpose of deferring, delaying or impairing revenue for purposes of the earn-out calculations.

Holdback for Stock A number of shares of Farmo common stock representing 15% of the value of the Closing Consideration Amount (the “Holdback Shares”) will be held back by Farmo for a period of twelve (12) months for purposes of satisfying any post-closing adjustments or indemnification obligations of Sellers.

Representations, Warranties Customary for transactions of this type, including organization and qualification, authority, third party consents, title to and sufficiency of assets, capitalization and subsidiaries, financial statements, absence of undisclosed liabilities, absence of certain changes, legal actions and governmental orders, compliance with laws, permits, taxes, warranties, material contracts, intellectual property, inventory, real property, customers and suppliers, employees and benefits, personal data, insurance, product liability, brokers, environmental matters, affiliate transactions, bank accounts, and books and records.

Certain of the representations and warranties will be deemed “Fundamental Representations”, including organization and qualification, authority, capitalization, compliance with laws, intellectual property, taxes, employee benefits, employee matters, brokers, and environmental matters.

The Representations and Warranties of the Parties will survive for a period of twelve (12) months following Closing, except for the Fundamental Representations, which will survive for the applicable statute of limitations plus 60 days.

Page 8 of 9

Conditions to Closing Execution of employment agreements and/or offer letters between Farmo and key Company executives and employees, including two-year employment agreements with each of the Majority Sellers, with a base salary of $175,000 and performance bonus eligibility of up to $50,000 for each Majority Seller, with the titles to be mutually agreed upon by the Parties. Additionally, in connection with the offer letters to be entered into between Farmo and each Minority Seller, each Minority Seller shall be entitled to receive 5,000 Restricted Stock Units of Farmo common stock. Other standard conditions to Closing for transactions of this type, including Board approval, ordinary course operation during Due Diligence Period, absence of material adverse change in Company’s business or financial condition, absence of litigation, Nasdaq compliance, and stockholder approval.

Indemnification The Majority Sellers will jointly and severally, and the Minority Sellers will severally (but not jointly), indemnify Farmo against losses arising from (a) misrepresentations or breaches of representations or warranties of the Sellers or the Company; (ii) breaches of any covenants, agreements or obligations of the Sellers or the Company; (iii) taxes of the Company with respect to pre-Closing periods; and (iv) indebtedness and transaction expenses of the Company, to the extent not paid at Closing. Indemnification obligations of the Majority Sellers will be satisfied (A) first, by deducting any remaining Holdback Shares due to Majority Sellers, with the value per Holdback Share being equal to the Closing Share Price, (B) second, by setting off against any earn-out payments due to Majority Sellers, and (C) third, by payment directly from Majority Sellers. The sole Indemnification obligations of the Minority Sellers may only be satisfied by deducting any remaining Holdback Shares due to Majority Sellers, with the value per Holdback Share being equal to the Closing Share Price.

Farmo will indemnify the Sellers against losses arising from (i) misrepresentations or breaches of represents or warranties of Farmo; and (ii) breaches of any covenants, agreements or obligations of Farmo.

The indemnification obligations of the Sellers, on the one hand, and Farmo, on the other hand, with respect to losses arising from breaches of representations and warranties other than the Fundamental Representations, will be subject to (i) a basket of $90,000, at which point the indemnifying Party shall be obligated to indemnify from the first dollar, and (ii) an aggregate cap of $1,350,000. In no event shall the Sellers be responsible to make indemnity payments or offsets with respect of breaches of representations or warranties (including breaches of Fundamental Representations) that, in the aggregate, exceed the Closing Consideration Amount plus any earn-out consideration actually received by the Sellers.

Governing Law/Venue Commonwealth of Massachusetts.

Transaction Documents All other terms will be negotiated between the Parties in good faith and will be set forth in Definitive Documentation.

**PDD#18**

LETTER OF INTENT

EXHIBIT EX-2

CONFIDENTIAL

October 4, 2005

Gourmet Dining  
c/o Mr. Felix M. Krull  
Chairman of the Board  
1551 North Waterfront Parkway  
Kansas 67206

Re: Letter of Intent

Dear Mr. Krull:

This letter of intent will evidence our discussions regarding the interest of Yokohama Capital Partners, Inc., or an affiliate ("Investor"), in purchasing all of the outstanding common stock (other than shares held by the Rollover Shareholders referred to below) of Gourmet Dining ("Gourmet" or the "Company") for $14.00 per share in cash, subject to the terms and conditions of this letter of intent. To consummate the transaction contemplated herein, Investor shall form a new entity ("Newco") to merge into Gourmet with the Company surviving the merger (the "Merger").

The following table shows the anticipated sources and uses for the transaction contemplated herein.

|  |  |  |  |
| --- | --- | --- | --- |
| Source | | Uses | |
| Senior Facility | $105.0MM | Purchase Equity | $148.7MM |
| Investor Capital | $53.8MM | Repay Existing Debt | $10.1MM |
| Rollover Shares | $17.4MM | Working Capital | $10.0MM |
|  |  | Fees & Expenses | $7.4MM |
| Total | $176.2MM | Total | $176.2MM |

Delivered with this letter is a "Highly Confident" letter with respect to the placement of the Senior Facility (the "Highly Confident Letter") issued by Libra Securities, LLC ("Libra Securities"). As part of the transaction, Investor will require that certain shareholders including certain management shareholders (collectively, the "Rollover Shareholders") exchange approximately 1.24 million shares of common stock and/or options of the Company (collectively the "Rollover Shares") for shares of the post-merger company having the equivalent value of $17.4 million. Investor will require that, at the time of signing the definitive merger agreement, the Rollover Shareholders enter into customary voting and lock-up agreements pursuant to which, among other things, the Rollover Shareholders shall agree to vote all the Rollover Shares in favor of the Merger.

1. Due Diligence. Immediately following the execution of this letter of intent by the Company, Investor will commence its due diligence investigation of the Company and its subsidiaries and other affiliates (collectively referred to as the "Companies"). The due diligence investigation will include, but not be limited to, a review of the Companies' business, operations, prospects, properties (including all of their assets) and condition (financial and otherwise). The Companies shall provide Investor, potential senior lenders and their representatives access, on a timely basis, to all books, records, accounts, material agreements (including, without limitation, leases), personnel information (including background information and references), suppliers, facilities and proprietary information of the Companies, as well as the opportunity to discuss directly with senior management and other personnel the Companies' operations and related business and financial matters. Investor anticipates that its due diligence investigation shall be completed (assuming timely responses and complete cooperation by the Companies) no later than November 3, 2005. Additionally, Investor currently anticipates that the senior lenders can complete their due diligence investigation with respect to the Senior Facility on or prior to December 2, 2005.

2. Conditions to Closing; Definitive Agreements. In addition to customary closing conditions for transactions of this type, the consummation of the transactions contemplated by this letter of intent is subject to (i) the negotiation, execution and delivery of definitive documentation, including (w) a securities purchase agreement with respect to the Investor Capital, (x) a definitive merger agreement (or similar agreement) with the Company, the Rollover Shareholders, Investor and Newco (the "Definitive Merger Agreement"), which shall contain provisions substantially similar to those contained herein relating to Alternative Third Party Proposals (as defined in paragraph 4(b)) and an Alternative Transaction Fee (as defined in paragraph 4(c)), (y) definitive voting and lock-up, shareholder and other equity-related agreements with the Rollover Shareholders, and (z) the Senior Facility documents, each containing terms and conditions mutually acceptable to the parties thereto, (ii) satisfactory completion of Investor's and the senior lenders' business and legal due diligence investigation, (iii) the funding of the Senior Facility and (iv) the absence of any material adverse change in the condition (financial or otherwise), business, operations, properties or prospects of the Companies since December 31, 2004. The parties will use their reasonable best efforts to negotiate, execute and deliver definitive documents by December 2, 2005 and to close the transaction by February 28, 2006, it being understood that the final closing date shall occur as soon as practicable after Investor and the senior lender have received all necessary consents, authorizations and approvals (including early termination of the waiting period in connection with an HSR filing, if needed) and the Company has received the requisite approval of its shareholders.

3. Public Statements; Confidentiality. Until consummation of the transactions contemplated hereby, except as required by applicable law or regulatory authority, none of the Companies or any of their respective shareholders, officers, directors, affiliates, representatives, investment bankers (including Willow Advisors, LLC ("WILLOW")), business brokers or agents nor Investor or any of its shareholders, officers, directors, affiliates, representatives, investment bankers, business brokers or agents, in each case without the prior consent of Investor and the Company, respectively, will disclose to any other person (other than the Company's and Investor's advisors, accountants, lawyers and other professionals who are involved in the transaction contemplated herein), (i) the fact that discussions or negotiations are taking place concerning a possible transaction between the Company and Investor or (ii) any of the terms or conditions contained in this letter of intent or the definitive documents, or discussed or proposed in negotiations between the Company and the Investor after the date hereof. All information exchanged by the parties in connection with the due diligence investigation and the negotiation and consummation of the transactions contemplated hereby shall be subject to the terms of this letter of intent and the Confidentiality Agreement, dated June 23, 2005, between the Investor and WILLOW. Any disclosure that the Board of Directors (as defined in paragraph 4(b)) is required to make by law or regulatory authority will not constitute a violation of this letter of intent.

4. Exclusivity. (a) In consideration of the capital and other resources (human or otherwise) committed and to be committed to Investor's due diligence investigation of the Companies and the consummation of the transactions contemplated by this letter of intent, during the Effective Period (as defined in paragraph 8), the Company will not, nor will it permit any of its affiliates, subsidiaries, shareholders, members, directors, officers, employees, attorneys, accountants, investment bankers (including WILLOW), business brokers, representatives or agents to, directly or indirectly, initiate contact with, or solicit, consider, encourage or make any inquiries or proposals from or to, or furnish any information regarding the Companies or their businesses or assets to, or engage or participate in any discussions or negotiations with, any person or entity with respect to any proposal pursuant to which any of the Companies would (i) obtain any debt or equity capital, (ii) be acquired, whether through a purchase, merger, tender offer, consolidation or other business combination, (iii) sell all or a substantial part of the assets of any of the Companies or their businesses or (iv) enter into any transaction or arrangement or otherwise approve any transaction pursuant to which any third party would acquire beneficial ownership (determined in accordance with Section 13(d) of the Securities Exchange Act and the related rules thereunder) of more than 10% of the outstanding common stock of any Company. Any transaction referred to in clauses (i), (ii), (iii) or (iv) above is referred to as an "Alternative Transaction". The Company will promptly communicate to Investor the fact that it has received any proposal or inquiry regarding any Alternative Transaction, whether in writing or otherwise. In addition, concurrent with the execution of this letter of intent, the Company shall terminate all discussion with other parties concerning an Alternative Transaction.

(b) Notwithstanding the foregoing, if the Company is in compliance with the provisions of paragraph 4 and it receives an unsolicited bona fide proposal from a third party regarding any Alternative Transaction (an "Alternative Third Party Proposal"), the Company may consider such proposal, engage and participate in discussions or negotiations with such third party regarding such Alternative Third Party Proposal and furnish information regarding the Companies or their businesses or assets to such third party in connection therewith; provided that the Company complies with the provisions of this paragraph 4(b). Within one day following the date on which the Company is aware that it has received an Alternative Third Party Proposal, the Company shall deliver to Investor a copy of such proposal if such proposal is written or a summary of the principal terms of such proposal if such proposal is not written. Within five business days following receipt of an Alternative Third Party Proposal, the board of directors of the Company (the "Board of Directors") shall determine in its good faith judgment (after consultation with its independent financial advisor) whether the Alternative Third Party Proposal is more favorable than the transaction with Investor contemplated by this letter of intent (in which case, such Alternative Third Party Proposal shall be a "Superior Proposal"). In the event that the Board of Directors determines that such Alternative Third Party Proposal is a Superior Proposal, the Company shall promptly (but in any event within one day) notify Investor in writing of such determination and of any changes to the Alternative Third Party Proposal that were not reflected in the original written notice to Investor. No later than five business days following the date on which Investor receives notice of such determination, Investor shall notify the Company either that (i) it wishes to match the terms of the Alternative Third Party Proposal or (ii) it wishes to modify the terms of the transaction contemplated herein and shall specify such modified terms. If Investor matches the terms of the Alternative Third Party Proposal, the Company shall terminate all negotiations with such third party and shall proceed with Investor on the basis of such terms. If Investor modifies the terms of the transaction contemplated herein but does not match the terms of the Alternative Third Party Proposal, then within five business days thereafter, the Board of Directors of the Company shall determine whether the Alternative Third Party Proposal still constitutes a Superior Proposal relative to the modified terms proposed by Investor and shall promptly notify Investor in writing of its decision. If (i) Investor fails to match the terms of the Alternative Third Party Proposal or modify the terms of the transaction contemplated hereby or (ii) Investor modifies the terms of the transaction contemplated hereby and the Board of Directors of the Company determines that the Alternative Third Party Proposal is still a Superior Proposal, either the Company or Investor may terminate this letter of intent as provided in paragraph 8(c). If the Company determines that the Alternative Third Party Proposal is not a Superior Proposal, then the Company shall promptly (and in any event within one day) deliver to the third party making the Alternative Third Party Proposal a written notice terminating all negotiations with such third party and shall deliver a copy of such notice to Investor. If the Company fails to make a determination that the Alternative Third Party Proposal constitutes a Superior Proposal within the time frames set forth herein, then it shall be deemed to have determined that such Alternative Third Party Proposal does not constitute a Superior Proposal.

After receipt by Investor of notice from the Company that it has received an Alternative Third Party Proposal, Investor may at its option and in its sole discretion cease its due diligence investigation until such time as the Company notifies Investor that it is not proceeding with the Alternative Third Party Proposal. Upon written notice by Investor to the Company of such cessation, all estimated time periods set forth in this letter of intent and the date set forth in paragraph 8 shall automatically be deemed to be extended by the same number of business days as were included in the period from and including the date of such written notice by Investor to the Company to and including the date Investor received written notice that the Company is not proceeding with the Alternative Third Party Proposal.

(c) If (i) this letter of intent is terminated by either the Company or Investor pursuant to clause (c) of paragraph 8 in connection with an Alternative Third Party Proposal, or (ii) this letter of intent is terminated for any reason (other than as provided in this paragraph 4(c)) and within three months after such termination, any of the Companies enters into an agreement or understanding with a third party relating to an Alternative Transaction or (iii) prior to the termination of this letter of intent, any of the Companies enters into an agreement or understanding with a third party relating to an Alternative Transaction and at such time after giving effect to such agreement or understanding the Company is in breach of the terms of paragraph 4(a) or paragraph 4(b), then (in lieu of any damages due to Investor for breach of this letter of intent by the Company) the Company shall be liable and pay to Investor the amount of $5,000,000 (the "Alternative Transaction Fee"), which Alternative Transaction Fee shall be due and payable to Investor in cash immediately upon the occurrence of the event described in clause (i), (ii) or (iii) above as applicable. Notwithstanding the foregoing, the Company will not be obligated to pay Investor the Alternative Transaction Fee if Investor terminates this letter of intent as a result of its decision not to proceed with this transaction based solely upon the matters described in clause (x), (y) or (z) of the penultimate sentence of paragraph 8.

5. Conduct of the Business During the Effective Period. During the Effective Period, the Companies shall not, without prior written notice to Investor, except as required by applicable law or regulatory authority, (i) make any change in its authorized capital stock, or amend its charter or bylaws, (ii) issue or sell any shares of its capital stock or any securities convertible into or exchangeable for its capital stock, other than the granting of stock options and warrants to employees in the ordinary course of business and the issuance of stock upon exercise of options or warrants, (iii) form, create or dissolve any subsidiary, (iv) purchase, redeem or otherwise acquire for consideration any shares of its capital stock or the capital stock of any other entity except as required by any existing employment arrangements or compensation plans, (v) declare, pay or set aside with respect to its capital stock any dividend or other distribution or payment, (vi) increase the level of compensation of any officer or key employee except in the ordinary course of business or as required by any existing employment arrangements or compensation plans, (vii) adopt any new employee benefit plan or amend any existing employee benefit plan, except as required to grant options or warrants in the ordinary course of business or in connection with stay bonus or retention arrangements approved by the Board of Directors in an aggregate amount to be reasonably agreed upon by the parties, (viii) enter into any new employment or consulting agreements except for new employees in the ordinary course of business or in connection with stay bonus or retention arrangements approved by the Board of Directors (subject to the limitation on aggregate payments set forth in (vii) above), (ix) other than capital expenditures in connection with expansion plans that were approved by the Board of Directors prior to the date hereof, make capital expenditures in excess of $500,000 or sell any assets outside of the ordinary course of business, (x) incur any indebtedness for borrowed money other than under the Company's currently existing credit lines in the ordinary course of business, (xii) engage in any related party transactions or transactions with affiliates other than existing arrangements in the ordinary course of business and consistent with past practices, (xiii) fail to use its commercially reasonable effort to operate its business in the ordinary course consistent with past practices or (xiv) fail to maintain its books and records consistent with past practices.

6. Costs and Expenses. Simultaneously with the signing of the Definitive Merger Agreement, the Company shall reimburse the Investor in cash for up to a maximum of $500,000 of all documented out-of-pocket fees, costs and expenses (other than Senior Lender Expenses (defined below)) incurred by Investor relating to the transactions described herein, including, without limitation, the documented out-of-pocket fees, costs and expenses relating to lien searches, filing fees, due diligence, accounting services, legal services, administration of the credit relationship, interpretation or enforcement of Investor's rights, and the negotiation, preparation, execution and delivery of definitive documentation ("Investor Expenses"). After the execution of a Definitive Merger Agreement, then the Company shall reimburse Investor promptly for up to a maximum of $1,000,000 (the "Aggregate Reimbursement Cap") of Investor Expenses, inclusive of any amounts previously reimbursed to Investor pursuant to the first sentence of this paragraph, within five business days after termination of the Definitive Merger Agreement due to (a) the Company's shareholders voting against approval of the transactions contemplated by the Definitive Merger Agreement, (b) the occurrence of a material adverse change with respect to the Companies, (c) the Board of Directors' failure to recommend the transactions contemplated by the Definitive Merger Agreement to the Company's shareholders or withdrawal of such recommendation, (d) the failure by Investor to finance the transaction contemplated by the Definitive Merger Agreement and the failure by the Company to achieve minimum fourth quarter 2005 and, if applicable, first quarter 2006 EBITDA levels to be agreed upon, which minimum levels will be consistent with the financial information provided by the Company to Investor prior to the date hereof or (e) any material breach by the Company of its representations and warranties in the Definitive Merger Agreement. In addition and without being applied against the reimbursement caps set forth previously in this paragraph, upon and after the execution of a Definitive Merger Agreement, the Company shall promptly upon request either pay directly to the senior lenders under the Senior Facility or reimburse Investor for any fees, costs and expenses payable to the senior lenders or incurred by Investor in connection with or related to the Senior Facility (the "Senior Lender Expenses"), regardless of whether the Senior Facility is completed or closed; provided, however, that the Company shall have no obligation to pay or reimburse Senior Lender Expenses in an aggregate amount in excess of $300,000. If Senior Lender Expenses exceed $300,000 and Investor pays such excess amounts, the Company shall be required to reimburse Investor for such payments provided that such obligation shall be subject to, and be applied without duplication against, the Aggregate Reimbursement Cap. Investor agrees to promptly reimburse the Company for any monies returned to Investor (which had been advanced by the Company on behalf of Investor or reimbursed to Investor) that are Senior Lender Expenses to the extent that Investor receives these monies pursuant to the documentation executed with any senior lender thereto. Upon closing of the transaction contemplated by the Definitive Merger Agreement, the Company will reimburse Investor for all Investor Expenses and Senior Lender Expenses without regard to the reimbursement caps described above. Except as expressly provided herein, each party shall be responsible for and pay the fees, costs and expenses incurred by such party in connection with the negotiation and consummation of the transactions contemplated hereby.

7. Binding Effect; Entire Agreement. The parties acknowledge and agree that this letter of intent is intended as a non-binding statement of their mutual intention to negotiate a transaction on the terms described herein and that except for their agreements in paragraphs 1, 3, 4, 5, 6, 8, 9, 10, 11 and 12, and this paragraph 7, which shall be binding in accordance with their terms, neither party shall be under any obligation to the other unless and until the parties execute and deliver definitive documents with respect to the transaction contemplated hereby. This letter of intent contains the entire understanding and agreement of the parties with respect to the transactions described herein and supersedes all prior oral or written, and all contemporaneous oral, understandings or agreements with respect to the transactions described herein, including the letter for Investor to the Company dated September 15, 2005.

8. Term and Termination. The term of this letter of intent shall commence on the date Investor shall have received the written acceptance of this letter of intent from the Company and shall end on the earlier to occur of (i) the execution of a Definitive Merger Agreement by all parties thereto and (ii) the date this letter of intent is terminated pursuant to this paragraph 8 (the "Effective Period"). This letter of intent may be terminated by (a) either party by giving written notice of termination to the other party at any time after January 31, 2006 (which termination shall be effective as of the date of receipt of such written notice); (b) either party upon 20 business days' written notice of a breach by the other party, which breach is not cured within such 20-business-day period; (c) either party if the Board of Directors determines, after compliance with all of the provisions set forth in paragraph 4(b) hereof, that an Alternative Third Party Proposal is a Superior Proposal; or (d) the Company if Libra Securities withdraws the Highly Confident Letter and the Highly Confident Letter has not been replaced within ten-business days by another "Highly Confident" letter with respect to the placement of the Senior Facility by a financial institution, in each case reasonably satisfactory to the Company. In addition, Investor shall have the sole right to terminate this letter of intent at any time upon written notice to the Company if (x) it decides, in its sole discretion, not to proceed with the transactions contemplated herein based upon the results of its due diligence investigation of the Companies or (y) any event or circumstance occurs which, individually or together with any other event or circumstance, has had or could reasonably be expected to have a material adverse change or (z) the United States shall have become involved in a war or there is an outbreak or escalation of major hostilities involving the United States, or there occurs any other substantial domestic or international calamity or terrorist attack or crisis or change in economic conditions or in the financial markets of the United States which, in the good faith judgment of Investor, is material and adverse and makes it impractical or inadvisable to proceed with the transaction contemplated herein. A termination of this letter of intent shall not affect the obligations of the parties under paragraphs 3, 4(c) (but only to the extent that the Company may be obligated to pay the Alternative Transaction Fee in accordance with the express terms of this letter of intent), 6, 9, 10, 11 and 12, each of which shall survive such termination in accordance with their terms.

9. Governing Law; Counterparts. This letter of intent shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, without regard to its conflicts of law or choice of law principles. This letter of intent may be executed in any number of counterparts and by facsimile, all of which taken together shall be one and the same instrument.

10. No Third Party Beneficiaries; Indemnification. This letter of intent is solely for the benefit of the Company and no third parties (including, but not limited to, the shareholders and creditors of the Company) shall be entitled to rely upon anything contained herein as a third party beneficiary or otherwise. Neither party shall be responsible or otherwise liable to any person for any indirect, consequential, special, punitive or exemplary damages, or claims of lost profits, which may arise, or be alleged to arise, as a result of this letter of intent or the transactions contemplated hereby, or for any damages which may be alleged as a result of such party's failure or refusal, in accordance with the terms of this letter of intent, to consummate the transactions contemplated herein. For avoidance of doubt, nothing in this paragraph 10 shall be deemed to prevent the payment of the Alternative Transaction Fee as provided in paragraph 4(c) or the reimbursement and payment of fees, costs and expenses as provided in paragraph 6.

11. Representations and Warranties. In order to induce Investor to enter into this letter of intent, the Company represents and warrants to, and covenants with, Investor that:

(a) The documents filed by the Company with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), together taken as whole (the "SEC Filings"), as of the date hereof do not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading;

(b) this letter of intent has been duly authorized, executed and delivered by the Company.

If the Company is informed or otherwise learns that the SEC Filings and any other information delivered to Investor by or on behalf of any of the Companies taken as a whole (the "Disclosed Information") contains an untrue statement of a material fact or omits to state a material fact necessary to make the Disclosed Information not misleading, the Company will (i) use commercially reasonable efforts if applicable to amend the SEC Filings or otherwise make a filing with the SEC pursuant to the Securities Act or the Exchange Act promptly such that the SEC Filings as so amended will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and will provide Investor with a copy of such amendment or other filing on the date of such amendment or filing and (ii) promptly inform Investor in writing of such untrue statement or omission in the Disclosed Information. The Company acknowledges and agrees that Investor may use and rely upon such Disclosed Information without independent verification thereof.

12. WAIVER OF JURY TRIAL. (a) EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS LETTER OF INTENT, THE PREPARATION, NEGOTIATION OR PERFORMANCE OF THIS LETTER OF INTENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, REGARDLESS OF WHICH PARTY INITIATES THE ACTION, SUIT, PROCEEDING OR COUNTERCLAIM.

(b) DISPUTE RESOLUTION. IN THE EVENT THAT THE WAIVER IN SUBPARAGRAPH (A) ABOVE IS UNENFORCEABLE FOR ANY REASON, ANY UNRESOLVED CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS LETTER SHALL BE SUBMITTED TO ARBITRATION BY ONE ARBITRATOR MUTUALLY AGREED UPON BY THE PARTIES, AND IF NO AGREEMENT CAN BE REACHED WITHIN 30 DAYS AFTER NAMES OF POTENTIAL ARBITRATORS HAVE BEEN PROPOSED BY THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA"), THEN BY ONE ARBITRATOR HAVING REASONABLE EXPERIENCE IN CORPORATE FINANCE TRANSACTIONS OF THE TYPE PROVIDED FOR IN THIS AGREEMENT AND WHO IS CHOSEN BY THE AAA. THE ARBITRATION SHALL TAKE PLACE IN LOS ANGELES, CALIFORNIA, IN ACCORDANCE WITH THE AAA RULES THEN IN EFFECT, AND JUDGMENT UPON ANY AWARD RENDERED IN SUCH ARBITRATION WILL BE BINDING AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES, COSTS, AND NECESSARY DISBURSEMENTS IN ADDITION TO ANY OTHER RELIEF TO WHICH SUCH PARTY MAY BE ENTITLED. EACH OF THE PARTIES TO THIS AGREEMENT CONSENTS TO PERSONAL JURISDICTION IN THE U.S. DISTRICT COURT OR STATE COURT SITED IN LOS ANGELES, CALIFORNIA FOR ANY EQUITABLE ACTION SOUGHT TO ENFORCE THE PROVISIONS OF THIS SECTION 12(B) OR TO ENFORCE ANY ARBITRATION AWARD MADE IN AN ARBITRATION PURSUANT TO THIS SECTION 12(B).

If the terms set forth in this letter of intent accurately reflect our mutual understanding of the transactions contemplated herein, please acknowledge your agreement and acceptance of such terms by countersigning this letter of intent in the space indicated below and returning to us an executed copy no later than 11:00 a.m. (Eastern Standard Time) on Tuesday, October 4, 2005. If Investor does not receive an executed counterpart of this letter of intent from the Company by such time on such date, the offer contained herein will automatically terminate and will be of no further force and effect.

|  |  |
| --- | --- |
|  | Sincerely,  Yokohama Capital Partners, Inc., a California corporation  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Masami Yokohama Chief Executive Officer |

Agreed and accepted  
as of October \_\_\_\_, 2005:

Gourmet Dining, a Delaware corporation

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Felix M. Krull  
Chairman of the Board

**PDD#19**

**LARK INDUSTRIES GROUP, INC.**

**LETTER OF INTENT**

April 12, 2019

Mr. Kalpreet Rohan

Money Advisor LLC

New York, NY 10004

Dear Kalpreet:

This Letter of Intent (“Letter of Intent”) is made by and between Lark Industries Group, Inc. (“LARK”), a publicly traded Nevada corporation and Money Advisor, LLC (“MONEY”), a Delaware limited liability company, and is to describe, confirm and bind the parties hereto to the principle terms and conditions under which GCA Equity Partners and/or its affiliates which may include one or more special purpose vehicle entities holding various real estate assets , (collectively, “Seller”), shall contribute and/or sell certain real estate assets to LARK (or one of its wholly owned subsidiaries), as set forth in the terms and conditions detailed in Exhibits A & B hereto (the “Transaction”). The Transaction is subject and conditioned upon the terms and conditions of this Letter of Intent, including the execution of mutually acceptable definitive agreements governing the Transaction (the “Definitive Agreements”),in substantially the same form as the Master Agreement Regarding the Contribution of the Real Property Interests dated April 7, 2019, receipt of which is hereby acknowledged by LARK and MONEY and subject to such other customary documentation as may be required for the Transaction contemplated herein.

The parties intend this Letter of Intent to be binding and enforceable, and that it will inure to the benefit of the parties and their respective successors and assigns. It represents a legally binding commitment on the part of the parties with respect to the Transaction, except in the event that certain conditions of the Transaction are not timely performed or there is a breach of this Letter of Intent by any of the parties hereto, or at the election of a party hereto as more fully described in Exhibit A (the “Termination Provisions”). Until such time as it is either replaced by the Definitive Agreements or a Termination Provision is asserted and exercised, this Letter of Intent shall be in full force and effect.

This Letter of Intent may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will constitute but one and the same instrument.

Any disputes arising from or related to the Letter of Intent or the Termination Provisions will be governed by and construed under and in accordance with the laws of the State of New York and submitted to binding arbitration with the American Arbitration Association, Metro New York following good faith efforts to mediate any such disputes.

|  |
| --- |
| 1 |
|  |

**EXHIBIT A**

SUMMARY OF THE TERMS OF THE TRANSACTION:

Surviving Company: LARK

Place of Incorporation: Nevada

Stock Exchange: OTC Pink Fully Reporting

Primary Shares Outstanding: Approximately 215,000,000 shares of Common Stock issued at par value $0.001 per share, and outstanding as of the date hereof

Authorized Common Stock: 350,000,000 shares authorized

Authorized Preferred Stock: Preferred Stock, par value $.001, 50,000 authorized, 1,000 issued

Stock Options: None

Warrants: None

ESOP Deferred: None

TRANSACTION:

Subject to legal, tax and accounting structuring to be determined in good faith and in the respective parties mutual best interests, Seller will contribute and/or sell certain real estate assets listed on Exhibit B, or the outstanding equity of special purpose vehicles that own the assets (collectively, the “Assets”), to LARK or a wholly owned seasoned subsidiary of LARK. The Transaction will result in a reverse merger and a change of control of LARK. The name and ticker symbol of LARK may be changed at the election of Seller upon the signing of the Definitive Agreements and the closing (the “Closing”) of the Transaction, to a name and symbol to-be-determined by Seller. Post Transaction LARK, following the Closing, is referred to herein as the “Pro Forma Company”. At the election of Seller, as of or following the Closing, the Pro Forma Company intends to remain incorporated under the laws of the state of Nevada.

NEW CLASSES OF LARK PREFERRED STOCK, REAUTHORIZATION OF SHARES:

Within ten (10) business days of execution of this Letter of Intent, or as soon thereafter as may be practicable, LARK shall create and designate two (2) new classes of Preferred Stock:

(1) Series B: LARK shall authorize the issuance of a series of Preferred Stock consisting of One Thousand (1,000) shares, without par value, to be designated Series B Convertible Preferred Stock (“Series B”). LARK may not issue more than or increase the authorized shares of Series B beyond 1,000 shares. Each share of Series B shall be convertible by its holder into a specific number of LARK Common Stock shares (“New LARK Common”) equal to a market value of $270,000 calculated under the VWAP formula as more fully described herein. The Series B will automatically convert into New LARK Common of the Pro Forma Company upon the anticipated reverse split of LARK Common Stock (“Stock Split”), as more fully described herein, being declared effective by FINRA (“Effective Date”). In the event of any unforeseen instance whereby the Stock Split does not occur the parties may determine another conversion trigger consistent with the terms of this binding Letter of Intent. The Series B and the New LARK Common into which it is converted shall have full voting rights.

(2) Series C: LARK shall authorize the issuance of a series of Preferred Stock consisting of Twelve Thousand Five Hundred (12,500) shares, without par value, to be designated Series C Convertible Preferred Stock (“Series C”). LARK may not issue more than or increase the number of authorized shares of Series C beyond 12,500 shares. Each share of Series C shall be convertible by its holder into a specific number of New LARK Common equal to a market value of $1,000 calculated under the VWAP formula as more fully described herein. The Series C is convertible into New LARK Common of the Pro Forma Company at the election of any holder after issuance up to an outside date of six (6) months after the Closing of the Transaction after which it automatically will convert into New LARK Common. The Series C shall not have any voting rights, but the LARK New Common into which it is converted shall have voting rights.

|  |
| --- |
| 2 |
|  |

Prior to Closing LARK shall amend its Articles of Incorporation to increase its authorized stock to a number of shares sufficient to pay the Consideration of the Transaction contemplated herein.

CONSIDERATION AND PRO FORMA:

Sellers Equity:

The Seller’s Assets are described on Exhibit B attached hereto and made part of this Letter of Intent, or will be identified in writing for inclusion in the Assets prior to the Closing of the Transaction. The Assets being contributed to LARK have or will have at the Closing of the Transaction an aggregate residual value of approximately $450 million. As consideration for the Assets, LARK shall issue to Seller or its designees One Billion Eight Hundred Million (1,800,000,000) shares of LARK pre Stock Split pre Closing Common Stock (“Seller LARK Common Stock”). In addition to the Seller LARK Common Stock, Seller shall receive all of the Series B stock. The aggregate Transaction is valued at approximately $465 million based on the equity value of the Assets (the “FC Asset Value”) and Seller will, at Closing, assign approximately $65 million of debt encumbering the Assets to the Pro Forma Company (see Exhibit B for corresponding estimated values related to those Assets that are identified for the Transaction to date). Seller shall reserve the right to add or subtract particular Assets to be contributed to LARK prior to the execution of the Definitive Agreements, and the FC Asset Value, the resulting equity and the percentage splits will be adjusted accordingly based on the recognized equity value of the final contributed Assets. As a result, Seller will receive a number of shares of LARK Common stock and Series B shares convertible into new LARK Common Stock equal to the FC Asset Value which should be approximately 91% of the post-Closing issued and outstanding LARK Common Stock (“Pro Forma LARK Common Stock”) on a fully-diluted basis, with the number of shares of Seller’s Series B conversions being calculated and derived from a price equal to the 10-day volume-weighted average price of the LARK Common Stock (as per Bloomberg) (the “VWAP Price”) for the 10 trading days immediately preceding the Effective Date of the conversion (“Seller’s Equity”).

The Pro Forma LARK Common Stock shall be duly authorized, validly issued, non-assessable, and free from all liens, taxes and charges. The Pro Forma Company shall have a sufficient number of authorized shares both pre and post Stock Split reserved to fulfill the issuances contemplated by the Transaction. The Pro Forma LARK Common Stock issued to Seller shall be issued with its transferability subject to Rule 144 of the Securities Act of 1933, as amended, and subject to customary restrictions. The Pro Forma Company may elect to register all or some of the Pro Forma LARK Common Stock or Series B or Series C Stock and the new LARK Common Stock into which they are convertible (i.e., registered with the SEC on Form S-4, and/or registered with the SEC on Form S-3), and/or enable their re-sale as Rule 144 SEC eligible shares through a public resale of restricted or control securities so as to facilitate the distribution of such equity to Seller and Seller affiliates. Pro Forma Company shall grant to LARK and any of its shareholders or designees piggyback registration rights on a pro rata basis with Seller shareholders.

LARK Shareholders and Affiliates Equity:

At the Closing Date of the Transaction, as more fully described herein, LARK will have issued up to a maximum of 350,000,000 pre-split Common Stock, to affiliates, advisors, shareholders, officers, board members, consultants and other designees at its sole discretion. In addition, LARK shall issue, at the Closing, all of the Series C to affiliates, vendors, debt holders, advisors, consultants, service providers and other designees convertible into new LARK Common Stock of the Pro Forma Company. The aggregate LARK Equity (“LARK Equity”) shall be comprised of all pre-Closing outstanding and issued LARK Common Stock, excluding only Seller LARK Common Stock, and all Series C. Any issued Series C and LARK Common Stock shall be restricted under Rule 144 subject to registration more fully described herein.

|  |
| --- |
| 3 |
|  |

As a result of the issuance of the Seller Equity, at Closing, the aggregate of the LARK Equity and prior issuance of LARK Common Stock shall equal in the aggregate to 9% of the Pro Forma LARK Common Stock on a fully-diluted basis, with the number of shares of LARK’s Series C conversions being calculated and derived from the 10-day volume-weighted average price of the LARK Common Stock (as per Bloomberg) (the “VWAP Price”) for the 10 trading days immediately preceding the date of the conversion. The resulting equity value to be retained as the LARK Equity at Closing, would approximate $47.5 million of the Pro Forma Company.

For the sake of clarity, fully diluted shares shall include, if any, earn-in shares, escrowed shares, warrants, options, restricted stock units, equity-linked and/or convertible securities in connection with the Transaction.

Notwithstanding any provision contained herein to the contrary and for the avoidance of doubt, any transfer, assignment, sale to conveyance of the LARK Assets shall not relieve, limit, excuse, waive, release and/or terminate the obligations of LARK under this Letter of Intent and the Definitive Agreement(s).

LARK PRE-MERGER ASSETS AND LIABILITIES:

LARK Assets:

On or before the Closing Date, LARK, including its subsidiaries, shall convey and transfer all of its assets (“LARK Assets”) to a designee of its sole choosing. The LARK Assets shall include but not be limited to cash and securities, intellectual property, contracts, accounts receivable, claims, trademarks, domain names, goodwill and other tangible and intangible assets including all those disclosed in LARK’s consolidated financial statements. LARK Assets shall expressly exclude LARK’s name and symbol. LARK’s recipient of the LARK Assets shall indemnify and hold harmless the Pro Forma Company from and against any liabilities connected with the LARK Assets.

LARK Liabilities:

As of the date of this Letter of Intent first above written, LARK will have approximately $5.5 million of debt and miscellaneous liabilities (“LARK Debt”). A non-affiliate (“Agent”) of LARK shall be retained and capitalized with Series C to resolve, settle and pay the LARK Debt. The Agent shall endeavor to resolve all of the LARK Debt by the Closing Date or by another outside date mutually agreed to by the parties (“Outside Debt Date”). In the event that the Agent is unable to fully resolve the LARK Debt and obtain releases by the Outside Debt Date, and the Pro Forma Company assumes any remaining LARK Debt, LARK or its Agent shall return a number of Series C shares to the Pro Forma Company treasury equal to the value of any remaining and unresolved LARK Debt.

STOCK SPLIT AND UPLISTING:

The parties hereto intend to reverse split the Pro Forma Company’s issued and outstanding (and possibly authorized, in its discretion) common stock. As soon as appropriate following the Closing Date, but in no event later than 30 days after the Closing Date, the Pro Forma Company shall file a corporate action with FINRA to change its name, trading symbol and reverse split its common stock. The ratio of the stock split shall be determined by the parties with the goal of achieving an approximate post-split market share price of $10 per share.

|  |
| --- |
| 4 |
|  |

As soon as appropriate after the Closing Date but in no event later than 30 days after the Closing Date, the Pro Forma Company shall apply to be up listed on the NYSE Exchange, NYSE American Exchange, the NASDAQ Capital Market, or the OTCQB Market.

CLOSING DATE:

The parties shall endeavor to draft the Definitive Agreements and complete due diligence in an expeditious fashion. The Closing Date will be on a day mutually determined by the parties in which all of the requirements necessary for this Transaction have been completed and the parties sign the Definitive Agreements (“Closing Date”). In no event, however, shall the Closing Date be later than May 15, 2019 unless extended by mutual agreement of the parties, or in order to complete necessary compliance with all applicable regulatory requirements.

TERMINATION PROVISIONS AND BREAK-UP FEE:

This Letter of Intent is intended to legally bind the parties. It may, however, be terminated by either party upon 30 days prior written notice to the other party, if the parties mutually agree to terminate, if either party becomes aware that the other party has materially breached any representations or covenants in this Agreement, or is unwilling or unable to provide or fulfill any of the conditions to Closing, more fully described herein (“Termination for Cause”). However, if any party terminates this Letter of Intent in bad faith, other than as “Termination for Cause” the terminating party shall be subject to the obligation to pay a $2,000,000 break-up fee (“Breakup Fee”) to the non-terminating party unless the terminating party rescinds such termination within 5 business days following written demand therefore by the non-terminating party or within 5 business days following the effective date for the notice of termination. Either party may pay the Breakup Fee through the issuance of its common or preferred stock with an equivalent market value.

EXCLUSIVITY:

LARK and the Seller agree that during the period beginning on the date of mutual execution of this Letter of Intent until the later of April 30, 2019 or the Closing Date (with such date being subject to a mutually agreed upon execution timetable for the Definitive Agreements (the “Exclusivity Period”), LARK and Seller and/or their affiliates or representatives will not, directly or indirectly, solicit from any third party any offers competitive with this Letter of Intent. LARK may, prior to the Closing, issue shares of its Common Stock for any valid purpose or consideration, so long as LARK and the Pro Forma Company retain sufficient authorized shares of Common Stock to pay the Seller Equity calculated as of the Closing. LARK will immediately notify Seller and Seller will immediately notify LARK if either receive any solicitation or offers competitive with this agreement. As of the date of mutual execution of this Letter of Intent and during the Exclusivity Period, LARK and Seller will suspend any currently existing discussion with all parties other than each other regarding the Transaction.

During the Exclusivity Period, the parties shall use their good faith efforts to finalize and execute the Definitive Agreements, prior to May 15, 2019, and undertake all related activities geared towards the Closing of the Transaction.

|  |
| --- |
| 5 |
|  |

MANAGEMENT OF THE PRO FORMA COMPANY:

Upon the Closing, all current Officers and Directors of LARK and its subsidiaries shall resign except in the event that David Reichmann is the LARK designee pursuant to (i) below. In any event on or before the Closing all of the outstanding Series A Preferred stock of LARK will either be transferred to a designee of Seller or redeemed and cancelled. At Closing, the Board of Directors of the Pro Forma Company shall consist of 3 members:

(i) 1 named by the LARK Board of Directors prior to the Closing and

(ii) 2 named by Seller and appointed by the LARK Board of Directors prior to the Closing subject to the consummation of the Transaction. Such designation of directors shall not be an ongoing nomination right.

And:

(1) The Board of Directors of the Pro Forma Company shall also be comprised of at least two (2) independent members to be selected by the BOD of the Pro Forma Company

Control Vote/Shareholder Approval:

As part of the Definitive Agreements, LARK and the holders of the LARK Equity, will enter into a shareholder voting agreement with Seller committing to deliver approximately 70% of the required number of shares to vote to approve the Transaction and submit the appropriate filings with the SEC.

External Advisor Management Agreement:

An external advisor (the “External Advisor”), which will be owned a 100% by MONEY, is to be formed to provide Asset Investment Advisory, Asset Management, Property Management, Acquisitions, Dispositions, Land Development, Entitlement Work, and Construction Services to the Pro Forma Company and its internal management, and LARK’s CEO will enter into a Management Agreement with the Pro Forma Company, to be agreed upon prior to the Closing of the Transaction.

INDEMNIFICATIONS:

LARK agrees to indemnify, defend and hold harmless Seller, its officers, directors, stockholders, lenders and affiliates, and, Seller agrees to indemnify, defend and hold harmless LARK, its officers, directors, stockholders, lenders and affiliates from any third party claims by or liabilities to such third parties, including any actual and reasonable legal or other expenses incurred in connection with the defense of such claims to the extent that such claims are the direct result from any breach or failure of the parties in connection with the Letter of Intent and the Transaction; provided however, that any such breach and failure shall be subject a notice and cure period of not less than ten (10) business days.

REPRESENTATIONS AND WARRANTIES:

The Definitive Agreements will contain all customary representations and warranties of the parties.

CONDITIONS OF CLOSING:

Closing the Transaction is subject to the following:

(i) Completion by each party and its advisor (to each party’s satisfaction) of all business, tax, accounting, legal and other due diligence reviews (including LARK’s financial statements after 12/31/18 that have been publicly filed, and Seller’s audits and financial statements ) of the other party (in parallel with the preparation and drafting of the Definitive Agreements);

|  |
| --- |
| 6 |
|  |

(ii) INTENTIONALLY OMITTED

(iii) LARK or Seller shall not have incurred any material obligations (other than in the normal course of business and/or in connection with the Transaction) following the execution of this Letter of Intent that will survive the Closing that would prevent the parties from realizing the benefits of the Transaction as described in the Letter of Intent and/or the Definitive Agreement(s);

(iv) Preparation by Seller’s counsel of all non-SEC corporate and governance documents that may be reasonably required by Seller to support the Transaction, including a revised charter, bylaw changes or other amendments that may be necessary;

(v) The negotiation, preparation and execution of the Definitive Agreements memorializing the terms hereof;

(vi) There shall be no material adverse change in LARK’s or Seller’s business or financial condition and no material adverse change to the Assets (other than that which has been previously disclosed in LARK’s or Seller’s filings with the SEC) that would prevent the parties from realizing the benefits of the Transaction as described in the Definitive Agreement(s);

(vii) The representations and warranties of both parties being true and correct at signing as of the Closing Date;

(viii) Receipt of all governmental, regulatory and third-party requisite approvals and consents, including the completion of any required SEC process, and the required approval of each party’s stockholders as necessary, in a form reasonably satisfactory to the other party (consideration to be given to a joint proxy statement if Seller stockholder approval is required);

(ix) The terms and conditions of the Transaction must be approved by the Board of Directors of LARK and Seller;

(x) Both parties shall have procured appropriate valuations through any of the following: Fairness Opinion, Third Party Appraisals or Due Diligence Feasibility and Analysis Write Up prepared by experienced industry veteran or Company and PCAOB audited financial statements suitable for inclusion in any proxy statements or other SEC filings in connection with the Transaction and with respect to LARK submission of a PCAOB audit is deemed sufficient for this purpose; and

(xi) Such additional terms as are consistent with the above as agreed between the parties.

CONFIRMATORY DUE DILIGENCE:

Both parties will use their diligent best efforts to assist and cooperate fully with each other, and their auditors and advisors to support due diligence efforts and to satisfy the conditions of Closing. Both parties may conduct due diligence, including conversations with management of Seller and LARK.

Each party and its employees, officers, directors, advisors, legal counsel, accountants, agents and representatives (the “Representatives”) will extend their full cooperation to either party’s Representatives in connection with such investigation and will provide either party’s Representatives with full access during normal business hours to the other party’s books and records, facilities, accountants, management, officers, directors and key employees for the purpose of conducting such due diligence investigation.

CONFIDENTIALITY AND PUBLICITY AND EXPENSES:

The parties to this Letter of Intent acknowledge and agree that the existence and terms of this Letter of Intent and the Transaction are confidential and further agree that they and their respective Representatives, including without limitation, shareholders, directors, officers, employees or advisors, shall not disclose to the public or to any third party the existence or terms of this Letter of Intent or the Transaction other than with the express prior written consent of the other party, except as may be required by applicable law, rule or regulation, or at the request of any governmental, judicial, regulatory or supervisory authority having jurisdiction over a party or any of its representatives, control persons or affiliates (including, without limitation, the rules or regulations of the SEC or FINRA), or as may be required to defend any action brought against such party in connection with the Transaction. If a party is so required to make such a disclosure, it must first provide to the other party the content of the proposed disclosure, the reasons that the disclosure is required, and the time and place that the disclosure will be made. In such event, the parties will work together to draft a disclosure which is acceptable to both parties. The parties acknowledge and agree that the provisions of the Confidentiality Agreement dated February 15, 2019 between the parties remain in full force and effect.

|  |
| --- |
| 7 |
|  |

EXPENSES:

All expenses incurred for the Transaction by LARK or Seller separately, inclusive of the drafting of the Definitive Agreements, prior to the Closing Date will be borne and paid by LARK and Seller separately, however, any and all fees, expenses and costs incurred after the Closing Date shall be assumed and paid by the Pro Forma Company.

NOTICES:

All notice in connection with this Letter of Intent shall be made to the parties via email, facsimile or Express Mail at the addresses above and below.

If you are in agreement with the terms of this Letter of Intent agreement, please sign in the space provided below and return a signed copy to Mark Richardson at markr@richardson-law.com, Tom Coleman, and the undersigned at:david@Lark-us.com by the close of business on April 12th, 2019. Upon receipt of a signed copy of this Letter of Intent, we will proceed with our plans for Closing the Transaction in a timely manner.

Sincerely,

David Reichman, CEO

Lark Industries Group, Inc.

|  |  |  |
| --- | --- | --- |
|  | */s/ Charles Tuttle* |  |
|  | Agreed to and Accepted for Buyer |  |
|  |  |  |
|  | */s/ Kalpreet Rohan* |  |
| By: | Kalpreet Rohan, |  |
|  | Chief Executive Officer |  |
|  |  |  |
|  | */s/ Bern Schmidt* |  |
|  | Agreed to Accepted for GCA Equity Partners |  |
| By: | Bern Schmidt |  |
|  | Member, Authorized Signer |  |

|  |
| --- |
| EXHIBIT B    SELLER ASSETS    Asset Name Asset Type Residual Value Asset Value Debt Equity  A Single/Multi Family Residential & Commercial Lots 112,000,000 12,850,000 99,150,000  B Single/Multi Family Residential Lots 177,870,568 177,870,568  C Single Family Residential 26,917,718 26,917,718  D Senior Living 14,681,045 14,681,045  E Single Family Residential 3,403,371 3,403,371  F High End Single Family Residential 1,921,098 1,921,098  G Condos 17,156,921 17,156,921  H Single Family Residential 1,795,034 1,795,034  I Single Family Residential Lots 24,366,653 24,366,653  J Single Family Residential 50,471,613 50,471,613  K Single Family Residential Lots 1,647,855 1,647,855    9      8 |
|  |

**PDD#20**

LETTER OF INTENT DATED JULY 8, 2019 BY AND BETWEEN PRECIOUS INC. AND HELPALL S.A.

**Exhibit 10.1**

**PRECIOUS, INC.**

**XXXX**

**Saint Charles, FLORIDA**

**July 1st, 2019**

**Helpall S.A.**

**San José, Costa Rica 10108**

**Attn: Felicitas Moreno, President**

**Attn: Carlos Menachem, Secretary**

**Re. Binding Letter of Intent**

**Dear Mrs. Morena and Mr. Menachem:**

This binding letter of intent (this “Letter of Intent”) sets forth the intention of the undersigned, Precious, Inc., a Nevada corporation (“Prec”) and Helpall S.A. (Operating as Cashforward), a Costa Rica corporation (“Cashforward”) to enter into a transaction whereby Prec will acquire 51% of the issued and outstanding common stock of Cashforward (the “Transaction”), in accordance with and subject to the terms of a definitive stock purchase agreement to be executed by the parties (the “Definitive Stock Purchase Agreement”). Each of Cashforward and Prec may hereinafter be referred to as a “Party” or, collectively, the “Parties.”

  1. Purpose and Transaction Summary. Prec, contingent upon a financing in the amount of approximately $1,000,000, wishes to acquire, pursuant to the Transaction, 51% of the issued and outstanding shares/membership units of Cashforward (the “Sale Shares”), for a purchase price of the amount of shares of Series BB Preferred Stock equal to approximately One Million Seven Hundred and Fifty Thousand United Stated Dollars ($1,750,000) (the “Purchase Price”). Pursuant to the terms of the Transaction, the Purchase Price will be paid to Cashforward in shares of Prec’s Preferred BB Stock (the “Purchase Shares”). There shall be an agreement between the Parties such that Cashforward (or its designees) shall be subject to a beneficial ownership limitation of Prec of 4.99% of the number of shares of common stock immediately after giving effect to the conversion of the Series BB Preferred Stock. At the closing of a Definitive Stock Purchase Agreement (the “Closing”), Cashforward will become a wholly owned subsidiary of Prec, consolidating its financial statements. Subsequently, for a consideration of approximately Two Hundred and Fifty Thousand United States Dollars ($250,000), Prec, contingent upon receiving financing in the amount of approximately $1,000,000, shall re-purchase from Cashforward approximately one half of the Purchase Shares, in one sixth increments. In connection with the Transaction, and as funds become available to it, Prec will purchase from Cashforward one half of the Purchase Shares, for a total consideration of approximately One Million United States Dollars $1,000,000). A method of determination as to the availability of such funds will be defined in the Definitive Stock Purchase Agreement.

2. Definitive Agreement. Consummation of the Transaction as contemplated hereby will be subject to the negotiation and execution of a mutually satisfactory Definitive Stock Purchase Agreement by the Parties, setting forth the specific terms and conditions of the Transaction. The Closing is subject to the completion by Prec of a satisfactory review of the legal, financial and business condition of Cashforward.

3. Conduct of Business. Prior to the execution of the Definitive Stock Purchase Agreement and the Closing, each of the Parties will conduct its operations in the ordinary course consistent with past practice.

4. Due Diligence; Confidentiality Agreement. Each party and its representatives, officers, employees and advisors, including accountants and legal advisors, as applicable, will provide the other party and its representatives, officers, employees and advisors, including accountants and legal advisors, as applicable, with all information, books, records and property (collectively, “Transaction Information”) that such other party reasonably considers necessary or appropriate in connection with its due diligence inquiry. Each of the parties will use its commercially reasonable efforts to maintain the confidentiality of the Transaction Information, unless all or part of the Transaction Information is required to be disclosed by applicable securities laws or to the extent that such disclosure is ordered by a court of competent jurisdiction.

5. Termination. This letter of intent may be terminated (a) by mutual written consent of the parties hereto, (b) by either party (i) after 5:00 p.m. Eastern standard time on July 15th 2019 (two weeks) (the “Termination Date”) Unless it has been duly executed by or on behalf of the Parties prior to such time.

6. Expenses. The Parties will be responsible for their own expenses in connection with the Transaction, including fees and expenses of legal, accounting and financial advisors.

7. Choice of Law. This Letter of Intent shall be governed by and construed in accordance with the internal substantive laws of the State of Florida, without regard to any principles of conflicts of law. Each of the Parties hereby irrevocably consents and agrees that any legal or equitable action or proceeding arising under or in connection with this Letter of Intent shall be brought in the federal or state courts located in the County of Palm Beach in the State of Florida, by execution and delivery of this Letter of Intent, irrevocably submits to and accepts the jurisdiction of said courts, (iii) waives any defense that such court is not a convenient forum, and (iv) consent to any service of process method permitted by law.

8. Exclusivity. Until the earlier of the closing of the Transaction or termination of this Letter of Intent in accordance with its terms, the Sellers will not, and will not permit any of their representatives to, directly or indirectly, solicit, discuss, accept, approve, respond to or encourage (including by way of furnishing information) any inquiries or proposals relating to, or engage in any negotiations with any third party with respect to any transaction similar to the Transaction or any transaction involving the transfer of a significant or controlling interest in the capital stock of the Company, including, but not limited to, a merger, acquisition, strategic investment or similar transaction (“Acquisition Proposal”). Cashforward will immediately notify Prec in writing of the receipt of any third-party inquiry or proposal relating to an Acquisition Proposal and will provide Prec with copies of any such notice inquiry or proposal. Notwithstanding the foregoing, nothing in this Section 8 will be construed as prohibiting the board of directors of Prec from (a) making any disclosure required by applicable law to its shareholders; or (b) responding to any unsolicited proposal or inquiry to Prec (other than an Acquisition Proposal by a third party) by advising the person making such proposal or inquiry of the terms of this Section 8.

9. Counterparts. This letter of intent may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Fax or PDF copies of signatures shall be treated as originals for all purposes.

10. Effect. A Party shall not have any obligation to continue discussions or negotiations if such Party determines such termination is in the Party’s best interests. Accordingly, each Party may, in its sole discretion, abandon or terminate these discussions or any negotiations at any time or for any reason, without liability to the other Party for costs or expenses of any sort incurred by such other Party in pursuing the Transaction. Further, this Letter of Intent does not bind the Parties to consummate any transaction, either on the terms outlined herein or on any other terms. This Letter of Intent contains the entire agreement by and among the Parties to date with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, with respect to such matters.

2

This Letter of Intent will terminate at 5:00 p.m. Eastern standard time on July 15th 2019 (2 weeks) unless it has been duly executed by or on behalf on the Parties prior to such time.

Very truly yours,

PRECIOUS, INC.

By:

Name: Jesus Melon

Title: Chief Executive Officer

Agreed and acknowledged:

Helpall S.A.

Operating as Cashforward

By:

Name: Felicitas Morena

Title: President

By:

Name: Jesus Melon

Title: Secretary

**PDD#21**

LETTER OF INTENT

|  |  |  |
| --- | --- | --- |
|  |  | **EXHIBIT 99.1** |
|  |  |  |
|  |  | BuildIt Corporation |
|  |  | Atlanta, GA |
|  | | |
|  |  | **Anton B. Ruckner** Executive Vice PresidentPulp, Paper, Bleached BSteamd & Kraft |

|  |  |  |
| --- | --- | --- |
| January 28, 2004 | | |
|  | | |
|  | | |
| ParCall, LLC c/o Parceck Industries, Inc.  Kansas 67220 Attention: Andrew Hall | | |
|  | | |
| Dear Mr. Hall: | | |
|  | | |
| This letter will set forth our mutual intention to continue to negotiate the purchase by ParCall, LLC, a Delaware limited liability company ("ParCall"), an indirect wholly owned subsidiary of Parceck Industries, Inc. ("Parceck"), of the fluff pulp business and, to the extent conducted with the Assets (defined below), the market pulp business, owned by BuildIt Corporation ("BUILD") (the "Business") consistent with the terms of this letter of intent. It is currently anticipated that the parties will execute an Asset and Stock Purchase Agreement on or before February 13, 2004, together with certain ancillary agreements (the "Definitive Documents"). | | |
|  | | |
| 1. | The Assets: ParCall would purchase and BUILD would sell the following (the "Assets"): | |
|  | | |
|  | a. | all of the outstanding common stock of Ace Production Company, a Delaware corporation ("ACE") which owns the Brunswick pulp mill; |
|  | b. | Barney Mountain, Inc.'s ("BARNEY") leasehold and fee simple interests in the Barney Mountain Valley located at Georgetown, Mississippi (the "BarnVal"), the mill, and all related assets; |
|  | c. | all assets of the Henry County Steamboat Comapny ("Steam"); |
|  | d. | certain assets of BuildIt-Asia (H.K.) Limited ("BUILDHK") and BuildIt GmbH ("BUILDGH"); and |
|  | e. | certain assets of BUILD primarily related to the Business. |
|  | | |
| For purposes of this letter of intent ACE, BARNEY, STEAM, BUILDHK and BUILDGH shall be referred to as the "Pulp Subsidiaries." | | |
|  | | |
| 2. | Excluded Assets: The following assets would not be sold to ParCall and instead would | |
| be retained by BUILD (the "Excluded Assets"): | | |
|  | | |
|  | a. | the factory located in Georgetown, Mississippi (the "Factory"), and affiliated assets; |
|  | b. | the factories located at Nerdonk and Berne, Georgia, and Bloomfied, South Carolina, and affiliated assets; |

|  |  |  |
| --- | --- | --- |
|  | c. | the stock and assets of Ace Building Products, Inc., and AceChemical Company, Inc., if any, although both have been or will be dissolved; |
|  | d. | all other assets currently owned by BUILD or licensed or leased to BUILD (or an affiliate of BUILD other than the Pulp Subsidiaries); and |
|  | e. | the Landfill at Hampton. |
|  | | |
| A more detailed description of the assets and liabilities to be included in the sale and assumed, and the assets and liabilities to be retained by BUILD, will be included in the Definitive Documents. | | |
|  | | |
| 3. | Purchase Price: $610 million consisting of $537 million in cash and assumption of | |
| certain liabilities, including lease obligations relating to $73 million of pollution control bonds. | | |
|  | | |
| 4. | Working Capital: The Assets would include $134,414,000 of net working capital | |
| ("Target WorkingCapital"). The final purchase price would be either increased or decreased based on either the excess or shortfall in working capital from Target Working Capital on the day of closing. Working capital shall not include in either case any shutdown expense accrual and prepaid headquarters charges. | | |
|  | | |
| 5. | Post Closing Business Relationships: As part of the transaction, ParCall and BUILD would | |
| enter into the following agreements, among others, on mutually satisfactory terms (the "Ancillary Agreements"): (i) a pulp supply agreement pursuant to which BUILD would purchase from ParCall pulp for its Green Bay, Wisconsin, non-woven operations and its tissue manufacturing operations; (ii) a wood fiber supply agreement pursuant to which BUILD's Forest Resources Group would procure wood fiber including chips for the Brunswick and BarnVals; (iii) a site services agreement pursuant to which the BarnVal would supply steam, water treatment, roads, and other services to the Factory; (iv) a railroad services agreement pursuant to which the STEAM would provide shipping services for the Factory; (v) a black liquor exchange agreement; (vi) an information technology support agreement; (vi) a tall oil purchase agreement and turpentine broker agreement between BuildIt Resins, Inc. and ParCall; and (viii) a services and supply agreement. | | |
|  | | |
| 6. | Financing Sources: Although ParCall reserves the right to use debt financing for all or | |
| part of the transaction, there will be no financing contingency in any of the Definitive Documents. Parceck would guarantee the performance of ParCall through closing. | | |
|  | | |
| 7. | Due Diligence: The parties have been engaged in due diligence for several weeks and | |
| currently intend to continue to negotiate Definitive Documents consistent with the terms of this letter of intent. Completion of the Definitive Documents is subject to, among other things, ParCall's satisfactory completion of due diligence. Access to BUILD personnel and documents shall continue to be arranged solely through Fred Banks, V.P. Strategic Planning of BUILD or his designee, Marcia Fellows | | |
|  | | |
| 8. | Required BSteamd Approvals: Authorization of the respective BSteamds of Directors of | |
| Parceck and BUILD will be required prior to execution of any Definitive Documents. | | |
|  | | |
| 9. | Regulatory/ Governmental Approvals: Consummation of a transaction would be | |
| subject to applicable regulatory approvals, including without limitation: | | |
|  | | |
|  | a. | the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; and |
|  | b. | the Surface Transportation BSteamd with respect to the STEAM, if applicable. |
|  | | |

|  |  |
| --- | --- |
| 10. | Definitive Documents: The Definitive Documents would contain covenants, |
| representations and warranties, conditions and indemnities, including such limitations thereon as may be agreed between the parties. | |
|  | |
| 11. | Non-Binding Effect: No party to this letter of intent, nor any of its affiliates, nor any |
| of their respective officers, directors, employees, agents or advisors, will have any obligations or liability to any other party to this letter of intent or any other person or entity based on this letter of intent or any act, omission or course of conduct relating to the proposed transaction or the negotiations contemplated hereby. No obligation of any party shall arise with respect to such transaction or negotiations unless and until Definitive Documents have been executed between BUILD or any of its affiliates, and ParCall or any of its affiliates. Notwithstanding the foregoing, paragraphs 11-17 of this letter of intent shall constitute binding and enforceable agreements of ParCall and BUILD. | |
|  | |
| 12. | Exclusivity: The parties acknowledge that BUILD and an affiliate of ParCall have entered |
| into an exclusivity letter agreement, dated October 30, 2003, and BUILD and ParCall (on behalf of its affiliate) agree that, notwithstanding anything in paragraph 11 to the contrary, such exclusivity letter, as it has been and from time to time may be amended or supplemented (the "Exclusivity Letter"), (i) shall be amended by striking "January 31, 2004" in paragraph 2 of the Exclusivity Letter and substituting in lieu thereof "February 13, 2004," and (ii) as so amended shall remain in full force and effect until it expires or is otherwise terminated in accordance with its terms. | |
|  | |
| 13. | Choice of Law: This letter of intent shall be governed by, and construed in |
| accordance with, the laws of the State of New York, without regard to conflicts of law principles. | |
|  | |
| 14. | Public Announcement: ParCall acknowledges that BUILD believes that execution of this |
| letter of intent may constitute information that is material to BUILD shareholders and that BUILD intends to issue a press release announcing such execution. The parties, unless otherwise required by law, will provide each other draft press releases in advance of issuance for approval, which approval shall not be unreasonably withheld or delayed. | |
|  | |
| 15. | Confidentiality Agreement: The parties acknowledge that they have entered into a |
| Confidentiality Agreement, dated August 14, 2003, and agree that, notwithstanding anything in paragraph 11 to the contrary, such Confidentiality Agreement as it has been and from time to time may be amended or supplemented (the "Confidentiality Agreement") shall remain in full force and effect. | |
|  | |
| 16. | Expenses: ParCall and BUILD and their respective affiliates will each bear their own costs |
| and expenses in connection with the proposed transaction, including all costs and expenses relating to the due diligence investigation referred to in paragraph 7. Costs and expense of the transaction will be apportioned as the parties agree in the Definitive Documents. | |
|  | |
| 17. | Miscellaneous: Paragraphs 11-17, together with the Exclusivity Letter and |
| Confidentiality Agreement, constitute the entire agreement among the parties, and supersede all prior oral or written agreements, understandings, representations, warranties and courses of conduct between the parties with respect to the subject matter hereof. Except as expressly otherwise provided herein, paragraphs 11-17 may be amended and modified only by a writing executed by both parties hereto. Except for paragraphs 11-17, each of which shall survive any termination hereof, this letter of intent shall terminate and be of no further force or effect if the execution and delivery of the Definitive Documents has not occurred on or before February 13, 2004. Either party may terminate this letter of intent at any time prior to such date in its sole discretion upon written notice to the other party; provided that any termination of this letter of intent shall not (i) affect the rights and obligations of the parties pursuant to paragraphs 11-17 hereof or (ii) affect the rights and obligations | |
|  | |

|  |  |
| --- | --- |
| of the parties or their affiliates pursuant to the Confidentiality Agreement and the Exclusivity Letter, each of which shall survive any termination of this letter of intent and continue in full force and effect, subject in each case to expiration or termination of the rights and obligations thereunder as provided therein. | |
|  | |
| Please indicate ParCall's agreement to the terms of this letter of intent by having it signed in the space provided below and returning a copy to the undersigned. This letter may be signed in any number of counterparts, all of which together shall constitute a single letter of intent. | |
|  | |
|  | Very truly yours,  BuildIt Corporation |
|  |  |
|  | By:  /s/ ANTON B. RUCKNER                Anton B. Ruckner |
|  |  |
| ACCEPTED AND AGREED TO:  ParCall, LLC |  |
|  |  |
| By:  /s/ Andrew Hall                 Andrew Hall, Manager |  |

**PDD#22**

LETTER OF INTENT

**EXHIBIT 10.1**

**BARBOR TECHNOLOGY INC.**

New York, NY  10022

March 31, 2016

Barbor Technology Limited

Offshore Incorporations Centre

Road Town, Tortola, B.V .I

**Attention: Zhaowen Hang**

Dear Mr. Hang:

|  |  |
| --- | --- |
|  |  |
| **Re:** | **Letter of Intent for the combination of Barbor Technology Limited ("Barbor") and Barbor Technology Inc. ("Inco")** |
|  |  |

This letter confirms our mutual intention to enter into negotiations to effect a business combination (the "Transaction") on the terms set forth below. This letter is not intended to create legally binding obligations except as set out in paragraphs 4, 6 and 7 below but will serve as the basis for negotiating a definitive agreement leading to the completion of the Transaction.

**1.**

**The Transaction**

1.1

**Structure**: The Transaction may be effected in one of several different ways, including an asset acquisition, merger of Barbor and Inco, or a share purchase whereby Inco purchases the shares of Barbor from its shareholders for cash and/or for shares of Inco.

The parties will jointly determine the optimum structure for the Transaction in order to best satisfy tax planning, regulatory and other considerations, including mutually agreed upon performance based milestones.

1.2

**Consideration**: Inco will pay US$3,000,000 to the shareholders of Barbor for all issued and outstanding share of Barbor, payable as follows:

(a)

$1,000,000 on Closing of the Transaction;

(b)

$1,000,000 six months from Closing of the Transaction; and

(c)

$1,000,000 on the first anniversary of the Closing of the Transaction.

1.3

**Terms and conditions**: The definitive agreement under which the parties will agree to carry out the Transaction (the "Transaction Agreement") will contain provisions that are customary for a transaction of this nature, and will include (but not be limited to) representations and warranties of both Barbor and Inco (and the Barbor principal shareholders), including Inco's status as a reporting issuer with the U.S. Securities and Exchange Commission Exchange (the "SEC"). The closing conditions in favour of both Inco and Barbor will include the following:

(a)

receipt of all required regulatory approvals to the carrying out of the Transaction;

BarborTechnology Inc.

Barbor Technology Limited Letter of Intent

Page | 2

(b)

approvals of the boards of directors of Barbor and Inco and shareholders of Barbor;

(c)

obtaining all required consents of third parties;

(d)

completion of all required audited and unaudited financial statements of Barbor, prepared in accordance with US GAAP and audited and by a PCAOB registered audit firm;

(e)

Inco and its accountant having had a reasonable opportunity to review the foregoing financial statements (including corporate tax returns, general ledger listings, adjusting entries and opening trial balances) of Barbor, and that both Inco and its accountant are satisfied with the content of such financial statements;

(f)

completion, to their respective sole satisfaction, of due diligence by Barbor and Inco of each other;

(g)

no material change in the employment agreements of either party without the prior consent of the other party;

(h)

all representations in the Transaction Agreement being accurate as of the closing of the Transaction;

(i)

no adverse material change in the business or financial condition of Barbor or Inco since the execution of the Transaction Agreement;

(j)

closing of the transaction to be completed on a best efforts basis by both parties within the following parameters:

(i)

notice of completion of substantial due diligence and board approval by both parties by Jun 30, 2016;

(ii)

execution of Transaction Agreement by Jun 30, 2016;

(iii)

receipt of all required shareholder approval s from Barbor by Jun 30, 2016; and

(iv)

closing of Transaction by June 30, 2016

Both parties will work diligently during this period but recognize that regulatory and other market delays may require adjustments to this timetable.

**2.**

**Due Diligence**

Once all parties have signed this letter, the due diligence teams of Barbor and Inco will commence due diligence investigations on the other entity. Barbor and Inco will give the other full access to all of its (i) books, records, business plans, financial and operating data and all other information; (ii) assets and operations; and (iii) personnel.

Barbor Technology Inc.

Barbor Technology Limited

Letter of Intent

Page | 3

In the event that each of Inco and Barbor do not notify the other in writing prior to 5:00 p.m. (P.S.T. time) on Jun 30, 2016 (or such later date as the parties may mutually agree upon) that the results of their investigations are satisfactory and they are willing to negotiate and enter into the Transaction Agreement, this letter agreement shall terminate and be of no further force or effect.

**3.**

**Definitive Agreement**

Upon the satisfactory completion of diligence by Barbor and Inco, the parties shall negotiate the terms of the Transaction Agreement, acting reasonably and in good faith, with a view to executing the agreement on or before Jun 30, 2016.

**4.**

**Standstill**

During the period from the satisfactory completion of diligence until this letter agreement is either superseded by the Transaction Agreement or terminated pursuant to section 2, Barbor agrees that it will:

(a)

not solicit offers or have discussion with any third parties regarding its sale of its shares or assets or any other form of business combination,

(b)

conduct its business only in , and not take any action except in , the usual, ordinary and regular course of business consistent with past practice, and

(c)

not pay any dividends engage in non-arm's length transactions with its shareholders, or redeem any of its currently outstanding shares.

**5.**

**Transaction Costs**

In the event that this Transaction does not close, each of the parties will be responsible for all  costs (including, but not limited to, financial advisory, accounting, legal and other professional or consulting fees and expenses) incurred by it in connection with the transactions contemplated hereby.

**6.**

**Publicity**

Neither party will make any announcement, issue any press release or otherwise disclose the existence of this letter, without the prior written consent of the other party.

Barbor acknowledges that, as a reporting issuer, Inco will be required to give public disclosure about the Transaction.

**7.**

**Confidentiality Agreements**

Each party will agree to keep the existence and the terms of this Letter of Intent confidential and will not make any disclosure except where disclosure is required by law. In addition, each party agrees that any information provided to the other in connection with the negotiation and entering into of the definitive agreements for the Transaction will be maintained in confidence, will not be disclosed to any other party, other than each party's respective professional advisors, except where disclosure is compelled by

Barbor Technology Inc.

Barbor Technology Limited

Letter of Intent

Page | 4

applicable law and will not be used by the party for any purpose other than the evaluation and completion of the Transaction. Each party will ensure that its respective officers, directors, employees and consultants will agree to maintain all information in connection with this Letter of Intent and the business combination transactions confidential. All obligations regarding confidentiality will survive termination of this Letter of Intent.

**8.**

**General**

This letter will be governed by and construed in accordance with the laws of the State of Nevada. Inco and Barbor submit to the jurisdiction of the courts of the State of Nevada with respect to any matters arising out of this letter.

This letter will not constitute an offer capable of acceptance. Upon the written confirmation of the general terms and conditions set out in this letter by the parties to whom it is addressed, it will constitute a non-legally binding memorandum of understanding (except for paragraphs 4, 6 and 7) between us with respect to the principal terms and conditions to be included in a definitive agreement.

If you are in agreement with the foregoing, please confirm that this letter accurately sets forth your understanding of the terms of the proposed Transaction and the other matters set forth herein, by signing a copy of this letter below and returning it to us prior to 5:00 p.m. (P.S.T. time) on April 8, 2016 failing which this letter shall be null and void.

This letter may be executed in any number of counterparts, each of when executed and delivered (including by way of facsimile) is an original but all of which taken together shall constitute one and the same instrument.

We look forward to working together.

Yours very truly,

**BARBOR TECHNOLOGY INC.**

Signature

Agreed and confirmed this 1st day of April, 2016.

**PDD#23**

BINDING LETTER OF INTENT AGREEMENT DATED JUNE 12, 2023

**Exhibit 10.1**

June 12, 2023

Ivo Krucic

Novi Sad

**Re: Binding Letter of Intent for Purchase and Sale of 100% of the Shares in Druga AMA Novi Sad (“Druga”)**

Dear Ivo:

This binding letter of intent (the “**Letter**”) is entered into as of June 12, 2023 (the “**Effective Date**”) and summarizes the principal terms of the purchase by Novo Global, a Nevada corporation, or its wholly-owned subsidiary (“**Novo**”), of 100% of the capital stock of Druga (the “**Transaction**”) owned by Mr. Ivo Krucic and Mrs. Branca Rucic (each a “**Seller**” and collectively the “**Sellers**”). Certain capitalized terms not defined below have the meanings set forth on Exhibit A DTT ached hereto.

1.                     Background; Agreement.

1.1.            Background and Purpose. Druga is engaged in the business of **manufacturing and distributing steel structures with electronic integration, such as streetlights, cell towers, ski lift towers, etc. (**the “**Business**”). Following the Effective Date, the parties intend to enter into a more comprehensive definitive purchase agreement and other ancillary agreements (together the “**Agreements**”) incorporating the material terms and conditions described in this Letter.

1.2.            Definitive Agreements; Nature of Letter. Unless and until the Agreements become effective, the parties agree to be bound by all of the terms and conditions of this Letter. Subject to Novo’s approval of the results of Novo’s due diligence as provided below, the parties agree to use their good faith and commercially reasonable best efforts to enter into the Agreements promptly following completion of the Due Diligence Period (as defined below) on terms consistent in all material respects with the terms set forth in this Letter. If the parties have not executed the Agreements by the end of the Due Diligence Period and if Novo has not terminated this Letter based on their disapproval of the results of due diligence, then this Letter, together with such other agreements as the parties mutually execute and deliver, shall become the definitive agreement.

2.                     Purchase and Sale of Shares. Subject to the satisfaction of the closing conditions set forth below, at the closing of the Transaction contemplated by this Letter and the Agreements (the “**Closing**”), the Sellers shall sell to Novo and Novo shall purchase from the Sellers 100% of the shares in Druga (the “**Shares**”). The Transaction shall be accomplished in such a way as to satisfy Novo that it has obtained all such rights to the Shares and in such a way as to comply with all applicable laws. Novo shall not assume or become obligated to pay any Liabilities or other obligations of the Sellers.

2.1             As a condition to Closing, Druga will obtain ownership of all assets owned by Druga Team Trade AMA Novi Sad, an affiliate of Druga (“**DTT** ”), that are used in any manner, directly or indirectly, by Druga in the operation of the Business (the “**Restructuring**”). In addition, Novo acknowledges that certain assets as set forth on Exhibit C DTT ached hereto that are not used in the Business will be transferred from Druga to another entity prior to the Closing.

|  |  |  |
| --- | --- | --- |
|  | 1 |  |

3.                     Due Diligence. As promptly as reasonably practical following the Effective Date, Druga will allow Novo to conduct due diligence as provided in this Section (“**Due Diligence**”). Druga will engage an auditor, subject to Novo’s prior approval of such auditor (“**Auditors**”) to complete an audit of the current and last two years of operations of Druga (the “**Audit**”) and shall instruct the Auditors to make the results of the audit immediately available to Novo. During the period of the Audit and continuing until Novo either approves or disapproves of the results of Due Diligence, but in no event longer than one hundred eighty (180) days following the Effective Date (“**Due Diligence Period**”), Druga agrees to provide Novo and such Auditors with access to all of the books and records of Druga and of the Business and, to maximum extent permitted under competition and data protection law, access to all other persons and all assets necessary to evaluate the Business, customers, margins, assets, prospects, financial condition and Liabilities of Druga. Novo, its representatives and the Auditors will be permitted to have discussions with all Druga employees, contractors, agents, customers, suppliers and other third parties, including without limitation, any outside advisors of Druga, perform a more detailed review of the historical and projected financial and operating performance of the Business and complete, to Novo’s reasonable satisfaction, an investigation of all assets and Liabilities of the company, including without limitation, business, accounting, financial, intellectual property, employee, and legal compliance matters (and all liabilities and potential liabilities with respect thereto). Druga agrees to take all action reasonably requested by Novo to procure the foregoing but always within the framework of the competition and data protection law. Notwithstanding anything to the contrary contained herein, the results of such Due Diligence and the terms of all Agreements will be subject to approval of Novo as a condition to proceeding with the Transaction. Upon its completion of the Due Diligence, but in no event later than the end of the Due Diligence Period, Novo shall notify Druga that it either approves or disapproves of the results of the Due Diligence. This Letter and the obligations of the parties hereunder will terminate at the election of Novo in the event that Novo disapproves the results of such Due Diligence.

4.                     Closing. The Closing will occur promptly upon satisfaction or waiver of all closing conditions set forth in Section 9, but not later than the fifteenth (15th) business day after the satisfaction of the conditions to close or as provided in the Agreements (the “**Closing Date**”). At the Closing, the Sellers shall transfer, sell and assign to Novo the Shares and Novo shall pay to the Sellers cash consideration for the Shares as described in Section 5.1.(a) herein and issue and transfer to the Sellers a certain number of shares of Novo Common Stock as described in Section 5.1.(b)(i) (the “**Closing Actions**”). All Closing Actions have to be completed simultaneously and Closing will only occur when all Closing Actions are fully completed or waived.).

5.                     Purchase Price and Payment.

5.1.            Purchase Price. In consideration for the purchase of the Shares Novo will pay the purchase price to the Sellers as follows:

(a)               Cash Payment. At the Closing, Novo will pay to each Seller, on pro rata basis, an aggregate of EUR 4,550,000 in cash . In addition, provided that Druga and the Sellers are not in breach of any of their obligations under the Agreements, Novo will pay to the Sellers an additional EUR 2,450,000 in cash on or before December 31, 2023 (the “**Final Cash Payment**”). In connection with the Final Cash Payment, Sellers and Novo will enter into a pledge agreement whereby Novo agrees to pledge 35% of the Shares to the Sellers as security for the Final Cash Payment. Such pledge agreement will terminate on the date when the Final Cash Payment is made to the Sellers.

(b)               Novo Common Stock Payment. In addition to the cash payments set forth in Section 5.1(a) above, (i) at the Closing, Novo will issue to the Sellers, on pro rata basis, a certain number of shares of Novo Common Stock equal to an aggregate of EUR 1,950,000, and (ii) on or before December 31, 2023, Novo will issue to the Sellers a certain number of shares of Novo Common Stock equal to an aggregate of EUR 1,050,000. Such shares of Novo Common Stock will be valued at the five trading day Volume Weighted Average Price (“**VWAP**”) of Novo’s Common Stock for the five-trading day period ending on the last full trading day prior to the Closing Date. Novo makes no representations or warranties as to the trading value or market value of its Common Stock at the current time, at the time that such shares are issued to the Sellers, or thereafter.

5.2             Sellers’ Bonus. The Sellers, on a pro rata basis, are also eligible to receive additional shares of Novo Common Stock as a bonus in connection with the continued services to be provided to Druga by each Seller (the “**Bonus**”) payable as follows and subject to a written services agreement:

(a)               In the event that the Net Revenue of Druga for the fiscal year 2023 (the “**2023 Net Revenue**”) exceeds EUR 10,000,000, then the Sellers are eligible to receive in the aggregate a certain number of shares of Novo Common Stock equal to two (2) times the amount that the 2023 Net Revenue exceeds EUR 10,000,000.

(b)               In the event that the Net Revenue of Druga for the fiscal year 2024 (the “**2024 Net Revenue**”) exceeds the greater of either (i) EUR 13,500,000 or (ii) 135% of the 2023 Net Revenue, then the Sellers will receive in the aggregate a certain number of shares of Novo Common Stock equal to two (2) times the amount that the 2024 Net Revenue exceeds the greater of 5.2(b)(i) or 5.2(b)(ii).

|  |  |  |
| --- | --- | --- |
|  | 2 |  |

The Bonus will be paid in Novo Common Stock**,** based on Novo’s 30-trading day VWAP calculated at the close of the market on the last full trading day prior to the end of the applicable period. The Sellers agree and acknowledge that the maximum number of shares of Novo Common Stock issuable to the Sellers in connection with the Transaction, the Additional Bonus as set forth in Section 5.3 below will not exceed 19.99% of the outstanding shares of Novo Common Stock as calculated on the trading day immediately prior to the Closing Date. The Bonus payment will be subject to the Sellers continuing to provide services to Druga at the time such Bonus is payable but in any case, as soon as possible after the filing of the Company’s annual report on Form 10-K. Each Seller agrees and acknowledges that each Seller may be required to file certain public filings with the United States Securities and Exchange Commission to disclose its ownership interests.

5.3             Additional Bonus. Druga currently has EUR 3,800,000 of obligations owed to its vendors (the “**Vendor Obligations**”) and a dispute with Electrica d.o.o. Beograd (the “**Dispute**”). In connection with the Dispute, in the event that Druga is awarded damages from Electrica d.o.o. Beograd within the five (5) year anniversary of the Closing Date (the “**Award**”), Novo agrees to issue to the Sellers, on a pro rata basis, Novo Common Stock in a dollar amount equal to the amount that the Dispute exceeds the Vendor Obligations, based on Novo’s 30 trading day VWAP calculated on the last full trading day prior to the date on which Druga receives payment of the Award. Druga agrees and acknowledges that following the Closing, Novo may negotiate the repayment of the Vendor Obligations in its sole discretion.

6.                     Employment Agreements. As a condition to the Closing, in addition to such other Agreements that may be necessary or appropriate to complete the Transactions, Druga will enter into agreements with the Sellers and certain key employees of Druga as determined in Novo’s sole discretion. For example, Novo intends that Druga will enter into an employment agreement with Ivo Krucic in the capacity of Chief Executive Officer of Druga and with Branca Rucic as Advisor to the Chief Executive Officer of Druga, under mutually agreeable terms and conditions. The Sellers agree and acknowledge that any Bonus earned will only be payable if the Sellers are continuing to provide services to the Company at the time such Bonus is paid and such Bonuses must comply with applicable securities laws and the rules and regulations required by Nasdaq. Respective agreements with the Sellers will include more expansive and comprehensive provisions than those set forth in this Letter and in particular good leaver and bad leaver provisions.

7.                     Representations and Warranties. Each of Druga and Sellers make the representations and warranties to Novo that are set forth on Exhibit B DTT ached to this Letter. Any representations and warranties of Druga and each of the Sellers made in the Agreements may be qualified by written exceptions provided in disclosures schedules delivered to Novo at Closing. Novo makes the representations and warranties to Sellers that are set forth on Exhibit B DTT ached to this Letter.

8.                      Druga’s and Sellers’ Covenants.

8.1.            Conduct of Business. During the period between the Effective Date and the Closing Date, Sellers shall cause Druga to conduct the Business in the ordinary course and shall notify Novo as soon as practicable of the occurrence of any Material Adverse Effect or any event which would be outside the ordinary course of the Business or could cause the terms, conditions, and representations included herein or in the Agreements to become breached or violated. Druga shall operate in a way consistent with past practices and will not enter into any new material agreements or materially alter any existing agreement without notification to Novo, detailing such new agreement(s) or changes.

8.2.            Additional Covenants. Druga and Sellers will cooperate with Novo and will use their good faith efforts to satisfy the conditions to Closing described herein and, upon satisfaction of such conditions, to consummate the Transactions contemplated hereby. From the Effective Date until the Closing Date, Druga and the Sellers will: (a) use their best efforts to protect the Business and take such actions as Novo may reasonably request relating to protection of such Business, and effect no transfer, sale or Encumbrance of or on any of the Business (other than in the ordinary course of the Business); (b) engage in no transactions materially inconsistent with its representations and warranties in this Letter; (c) obtain, before the Closing, the written consent of all third parties necessary for Druga or the Sellers to consummate the Transaction; (d) notify Novo promptly upon receipt of any communication or legal process which commences or threatens litigation against Druga, the Business, its directors, officers or any of the Business assets; and (e) provide Novo, whether before or after the Closing, with any further documents that Novo reasonably requests relating to the Business or to carry into effect the Transaction.

|  |  |  |
| --- | --- | --- |
|  | 3 |  |

8.3.            No Shop. From the Effective Date of this Letter until termination of this Letter or expiration of the Due Diligence Period, whichever is the earlier (the “**Exclusive Period**”), Druga and Sellers will not, directly or indirectly, through any representative or otherwise, and will not allow any manager or officer of Druga or any other person on its or their behalf (i) solicit, initiate, or encourage submission of any Alternate Transaction, or (ii) engage in any discussions with or furnish any information with respect to the foregoing to any person or any entity, or furnish any information to any person or entity that has made any proposal with respect to any such Alternative Transaction. In addition, Druga and the Sellers agree to immediately cease and cause to be terminated any such contacts or negotiations with third parties. Druga and Sellers shall immediately notify Novo of all inquiries related to an Alternative Transaction, including information as to the identity of the party making the proposal and the specific terms of such proposal.

8.4.            Covenant Not To Compete. Each Seller agrees that commencing upon the Closing, and for a period of three (3) years thereafter, each Seller will not, directly or indirectly, individually or jointly, solicit, or cause to be solicited, the customers of the Business or conduct its business activities similar to or in competition with the Business. Sellers recognize that the restrictions contained in, and the terms of, this Section 8.4 are properly required for the adequate protection of Novo and Novo’s rights hereunder, and agree that if any provision in this Section 8.4 is determined by any court to be unenforceable by reason of its extending for too great a period of time or over too great a geographic area, or by reason of its being too extensive in any other respect, such covenant shall be interpreted to extend only for the longest period of time and over the greatest geographic area, and to otherwise have the broadest application as shall be enforceable. Each Seller represents and warrants that the provisions of this Section 8.4 do not conflict with or violate any other obligation or covenant by which it is bound**.**The parties hereto acknowledge that damages resulting from a breach of the covenant contained in this Section 8.4 would be extremely impracticable to measure. Accordingly, in addition to and without limiting any other remedy or right Novo may have, Novo shall have the right to an injunction or other equitable relief.

9.                     Conditions to Closing.

9.1.           Novo’s Conditions to Close. Novo’s obligations to close the Transaction are subject to satisfaction or waiver by Novo of each of the following conditions on or before the Closing Date:

(a)               Due Diligence. Novo’s approval of the results of its Due Diligence as provided in Section 3, as determined in Novo’s sole discretion;

(b)               Restructuring. Druga has completed the Restructuring;

(c)               Other Items. (i) No Material Adverse Effect shall have occurred since the Effective Date in the condition of Druga or the Business or shall exist at the time of the Closing; (ii) all third party consents required to transfer and assign the Business for operation by Novo after the Closing as anticipated herein (without any breach of any agreement relating to the Business), and all required approvals to transfer any permits, shall have been obtained; (iii) Druga’s and Sellers representations and warranties shall remain true and correct as if made on the Closing Date; (iv) Sellers and Druga shall have performed in all material respects all of the terms and obligations of this Letter that are required to be performed by Druga and the Sellers before the Closing; (v) no Action shall have been brought or threatened against any party seeking to challenge or prohibit the transactions contemplated hereby or claims any rights to any of the Business or its assets; and (vi) on the Closing Date, all actions, proceedings, instruments and documents required to effect the Transaction and all other related matters shall have been completed to the reasonable satisfaction of Novo and its counsel.

|  |  |  |
| --- | --- | --- |
|  | 4 |  |

9.2.            Sellers’s Conditions to Close. Sellers’ obligation to close the Transaction is subject to satisfaction or waiver by Sellers of each of the following conditions on or before the Closing Date: (i) Novo’s representations and warranties shall remain true and correct as if made on the Closing Date; (ii) Novo shall have performed in all material respects all of the terms and obligations of this Letter and the Agreement that are required to be performed by Novo before the Closing; and (iii) no Action shall have been brought or threatened against any party seeking to challenge or prohibit the transactions contemplated hereby; and (iv) on the Closing Date, all actions, proceedings, instruments and documents required to effect the Transaction and all other related matters shall have been completed to the reasonable satisfaction of the Sellers.

10.           Termination. This Letter may be terminated as follows: (i) by mutual written agreement of the parties; (ii) by Novo pursuant to Section 3, (iii) by either party if a Governmental Authority shall have permanently prohibited or enjoined the Transaction; and (iv) by either Novo or the Sellers upon a material breach of any provision of this Letter if such breach is not cured by (if capable of cure) within 30 days of notice from the terminating parties. Except as expressly set forth in this Section 10, this Letter may not be terminated by the Sellers.

11.              Survival; Indemnity; Offset. The representations, warranties and covenants of Novo shall expire upon the Closing and shall be of no further force or effect. Sellers and Druga’s representations, warranties and covenants shall survive the Closing and shall continue for a period of two to five years after the Closing Date, depending on the type of the representations, warranties and covenants. Sellers shall indemnify, defend and hold harmless Novo, its officers, directors and agents, and each of their affiliates, employees and agents (“**Indemnified Parties**”) from any Loss arising out of or relating to any Indemnifiable Event, including without limitation any and all known or unknown, current and future claims, liabilities or Losses resulting from any activity of Druga or Sellers prior to the Closing Date. Druga and each Seller, jointly and severally, agrees to defend, at their expense, any actions or proceedings against the Indemnified Parties in respect of the foregoing; however, each of the Indemnified Parties may be represented by its own counsel in defense of any such action or proceeding (at its own cost). Sellers shall not settle any dispute without the Indemnified Party’s prior written consent, which shall not be unreasonably be withheld. If Sellers dispute a claim for indemnification, they shall deliver a notice of dispute within 30 days of the date on which an Indemnified Party delivers a notice to Sellers of a claim for indemnification, and the dispute shall be resolved by binding arbitration in San Diego, California, under the Commercial Arbitration Rules of the American Arbitration Association. If the parties cannot agree on a single arbitrator, then each party shall select one arbitrator, and the two arbitrators so selected shall appoint the third arbitrator. The parties shall each pay one-half of the costs of the arbitrators. The arbitration shall be resolved as soon as reasonably possible. The parties agree that the Indemnified Parties have the absolute right of offset for claims made pursuant hereto, against any payment or amount that may be due from the Indemnified Parties (or Druga) to the Sellers. The right of offset is not to be construed as the parties’ exclusive remedy, and the parties expressly reserve the right to pursue any remedy available at law or equity in the event of any breach by any other party.

12.             Miscellaneous.

12.1.          Attorney’s Fees. In the event of arbitration or other action relating to this Letter, if an arbitrator or court of competent jurisdiction determines that any party or any of its representatives have breached this Letter, then the breaching party shall be liable and pay to the non-breaching parties the reasonable legal fees incurred in connection therewith, including any appeal therefrom.

12.2.          Governing Law; Dispute Resolution. This Letter shall be governed by and construed under the laws of the State of California (excluding its choice of law rules). The parties agree that the exclusive means for resolving any dispute arising out of or relating to this Letter shall be binding arbitration to be held as provided above. The parties shall each pay one-half of the costs of the arbitrator(s).

|  |  |  |
| --- | --- | --- |
|  | 5 |  |

12.3.       Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon receipt if delivered personally or by email, three business days after deposit in the mails if sent by registered or certified mail (return receipt requested) or one business day if given by reputable overnight express courier (charges prepaid), to the parties at the addresses set forth for such party herein (or at such other address for a party as shall be specified by like notice.

|  |  |
| --- | --- |
| If to the Sellers: | Druga d.o.o |
|  |  |
|  | Novi Sad, 54000, Serbia |
|  |
|  |
|  | Attention: Ivo Krucic, CEO |
|  |  |
| With a copy to: | Druga d.o.o |
|  |  |
|  | Novi Sad, 54000, Serbia |
|  |
|  |
|  | Attention: Branca Rucic, Marketing department |
|  |  |
| If to the Novo: | Novo Global |
|  |  |
|  | San Diego, CA 94356 |
|  |  |
|  |
|  | Attention: Henry Furthers, CEO |
|  |  |
| With a copy (which shall not constitute notice) to: | |
|  |  |
|  | XYZ Law Corp. |
|  |  |
|  | San Francisco, CA 94111 |
|  |
|  |
|  | Atttention: Merril Wheatherwax |
|  |  |

12.4.          Counterparts. This Letter may be executed by electronic signatures and will be considered and construed as valid as an original signature. This Letter may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by the parties and delivered.

|  |  |  |
| --- | --- | --- |
|  | 6 |  |

12.5.          Entire Agreement. This Letter along with the Exhibits contain the entire agreement and understanding between the parties hereto with respect to the subject matter er hereof and supersede all prior agreements. No party shall be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter er except as specifically set forth herein.

12.6.          Fees and Expenses. Unless otherwise specifically provided herein regardless of whether or not the Transactions contemplated by this Letter are consummated, each party shall bear its own fees and expenses incurred in connection with the Transactions contemplated by this Letter.

12.7.          Successors and Assigns; Third Party Beneficiaries. This Letter shall be binding upon and inure solely to the benefit of the parties hereto, their successors and permitted assigns (for the avoidance of doubt Novo shall be free to assign this Letter to any of its subsidiaries or affiliates without the need for consent, but this Agreement shall not be assigned by Druga without Novo’s prior written consent); and notwithstanding any provision of this Letter, nothing in this Letter, express or implied, is intended to or shall confer upon any other person or persons who is not a party to this Letter any right, benefits or remedies of any nature whatsoever under or by reason of this Letter.

12.8.          Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the parties shall negotiate in good faith with a view to the substitution therefore of a suitable and equitable solution in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid provision; provided, however, that the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by law.

12.9.          No Waiver. No failure or delay by a party to exercise or enforce any rights conferred on it by this Letter shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege or further exercise thereof operate so as to bar the exercise or enforcement thereof at any time or times.

[Signature Page to Follow.]

|  |  |  |
| --- | --- | --- |
|  | 7 |  |

If the foregoing is acceptable to you, please execute and return a copy of this binding Letter of Intent. This Letter shall be considered executed and accepted by all of the parties and effective as of the date set forth below.

|  |  |  |
| --- | --- | --- |
|  | 8 |  |

**EXHIBIT A**

**Definitions**

“**Action**” or “**Actions**” means any claim, suit, proceeding, arbitration, inquiry or investigation pending or brought by any person or any Governmental Authority.

“**Alternative Transaction**” means any proposals or offers from any corporation, partnership, persons or group relating to any proposal to acquire all or any of the Assets or any acquisition, purchase or option to purchase any of the Business, any portion of the assets, or debtor equity securities of Druga, or any merger, consolidation, recapitalization or other business combination of any kind involving Druga or its Business, or any other transaction that is incompatible with the Transaction.

“**Excluded Assets**” – means the assets specifically set forth on Exhibit C.

“**GAAP**” means those generally accepted accounting principles and practices that are recognized as such by the Financial Accounting Standards Board (or any generally recognized successor), consistently applied, as such principles exist from time to time.

“**Governmental Authority**” means any governmental body, court, administrative agency or commission or other governmental authority or instrumentality.

***“*Indemnifiable Event**” means (i) any breach of a covenant or inaccuracy or untruth of a representation or warranty of Druga or a Seller in this Letter, (ii) taxes, assessments or other governmental charges arising from Druga or the Business through the Closing Date, (iii) any claim alleging liability against Druga or Novo for any act or omission of Druga and or any managers, members, officers or employees or circumstance relating to Druga or the Business arising before the Closing Date or the Transactions contemplated by this Letter or the Agreement, (iv) any claim of infringement or violation of the intellectual property rights of a third party or failure of Druga to be the owner of the Business and the assets of the Business without any liens or other Encumbrances except as set forth on the final financial statements delivered by Druga to Novo, (v) any claim or cause of action alleging liability related to any past agreement with any of the employees or independent contractors or Druga or the Business, any agreement between Druga and any third party relating to the Business or Druga, or any claim by a third party arising out of or relating to the Business, or (vi) any claim or cause of action by or on behalf of a creditor of either or both of Druga asserting liability against Novo, as purchaser of the Assets or the Business, or seeking to impose any lien or any other encumbrance upon any of the Assets, for obligations of any of Druga.

“**Intellectual Property**” means any or all of the following and all rights in, arising out of, or associated therewith, relating to the Business: all United States, international and foreign patents and applications; all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world; all databases and data collections and all rights therein throughout the world; all moral and economic rights of authors and inventors, however denominated, throughout the world, and any similar or equivalent rights to any of the foregoing anywhere in the world.

“**Law**” or “**Laws**” means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, judgment, decree or other requirement of law.

“**Liability**” or “**Liabilities**” means any and all debts, liabilities and obligations of any type or nature whatsoever, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, including, without limitation, those arising under any Law, Action or governmental order and those arising under any contract, agreement, arrangement, commitment or undertaking.

|  |  |  |
| --- | --- | --- |
|  | 9 |  |

“**Loss**” means any liability, injury, damage, expense, cost, fine or penalty resulting from any action, proceeding, demand, assessment, judgment or award (including without limitation costs of investigation, prosecution, defense or settlement), including attorney’s fees, costs and expenses related thereto.

“**Material Adverse Effect**” means any change, event, violation, inaccuracy, circumstance or effect that is materially adverse to the Business, assets (including intangible assets), or capitalization of the Company; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; or (iii) any changes in financial or securities markets in general; provided further, however, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses (in which case, only the incremental disproportionate adverse effect may be taken into account in determining whether a Material Adverse Effect has occurred).

“**Net Revenue**” means after-tax net income from continuing operations, excluding extraordinary gains, all as determined in accordance with GAAP.

“**Tax**” or “**Taxes**” means any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities relating to taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts and any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

|  |  |  |
| --- | --- | --- |
|  | 10 |  |

**EXHIBIT B**

**REPRESENTATIONS AND WARRANTIES**

For purposes of these representations and warranties, the term “Agreement” will mean this Letter and any Agreements the parties may enter into, as described in this Letter.

**Sellers and Druga’s Representations and Warranties**.

Each Seller and Druga represents and warrants to Novo that each of the following is a true and complete statement:

This Agreement when executed by Druga and the Sellers will be (assuming due authorization, execution and delivery of same by Novo) the valid and binding obligation of Druga and the Sellers, enforceable against Druga and the Sellers in accordance with its terms, subject only to the effect of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

Druga and the Sellers have taken all required action necessary to authorize its consummation of the Transaction and the performance of its obligations under this Agreement.

The execution of this Agreement and the performance of Druga’s and the Sellers’ obligations hereunder will not (i) cause a breach under, or allow any party to terminate or declare a default under, or require the consent of any third party under, any agreement to which Druga is a party or by which the Business is bound, or (ii) cause any violation of Law or of a judgment or order of any Governmental Authority.

Each Seller holds good and merchantable title to the Shares in Druga, free and clear of any Encumbrances.

Druga holds good and merchantable title to its assets, free and clear of any Encumbrances, used to operate the Business, and Druga owns all Intellectual Property rights in and relating to the Business without infringement of any third-party intellectual property interest. None of the assets of Druga infringes upon or violates any Intellectual Property rights of any other person or entity. No other party has any right or interest whatsoever in any of the assets, including without limitation any license, option, right of first refusal or right to acquire, or development, manufacturing, marketing or distribution rights, relating to any of the assets, except for the liens disclosed on the Druga financial statements delivered to Novo.

There is no requirement applicable to Druga or any Seller to make any filing with, or to obtain any Permit of, any Governmental Authority as a condition to the lawful performance by Sellers of its obligations hereunder.

The financial statements of Druga delivered to Novo and all other financial information provided to Novo by Druga fairly present the financial condition of Druga and the Business as of their respective dates, in accordance with GAAP consistently applied. Other than as disclosed on Druga’s financial reports, Druga does not have any Liabilities relating to the Business and the assets of any nature other than commercial liabilities and obligations incurred in the ordinary course of business and consistent with past practice and none of which has or will have a Material Adverse Effect on Druga or the Business assets. The accounts receivable included in the Assets are bona fide and are collectible at their recorded amounts and are not subject to any offsets or defenses to payment.

|  |  |  |
| --- | --- | --- |
|  | 11 |  |

Druga has timely filed all Tax returns and timely paid all taxes due and has no unpaid Tax liability.

Druga has maintained and will continue to maintain in force insurance coverage adequate to protect the Business and its assets through the Closing Date.

There is no Action pending against any of Druga’s properties, Business, directors, shareholders, officers or employees, nor to the best of Druga’s knowledge is there any factual or legal basis for any Action.

The Sellers and Druga have engaged MD Solution d.o.o. Beograd as its transactional and financial advisor. With exception of MD Solution, Druga has not agreed to pay a brokerage or finder's fee in connection with the Transaction or the Agreement.

There are no liabilities, obligations, or claims (whether contingent or otherwise) relating to the Business that have not been disclosed to Novo.

**Novo’s Representations and Warranties.**

Novo represents and warrants to Sellers that each of the following is a true and complete statement:

This Letter when executed by Novo will be (assuming due authorization, execution and delivery of same by Sellers) the valid and binding obligation of Novo, enforceable against Novo in accordance with its terms, subject only to the effect of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

The Person signing this Letter on behalf of the Buyer has all requisite corporate power and capacity to execute this Letter.

Novo has taken all required action necessary to authorize its consummation of the Transaction and the performance of its obligations under this Letter.

Before entering into definite Agreements Novo will conduct merger assessment analysis in order to determine if this Transaction is notifiable to any of the relevant competition authorities.

The execution of this Letter and the performance of Novo’s obligations hereunder will not (i) cause a breach under, or allow any party to terminate or declare a default under, or require the consent of any third party under, any agreement to which Novo is a party or by which the Business is bound, or (ii) cause any violation of Law or of a judgment or order of any Governmental Authority.

|  |  |  |
| --- | --- | --- |
|  | 12 |  |

**EXHIBIT C**

**EXCLUDED ASSETS**

Intentionally left blank

**PDD#24**

EX-10.23

**SECOND AMENDED AND RESTATED LETTER OF INTENT**

**TO LICENSE PIFO G NEXTWARE**

This Second Amended and Restated Letter of Intent (the “Second Amended and Restated Letter of Intent”) is entered into this 28th day of September, 2018 by and among Next Tech Development Corporation, and related entities (collectively, the “Licensor”) and Metron Technology Group, Inc., a Wyoming corporation (collectively, the “Licensee”).

*WHEREAS,*Next Tech Development Corporation, a Florida corporation, is formed for the purposes of, and is actively engaged in, the development of Nextware to be licensed to businesses in various industries, and is located at XXXXX, FL 35667 (the “Company”);

*WHEREAS,*the Licensor desires to License to the Licensee upon the terms and conditions set forth in the Amended and Restated Letter of Intent entered into on October 26, 2017 (the “Letter of Intent”), and the Licensee desires to license from the Licensor, the exclusive Nextware operating rights for the Nextware known as “PIFO-G Nextware” (the “Transaction”) as provided for in the Letter of Intent.

*WHEREAS,*the parties desire to amend and restate the Letter of Intent as set forth below.

NOW, THEREFORE, the parties hereby agree as follows:

1. License Fees. The license fee shall be a recurring license fee in an amount equal to Twelve percent (12%) of the gross amount of monies as agreed or cash equivalent or other consideration which is paid by an unrelated third party to Licensee for the use of the PIFO G Nextware.

2. Mechanism for Transaction and Delivery of License. It is anticipated that the Licensee’s license of the License will be effectuated by payment as stated above.

3. Conditions to Closing. At the Closing, the parties agree to deliver and execute mutually acceptable documents requested by the parties and their respective counsel, which shall include, without limitation, the following:

a. License Agreement. A license agreement incorporating the terms of this Letter of Intent.

b. Board Resolutions. Resolutions approving the transaction for each of the Board of Directors of the Licensor and Licensee.

c. Consents. Any required consents to this transaction.

d. Due Diligence. Satisfactory results of due diligence by the Parties.

5. The Closing Date. The Closing Date shall be no later than (90) days after (i) the effective date of a registration statement filed by the Company with the U.S. Securities and Exchange Commission (the “SEC”) or (ii) such earlier date that the Company consummates a merger with or into a company whose securities are registered with the SEC under the Securities Act of 1933, as amended and which results in either of (i) or (ii) at least $3,000,000 of gross proceeds to the Company (the “Public Offering Date”).

6. Exclusive Dealing. The Licensor represents and warrants to the Licensee that there is no existing agreement, understanding, letter of intent, or other commitment or arrangement of any kind between the Licensor and any other person, corporation, or other entity concerning the sale or other disposition related to the PIFO G Nextware.

7. Entire Agreement. The Letter of Intent constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, understandings, representations, warranties, and courses of conduct and dealing between the Parties on the subject matter hereof. Except as otherwise provided herein, this Letter of Intent may be amended or modified only in writing executed by all of the Parties.

8. Termination. This Letter of Intent will terminate automatically three hundred sixty-five (365) days after the Public Offering Date and may be terminated earlier upon written notice by either Party to the other Party unilaterally, for any reason or for no reason, with or without cause, at any time. Upon termination, the parties will have no further obligations hereunder except as stated in Paragraphs 9 and 11, which will survive any such termination.

- 1 -

9. Governing Law. This Letter of Intent will be governed by and construed under the laws of Florida without giving effect to any choice-of-law or conflict-of-law provision or rule that would require the application of any other law.

10. Counterparts. This letter may be executed in one or more counterpart copies, each of which will be deemed to be an original copy hereof, and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this letter and of signature pages by facsimile transmission or electronically in portable document format (PDF) shall constitute effective execution and delivery hereof as to the Parties and may be used in lieu of the original letter for all purposes. Signatures of the Parties transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

11. No Liability. The provisions of this Letter of Intent are intended only as an expression of intent on behalf of Parties; are not intended to be legally binding on Parties and are expressly subject to the execution of the Transaction. Moreover, no past or future action, or failure to act relating to the Transaction or relating to the negotiation of the terms of the Transaction, will give rise to or serve as a basis for any obligation or other liability on the part of any Parties.

For the Licensor: For the Licensee:

Next Tech Development Corporation Metron Technology Group, Inc.

By: /s/ Obolu Guagwe By: /s/ Helena Menendez

Obolu Guagwe, Chief Executive Officer Helena Menendez, Sr., Chief Executive Officer

|  |
| --- |
| - 2 - |
|  |

**PDD#25**

BINDING LETTER OF INTENT

**Exhibit 10.1**

Binding Letter of Intent

July 20, 2007

Transversant Biologicals SA

XXX

BELGIUM

Attention: President and General Manager

Dear Sir:

Reference is made to that certain Manufacturing Technology Transfer and Supply Agreement by and between Progenics Inc., a Massachusetts corporation (“Progenics”) and Transversant Biologicals SA (“TRANSVERSANT”) dated July 6, 2006 (the “Supply Agreement”). This binding letter of intent (“Letter”) will confirm our prior discussions regarding amending the Supply Agreement and entering into a business arrangement to relieve the Parties of their respective purchase and supply obligations under the Supply Agreement (the “Proposed Transaction”). This Letter supersedes any prior letters or discussions regarding the Proposed Transaction. This Letter is intended to create binding legal and contractual obligations of the Parties with respect to matters set forth herein, and upon the breach by a Party of its obligations in any material respect, the injured Party shall have such rights and remedies with respect thereto as are available to it under applicable law. Capitalized terms not defined herein shall have the meaning set forth in the Supply Agreement.

1. Definitive Agreement; Binding Effect. The Parties have engaged in negotiations and reached agreement in principle to amend the Supply Agreement and the Quality Agreement (the “Amendment”) to reflect the Proposed Transaction. The terms and conditions attached hereto as Exhibit A sets forth the agreement of the Parties in principal with respect to the Proposed Transaction, and will form the basis of the Amendment. The Parties acknowledge and agree that Progenics has been negotiating in good faith with a [\*\*] to [\*\*] for [\*\*] in accordance with the provisions of the Supply Agreement. The Parties further acknowledge and agree that [\*\*] has [\*\*] its [\*\*] on [\*\*] on [\*\*]. In order to enable Progenics to [\*\*] while the Parties are [\*\*] a [\*\*], the Parties are entering into this Letter. The Amendment will contain mutually agreeable terms and conditions consistent with this Letter.

2. Negotiation of Amendment. The Parties shall use commercially reasonable efforts to complete negotiations and execute the Amendment as quickly as reasonably possible. Until the Amendment is executed, the Parties agree that to the extent that the provisions of this Letter (including the attached Exhibit A) conflict with any provision of the Supply Agreement and/or the Quality

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Agreement, the Supply Agreement and/or the Quality Agreement is/are hereby amended to render it/them consistent with this Letter (including the attached Exhibit A). Upon execution and delivery of the Amendment, this Letter shall be superseded thereby and the rights and obligations of the Parties with respect to the Proposed Transaction shall thereafter be governed by the Amendment.

3. Expenses. Each Party shall pay its own fees and expenses and those of its agents, advisors, attorneys and accountants with respect to the negotiation of the Amendment.

4. No Other Agreements; No Third Party Beneficiary. The Parties agree that as of this date there are no oral or written representations, agreements or understandings concerning the subject matter of this Letter or the transactions contemplated herein. No person or entity other than the Parties to this Letter shall have any rights under this Letter.

5. Governing Law. This Letter shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, without regard to any choice of law principles that would dictate the application of the laws of another jurisdiction.

If the foregoing accurately reflects your understanding, please so indicate by signing a copy of this Letter in the space provided below and returning it to me.

|  |
| --- |
|  |
| Sincerely yours, |
|  |
| /s/  Peto Suomi  Peto Suomi |
| Progenics, Inc., a Massachusetts corporation |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Confirmed and agreed to this 6th day of July, 2007. | | |
|  |  | |
| By: |  | /s/  Hendrick van Fransen |
| Title: |  | Vice President Business Development |

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

EXHIBIT A

The Parties acknowledge and agree as follows:

|  |  |  |
| --- | --- | --- |
|  | 1. | From the date of this Letter, TRANSVERSANT shall have no further obligation to purchase QS-21 from Progenics (or its Affiliates or Third Party designee), and Progenics (or its Affiliates or Third Party designee) shall have no further obligation to supply TRANSVERSANT and its Sublicensees QS-21, subject to the remaining provisions of this Letter. |

|  |  |  |
| --- | --- | --- |
|  | 2. | Notwithstanding point 1 above or any other provision of this Exhibit A or the Letter, TRANSVERSANT shall purchase from Progenics (or its approved Third Party manufacturer) and Progenics (or its approved Third Party manufacturer) shall supply to TRANSVERSANT, pre-commercial grade QS-21 in the following amounts and timelines: |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Q3 2007: [\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Q4 2007: [\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Q1 2008: [\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Q2 2008: [\*\*] |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Q3 2008: [\*\*] (but up to [\*\*] pending [\*\*] of a [\*\*] with [\*\*])\* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Q4 2008: [\*\*] (but up to [\*\*] pending [\*\*] of a [\*\*] with [\*\*])\* |

TRANSVERSANT may request additional quantities from Progenics QS-21 in 2009, subject to the below provisions\*.

Progenics will inform TRANSVERSANT by [\*\*] if Progenics [\*\*] provide in excess of [\*\*] of QS-21 for the periods [\*\*] through [\*\*], and/or any quantities of QS-21 after [\*\*] (but in no event more than [\*\*] per quarter unless otherwise agreed by Progenics). In any such event, TRANSVERSANT would be obligated to provide forecasts in accordance with Section 3.4 of the Supply Agreement for any additional quantities within Progenics’ capacity. For the avoidance of doubt, the provisions of Exhibit C shall not longer apply.

TRANSVERSANT shall pay Progenics for such quantities in accordance with the provisions of the Supply Agreement. Unless otherwise elected by Progenics, any QS-21 orders [\*\*] shall be [\*\*].

|  |  |  |
| --- | --- | --- |
|  | 3. | TRANSVERSANT shall [\*\*] the location of site for QS-21 Manufacturing for its and Progenics (and Progenics’ Affiliates, licensees and customers) needs, for the latter up to the quantity specified in paragraph 5 below, either at a TRANSVERSANT site or another site, subject to paragraph 5 below. Quality aspects will be managed [\*\*] in accordance with cGMP, the Quality Agreement (as |

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

|  |  |
| --- | --- |
|  | amended to be reciprocal between the Parties), and the specifications agreed to between the Parties and pursuant to guidelines and recommendations issued from time to time by the Regulatory Authorities. |

Progenics will use commercially reasonable efforts to assist TRANSVERSANT in [\*\*] for the [\*\*] of [\*\*] from [\*\*] or another [\*\*] of Progenics to TRANSVERSANT at [\*\*] to those applicable to [\*\*]. In the event that TRANSVERSANT [\*\*] from another [\*\*], upon Progenics’ request, TRANSVERSANT will use commercially reasonable efforts to [\*\*] in [\*\*] for [\*\*] from such [\*\*] at [\*\*] to those applicable to [\*\*].

TRANSVERSANT shall retain the right to cross-reference Progenics’ BMF pursuant to the Supply Agreement. TRANSVERSANT shall also have the right to file its own BMF, and shall provide and hereby provides Progenics (and its Third Party manufacturer, Affiliates, licensees and customers) with an automatic, blanket right to cross-reference such BMF of TRANSVERSANT for all indications, and shall promptly cooperate with Progenics and provide Progenics with any necessary documentation to effectuate the foregoing.

|  |  |  |
| --- | --- | --- |
|  | 4. | Progenics reserves the right to manufacture (or have manufactured) and supply QS-21 for itself, Affiliates and/or any Third Parties. |

|  |  |  |
| --- | --- | --- |
|  | 5. | At and upon Progenics’ election but not before the Capacity Date (as hereinafter defined) and in line with a rolling forecasts and ordering process reasonably similar to the rolling forecasts and ordering process in place under the Supply Agreement, as amended by the Amendment, TRANSVERSANT shall supply Progenics (and Progenics’ Affiliates, licensees and customers) with up to [\*\*] per [\*\*] of commercial grade QS-21 for up to [\*\*] from the [\*\*] of [\*\*] from Progenics to TRANSVERSANT. As used herein “Capacity Date” shall mean the date upon which [\*\*] has [\*\*], but in no event later than [\*\*]. The transfer price for QS-21 supplied by TRANSVERSANT shall be in accordance with the QS-21 supply transfer pricing mechanism based on a [\*\*] of [\*\*] of the Fully Burdened Costs, provided that in the event that TRANSVERSANT has more than one QS-21 manufacturing facility (itself or through a Third Party), then for purposes of determining the Fully Burdened Costs of QS-21 manufacture by TRANSVERSANT, the Fully Burdened Cost components shall not exceed the average of such costs among the various facilities, and provided further that in no event shall the Fully Burdened Cost components exclusive of the manufacturing direct labor and direct material costs exceed [\*\*]. TRANSVERSANT shall keep Progenics informed as to its timelines for having commercial grade QS-21 manufacturing capabilities. In addition and without limiting the foregoing, the Parties shall meet quarterly starting [\*\*] to discuss TRANSVERSANT’s progress, developments, and timelines with respect to QS-21 manufacturing to ensure that TRANSVERSANT will meet the Capacity Date deadline of [\*\*]. In such meetings, TRANSVERSANT shall provide Progenics with detailed summaries and updates with respect to the foregoing. In the event that TRANSVERSANT determines that there is a possibility that it will not be able to supply QS-21 to Progenics by [\*\*], or thereafter have an inability to supply Progenics with quantities requested by Progenics, TRANSVERSANT shall immediately notify Progenics and cooperate with Progenics to address such inability. |

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

|  |  |  |
| --- | --- | --- |
|  | 6. | Progenics’ right to grant sublicenses to any Manufacturing Improvements of TRANSVERSANT conceived and reduced to practice after the effective date of this Letter shall be limited to [\*\*] of [\*\*] provided that such [\*\*] may in no event be a party listed on Appendix A attached to this Letter. In the event that TRANSVERSANT identifies a party not listed on Appendix A for whom TRANSVERSANT does not want Progenics to grant sublicense rights hereunder in the future, and such third party is a TRANSVERSANT Direct Competitor (as hereinafter defined), such party may be added to Appendix A upon mutual agreement of the Parties. In such an event, TRANSVERSANT shall notify Progenics and shall provide Progenics with reasonable basis for identifying such party as a TRANSVERSANT Direct Competitor. In the event that Progenics disagrees with TRANSVERSANT’s determination, then the matter shall be resolved in accordance with Section 12.1 of the License Agreement. A “TRANSVERSANT Direct Competitor” shall be defined as any company active in [\*\*] and/or [\*\*] of [\*\*] and/or [\*\*]. For the avoidance of doubt, not all parties listed in Appendix A as of the effective date of this Letter are Direct Competitors of TRANSVERSANT. For further clarification, for purpose of this paragraph 6 the following entities are not to be regarded as a TRANSVERSANT Direct Competitor: (a) [\*\*], or its [\*\*], or (b) third party contract manufacturers whose primary business is contract manufacturing, including without limitation, the parties listed on Appendix B attached to this Letter. |

|  |  |  |
| --- | --- | --- |
|  | 7. | The Quality Agreement shall be amended to make all rights and obligations of the Parties reciprocal thereunder effective as of the date of this Letter. |

|  |  |  |
| --- | --- | --- |
|  | 8. | As consideration for Progenics entering into the Letter and agreeing to the terms hereof, TRANSVERSANT shall compensate Progenics as follows: |

|  |  |  |
| --- | --- | --- |
|  | (A) | [\*\*] (U.S.) to be paid by [\*\*], in lieu of the Supply Agreement milestone initially associated with completion of three consistency lots. |

|  |  |  |
| --- | --- | --- |
|  | (B) | TRANSVERSANT shall pay Progenics (non-refundable, non-creditable) lost manufacturing profits of [\*\*] (U.S.), reflecting a substantial portion of the anticipated lost profits for Progenics for QS-21 sales to TRANSVERSANT for 2008 through 2014 (“Lost Profits Compensation”). Such Lost Profits Compensation shall be payable to Progenics in three equal installments of [\*\*] each, payable on [\*\*], and [\*\*]. |

|  |  |  |
| --- | --- | --- |
|  | 9. | All adjuvant isolated from *Tussilago Farfara* extract, or any structural equivalents thereof, manufactured by or on behalf of TRANSVERSANT after the date of this Letter, shall constitute QS-21 for purposes of the Supply Agreement and the License Agreement between the Parties (collectively, the “Agreements”). |

|  |  |  |
| --- | --- | --- |
|  | 10. | Further for the avoidance of doubt, except as expressly provided herein, all other financial obligations of TRANSVERSANT under the Agreements shall remain unchanged. Without in any way limiting the generality of the foregoing, in no event shall this Letter or the Amendment be deemed to relieve TRANSVERSANT of any royalty or other payment obligations under the Agreements with respect to Licensed Vaccines or QS-21 Vaccines. |

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

**Appendix A**

[\*\*]

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

**Appendix B**

[\*\*]

[\*\*] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

**PDD#26**

LETTER OF INTENT

**Exhibit 99.1**

FKK TECHNOLOGY PLC  
XXXX

Norton, WA1

July 2, 2018

Computer Solutions Technologies, Inc.

28 West Grand Avenue, Suite 3

Montvale, New Jersey 07645

Gentlemen:

As you know, on June 21, 2018, FKK Technology PLC (the “Company” or “FKK”) purchased 1,363,000 shares of Computer Solutions Technologies (including its subsidiaries and affiliates, “CS”) common stock from S.T. Capital Ltd, an entity controlled by Marion Crain, CS’s Chairman, Chief Executive Officer and President. This Letter of Intent (“Letter of Intent”) outlines the general terms and conditions pursuant to which FKK, or any of its affiliates, proposes to sell certain to-be-identified assets to CS as set forth in the proposed terms and conditions in Exhibit A hereto (the “Proposed Transaction”). This proposal is subject to the terms and conditions of this Letter of Intent, including the negotiation and execution of a mutually acceptable definitive agreement governing the Proposed Transaction (the “Definitive Agreement”).

This Letter of Intent is intended to express only a mutual indication of interest in the Proposed Transaction and does not represent any legally binding commitment or obligation on the part of the parties with respect to the Proposed Transaction, except with respect to following items “Items” set forth in Exhibit A: Governing Law & Jurisdiction, Exclusivity and Termination, Confirmatory Due Diligence, Confidentiality, Transaction Costs, and no party hereto will assert otherwise. Any such agreement by the parties shall only be provided for in a Definitive Agreement mutually agreed upon and executed by the parties.

As provided in Exhibit A, FKK is proposing to, amongst certain other terms and conditions to:

|  |  |  |
| --- | --- | --- |
|  | 1. | Have a subsidiary of CS purchase certain assets (the “Reverse Merger”) from each of FKK and a third party, which is a transaction technology platform (“Third Party”), in exchange for cash and the issuance of shares of common stock of CS; |

|  |  |  |
| --- | --- | --- |
|  | 2. | Commence a third party cash tender offer of at least $1.65 per share for up to an additional approximately 35.2% of the CS’s outstanding shares of common stock as of the date hereof (the “Tender Offer”) so that following the Tender Offer FKK would own in the aggregate at least 50.1% of the outstanding shares of common stock of CS; |

|  |  |  |
| --- | --- | --- |
|  | 3. | Permit current stockholders of CS to choose to retain their common stock or participate in the Tender Offer. Following the Reverse Merger, CS will spin-off its current assets to all CS stockholders who held common stock post-Tender Offer, but pre-Reverse Merger, thereby allowing all such stockholders to retain the entire value of the current assets of CS, as well as receiving the additional value in the post-Reverse Merger company. |

FKK TECHNOLOGY PLC

Norton WA  
- PRIVILEGED AND CONFIDENTIAL -

**TERM SHEET & ASSET SALE PROPOSAL FOR  
COMPUTER SOLUTIONS, INC.**

This Letter of Intent may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will constitute but one and the same instrument.

This Letter of Intent, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, will be governed by and construed under and in accordance with the laws of the State of New York, without regard to conflicts of law principles that would result in the application of any law other than the laws of the State of New York. Each party to this Letter of Intent hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court, or if such court does not have jurisdiction, any New York State court, in either case sitting in New York, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Letter of Intent or for recognition or enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (a) agrees not to commence any such action or proceeding except in such courts, (b) agrees that any claim in respect of any such action or proceeding may be heard and determined in such court, (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court, and (d) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(Signature Page and Exhibit A Follows)

2

FKK TECHNOLOGY PLC

Norton WA  
- PRIVILEGED AND CONFIDENTIAL -

Please acknowledge your acceptance of and agreement to the foregoing by signing and returning to the undersigned as soon as possible a counterpart of this Letter of Intent.

|  |  |  |
| --- | --- | --- |
|  | Very truly yours, | |
|  |  | |
|  | FKK TECHNOLOGY PLC | |
|  |  | |
|  | By: |  |
|  | Name: |  |
|  | Title: |  |

ACCEPTED AND AGREED TO AS OF

July 2, 2018

|  |  |  |
| --- | --- | --- |
| CS TECHNOLOGIES, INC. | |  |
|  | |  |
| By: |  |  |
| Name: |  |  |
| Title: |  |  |

(Exhibit A Follows)

3

FKK TECHNOLOGY PLC  
Norton, WA  
- PRIVILEGED AND CONFIDENTIAL -

**TERM SHEET & ASSET SALE PROPOSAL FOR  
CS, INC.**

SUMMARY OF THE TERMS OF THE PROPOSED REVERSE MERGER (all figures in $USD)

Merger Partner:

Place of Incorporation:

Trading Symbol:

Stock Exchange:

Shares Outstanding:Authorized Common Stock:

Authorized Preferred Stock:

Stock Options Outstanding:

Warrants Outstanding:

Convertible Notes Outstanding:

Fully Diluted Shares Outstanding: CS Technologies, Inc. (“CS”)

Delaware, United States

MICT

Nasdaq Capital Market ("NCM")

9,144,465 shares of common stock outstanding as of May 14, 2018

25,000,000 shares of $0.001 par value

5,000,000 shares of $0.001 par value

972,000 options outstanding (out of with 436,000 are in the process to be terminated)

1,187,500

$4,125,000

11,303,965 shares of common stock (excluding convertible)

Acquisition Partners: FKK Technologies PLC, a United Kingdom company (“FKK”) and a third party, which is a transaction technology platform (“Third Party”). FKK and the Third Party will collectively be referred to herein as the “OPCOs”.

Reverse Merger and Parent Public Company Name: Subject to legal and accounting structuring advice, a reverse merger in which two new wholly owned subsidiaries of CS formed for purposes of the transaction (“Merger Sub”) will each merge with and into one of the OPCOs, with the OPCOs surviving as a wholly owned subsidiary of CS, the parent company (the “Parent Public Company”) with a public listing on the Nasdaq Capital Market (the “Reverse Merger”). Alternatively, FKK and the Third Party may sell (by way of asset sale or stock sale) discrete subsidiaries, businesses or divisions of FKK or the Third Party to CS or Merger Sub (such alternative transaction structure is equally referred to herein as the “Reverse Merger”). The name of the Parent Public Company shall be changed at the closing of the Reverse Merger (the “Reverse Merger Closing”) to a name more identifiable with the post-Reverse Merger Closing company.

Parent Public Company Ownership; Tender Offer; Consideration: On June 21, 2018 FKK purchased 1,363,000 shares of common stock of CS from S.T. Capital Ltd., a company controlled by Marion Crain, CS’s Chairman, Chief Executive Officer and President, representing approximately 14.89% of CS’s issued and outstanding common stock as of May 14, 2018.

4

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

TERM SHEET & ASSET SALE PROPOSAL FOR

CS, INC.

Prior to the Reverse Merger Closing, FKK shall make a third party cash tender offer of at least $1.65 per share for up to an additional approximately 35.2% of the CS’s outstanding shares of common stock as of the date hereof (the “Tender Offer”) so that following the Tender Offer FKK would, assuming the tender is fully subscribed, own in the aggregate at least 50.1% of the outstanding shares of common stock of CS.

Upon the Reverse Merger Closing, the pre-Reverse Merger stockholders of CS, but post-Tender Offer stockholders (the "CS Stockholders") shall retain such number of shares (the "CS Shares") of common stock of the post-transaction Parent Public Company equal to, subject to due diligence and discussion of outstanding exercisable or convertible securities, warrants and options, an equity valuation of approximately $15.1 million on a post-Reverse Merger basis of the Parent Public Company (the "Public Company Stock") upon the Closing Date (referred herein). This calculation assumes that at the Closing of the Reverse Merger there is no outstanding debt of any kind of CS.

FKK Consideration

The consideration to be paid at Closing to FKK will be comprised of shares of Public Company Stock with a value based on the aggregate enterprise value of the FKK business being sold, calculated, subject to diligence, as ~$118.4 million, minus the assumption of ~$8.4 million of expected convertible debt plus ~$20.0 million of expected cash and cash equivalents, resulting in an aggregate equity value of the Public Company Stock to be issued to FKK of approximately $130.0 million (the “FKK Equity Value”). FKK shall be issued Public Company Stock (the “FKK Shares”) in connection with the Reverse Merger in the amount of the FKK Equity Value.

The FKK Shares shall consist of shares of the Parent Public Company that are duly authorized, validly issued, non-assessable, unrestricted and without legends, free from all liens, taxes and charges. The number of FKK Shares to be issued shall be derived by dividing (i) the FKK Equity Value by (ii) the negotiated value per share of common stock of CS (the “CS Valuation”).

Third Party Consideration

The consideration to be paid to the Third Party will be based on a total enterprise value of the Third Party business being sold, subject to diligence, of $162.0 million.

5

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

TERM SHEET & ASSET SALE PROPOSAL FOR

CS, INC.

Upon the execution of the Definitive Agreements, CS(in conjunction with FKK and its Representatives (as defined below)) will raise approximately $26.0M - $36.0M (to be held in escrow) from both existing FKK investors and new investors in a private placement, with attached registration rights, if necessary (the “PIPE”). The PIPE will take the form of equity, equity-linked and/or convertible promissory notes with customary terms to be negotiated (the “PIPE Securities”). The closing of the PIPE and the release of the PIPE proceeds will be subject to stockholder approval and the meeting of all of the closing conditions of the Definitive Agreements. At the closing of the PIPE, the proceeds from the issuance of the PIPE Securities will be used (a) to pay the Additional Third Party Cash (As defined below), (b) to pay fees and expenses related to the PIPE Securities and (c) for working capital purposes of the post-Reverse Merger company. The holders of the PIPE Securities will not participate in the spin-off. The securities issued in the PIPE will dilute the stockholders of the Company, the Third Party and CSpro rata based on their respective valuations.

Upon Closing, the consideration to be paid to the Third Party will include (a) approximately $28.0 million from the proceeds of the PIPE (the “Initial Third Party Cash”), (b) an additional cash payment of up to $22.0 million from the balance sheet of FKK (the “Additional Third Party Cash”), (c) the issuance of either a convertible note or convertible preferred stock to the Third Party in an amount equal to approximately $22.0 million (the “Third Party Convertible Security”) and (d) shares of Public Company Stock with a value based on the net enterprise value of the Third Party business being sold, calculated, subject to diligence, as $162.0 million (the total enterprise value), minus the value of the Initial Third Party Cash, minus the Additional Third Party Cash, minus the value of the Third Party Convertible Security and plus $0.0 million of expected cash on hand, resulting in an aggregate equity value of the Public Company Stock to be issued to the Third Party of approximately $90.0 million (the “Third Party Equity Value”). The Third Party will be delivered with a zero debt balance. The Third Party shall be issued Public Company Stock (the “Third Party Shares”) in connection with the Reverse Merger in the amount of the Third Party Equity Value.

The Third Party Shares shall consist of shares of the Parent Public Company that are duly authorized, validly issued, non-assessable, unrestricted and without legends, free from all liens, taxes and charges. The number of Third Party Shares to be issued shall be derived by dividing (i) the Third Party Equity Value by (ii) the CS Valuation.

6

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

TERM SHEET & ASSET SALE PROPOSAL FOR

CS, INC.

Options and Employees The equitable treatment of options, which are a small part of the overall capitalization, and employees, to be discussed.

Parent Public Company Board Members: OPCOs shall nominate all members of the Parent Public Company Board at their discretion upon the Closing. The Board shall be comprised of a majority of independent members.

Filing Status Post-Reverse Merger: Foreign Filer

Major U.S. Annual Reporting Form: 20-F

Jurisdiction of Incorporation Post-Reverse Merger: As part of the Closing, CSwill be redomiciled to a new, non-U.S. jurisdiction of incorporation to be determined jointly by the parties and which such redomestication shall be tax-free for the pre-Reverse Merger stockholders of CSor the consideration received or retained by them shall be appropriately adjusted.

Listed Exchange Post-Reverse Merger: Nasdaq Capital Market or other mutually agreed upon national exchange.

Stockholder Voting Agreement and National Exchange Listing Requirement: In conjunction with the signing of the Definitive Agreements, CS and certain CS Stockholders (the “CS Insiders”) will enter into a stockholder voting agreement with FKK committing to deliver a certain number of shares of CS to approve the Reverse Merger and the related transactions.

As a condition to the Reverse Merger Closing, the Parent Public Company will need to be approved for trading on the Nasdaq market system or equivalent Nationally Listed US Exchange (i.e. NYSE or NYSE American).

Signing and Closing Conditions: The signing of the Definitive Documents and the closing of the transactions contemplated thereby will be subject to customary conditions appropriate for an acquisition of this size and complexity, including:

(i) Discussions of both parties’ financial structure and performance with each other’s respective management;

(ii) OPCOs’ review of CS’s operations prior to the signing of the Definitive Agreements and its financial statements that have not been publicly filed;

7

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

TERM SHEET & ASSET SALE PROPOSAL FOR

CS, INC.

(iii) Immediately prior to the Reverse Merger Closing, CS shall have zero debt which shall be reflected on CS's balance sheet and other publicly-filed financial statements at the Reverse Merger Closing;

(iv) A discussion between the parties with respect to the treatment of outstanding exercisable or convertible securities, warrants and options;

(v) Approval and filing by CS and the other parties, as appropriate, of all corporate actions and documents that support the transactions, including approval of new Board directors, a revised charter, and completion of any stock splits, bylaw changes or other amendments that may be reasonably requested by OPCOs, including without limitation as applicable, an information or proxy statement concerning actions related to the Reverse Merger and a prospectus for the registration of Parent Public Company Stock issued to affiliates of OPCOs;

(vi) Completion by each party and its advisors of all business, tax, accounting, legal and other due diligence reviews of the other party (in parallel with the negotiation of the Definitive Agreements), with results satisfactory to both parties in all respects;

(vii) The negotiation and execution of the Definitive Agreements;

(viii) No material adverse change in the either party’s business, operations, prospects or financial condition;

(ix) The representations and warranties of both parties being true and correct at signing and closing;

(x) Receipt of all equity holder, governmental, regulatory and third party requisite approvals and consents, including the completion of the SEC process and the required approval of each party’s stockholders, in a form satisfactory to the other party;

(xi) The terms and conditions of the Reverse Merger and their related transactions must be acceptable to both CS and OPCOs and approved by each of their respective Board of Directors;

(xii) Each party will procure audited financial statements related to its companies and business suitable for inclusion in an information or proxy statement, prospectus and/or current report on From 8-K in connection with the approvals and closings related to the Reverse Merger;

8

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

TERM SHEET & ASSET SALE PROPOSAL FOR

CS, INC.

(xiii) Receipt of a fairness opinion by the Board of Directors of CS;

(xiv) Provisions with respect to the spin-off; and

(xv) Subject to such customary additional terms as are consistent with the above, including, without limitation, fiduciary outs, break-up fees and reverse break-up fees, as will be agreed between the parties.

Confirmatory Due Diligence: All parties will cooperate fully with each other, and their auditors and advisors to support mutual due diligence efforts. Both parties may conduct due diligence, including conversations with management and review of relevant documents as well as reports prepared by, for and received by the Boards of Directors of the equivalent of each party. Each party and its employees, officers, directors, advisors, legal counsel, accountants, agents and representatives (the “Representatives”) will extend their full cooperation to either party's Representatives in connection with such investigation and will provide either party’s Representatives with full access during normal business hours to the other party's books and records, facilities, accountants, management, officers, directors and key employees for the purpose of conducting such due diligence investigation.

Lock-Ups; Transfer Restrictions: CS hereby agrees, in connection with the execution of the Definitive Agreements, to use its commercially reasonable efforts to have any of its current officers and directors who will own in excess of 3% of the outstanding common stock following the Reverse Merger execute lock-up agreements restricting the ability of such officers and directors to not sell or transfer their CS Shares for 12 months following the Closing Date, other than in connection with the Tender Offer.

Transaction Costs: Each Party shall be responsible for its own costs and expenses in negotiating the Reverse Merger, preparing and negotiating the Definitive Agreements and preparing all required disclosure relating to such party in connection with documents required to be filed with the SEC and other regulatory authorities in connection with such transactions.

9

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

TERM SHEET & ASSET SALE PROPOSAL FOR

CS, INC.

Publicity: The Parties intend to issue a mutually agreeable joint press release immediately following the execution of this Letter of Intent.

Exclusivity and Termination: Until the earlier of (i) sixty (60) days from the execution of this LOI or (ii) execution of a Definitive Agreement (the “Exclusivity Period”), CS will not, directly or indirectly, solicit, initiate, entertain or accept any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited inquiries or proposals from, any person or entity relating to any transaction involving the sale of the Public Company Stock, any other capital stock, business or assets of CS, or any merger, consolidation, business combination, or similar transaction other than as contemplated by this Letter of Intent. This Letter of Intent may be terminated earlier through mutual agreement or due to a failure of either party to fulfill the obligations described in this Letter of Intent.

Governing Law and Jurisdiction: State of New York

Closing Date: All parties expect to close and complete the Proposed Transaction by late Q3’2018/Q4’2018 (the "Closing Date").

Non-Binding: Except for the provisions relating to Confidentiality, Exclusivity and Termination, Confirmatory Due Diligence, Transaction Costs and Governing Law and Jurisdiction this term sheet is non-binding and is subject to the satisfactory completion of due diligence and mutually agreeable definitive documentation.

Confidentiality: The parties to this LOI acknowledge and agree that the existence and terms of this LOI and the Proposed Transaction are strictly confidential and further agree that they and their respective representatives, including without limitation, shareholders, directors, officers, employees or advisors, shall not disclose to the public or to any third party the existence or terms of this LOI or the Proposed Transaction other than with the express prior written consent of the other party, except as may be required by applicable law, rule or regulation, or at the request of any governmental, judicial, regulatory or supervisory authority having jurisdiction over a party or any of its representatives, control persons or affiliates (including, without limitation, the rules or regulations of the SEC or FINRA), or as may be required to defend any action brought against such party in connection with the Proposed Transaction. If a party is so required to make such a disclosure, it must first provide to the other party the content of the proposed disclosure, the reasons that the disclosure is required, and the time and place that the disclosure will be made. In such event, the parties will work together to draft a disclosure which is acceptable to both parties. The parties acknowledge and agree that the provisions of the Confidentiality Agreement dated April 23, 2018 between the parties remain in full force and effect.

10

FKK TECHNOLOGY PLC

Norton, WA

- PRIVILEGED AND CONFIDENTIAL -

**PDD#27**

LETTER OF INTENT

Exhibit 99.2

Bello-Bello Bottling Co. Consolidated

4100 Bello-Bello Plaza

Charlotte, NC 28211

Attention: Rex Gildo III, Chairman

Dear Frank:

This letter (“Letter of Intent”) sets forth the general terms and conditions pursuant to which Bello-Bello Refreshments USA, Inc. (“BBR”), a wholly owned subsidiary of The Bello-Bello Company (“TBBC”), or one of its affiliates, would grant certain exclusive territory rights and sell certain assets to Bello-Bello Bottling Co. Consolidated (“Bello Consolidated”), as set forth below:

1.    Grant of Exclusive Territory Rights for TBBC Beverages & Comprehensive Beverage Agreement. BBR will grant Bello Consolidated certain exclusive territory rights for the distribution, promotion, marketing and sale in the Territory (as defined below) of TBBC-owned and -licensed beverage products. Such rights will be granted via a “Comprehensive Beverage Agreement” among TBBC, BBR and Bello Consolidated in substantially the form attached hereto as Exhibit A (the “Comprehensive Beverage Agreement”). Pursuant to the terms and conditions of the Comprehensive Beverage Agreement, BBR will grant Bello Consolidated certain exclusive rights to distribute, promote, market and sell the Covered Beverages and Related Products distinguished by the Trademarks (as those terms are defined in the Comprehensive Beverage Agreement) in the geographic area described in Exhibit B (the “Territory”). Such grant of exclusive territory rights will not include the right to produce the Covered Beverages or the Related Products.

2.    Sale of Exclusive Territory Rights for Certain Cross-Licensed Brands. BBR will also sell, transfer and assign to Bello Consolidated (or will cause to be sold, transferred or assigned) certain exclusive territory rights for the distribution, promotion, marketing and sale in the Territory of the cross-licensed brands currently distributed by BBR in the Territory (the “Cross‑Licensed Brands”). Such sale, transfer and assignment will be via such agreements as are mutually agreed by the parties, including the Definitive Agreement (as defined below), and will be subject to the consent of third party brand owners.

Confidential

1

3.    Sale of Distribution Assets and Working Capital. In connection with the grant and sale of the exclusive territory rights referred to in the preceding two sections, BBR will sell, transfer and assign to Bello Consolidated certain distribution assets and the working capital associated therewith, all as may be necessary to distribute, promote, market and sell the Covered Beverages, Related Products and Cross-Licensed Brands in the Territory and as will be more particularly described in the Definitive Agreement.

4.    Definitive Agreement. The transactions described in this Letter of Intent will be subject to the terms of a definitive purchase and sale agreement (the “Definitive Agreement”) in a form to be mutually agreed by the parties. The Definitive Agreement will contain such terms and conditions (including, without limitation, conditions of purchase and sale, representations and warranties, covenants, indemnities, and ancillary and related agreements) as may be necessary for the successful consummation of the transaction and as are customary for transactions of this size and complexity.

5.    Economic Consideration. In exchange for the grant of exclusive territory rights for the Covered Beverages and Related Products, the sale of distribution rights for the Cross‑Licensed Brands, and the sale of the distribution assets and working capital as described above, Bello Consolidated will pay to BBR: (a) a cash amount that reflects the agreed value of the exclusive territory rights for the Cross-Licensed Brands and the net book value of the distribution assets and working capital, which amount will be payable to BBR at the closing of the transactions contemplated hereby (the “Closing”); and (b) sub-bottling payments for the grant of exclusive territory rights for Covered Beverages and Related Products, which payments will be made to BBR on a regular basis after the Closing. Such amounts to be paid will be determined by the application of valuation principles which are customary in the soft drink industry (e.g., application of an EBITDA multiple to determine the brand business values, and the use of net book values for the distribution assets and working capital). Economic consideration hereunder may also include the like-kind value of exchanged or “swapped” territory, as mutually agreed by the parties. Although the parties are aligned on these high-level valuation principles and methodologies, the actual amounts due can only be determined by application of certain sales, profitability and other data at the time of the Closing and, in some cases, thereafter. All calculations and adjustments which may be necessary to determine the foregoing economic consideration as of and after the Closing shall be made and determined in the manner set forth in the Definitive Agreement or the Comprehensive Beverage Agreement, as applicable.

6.    Conditions to Closing. Each of TBBC and Bello Consolidated intend for the following express conditions to be satisfied prior to the Closing and/or to be addressed in the Definitive Agreement:

(a)The parties will engage in such pre-Closing activities related to governance, product supply, information technology and shared services as they deem to be necessary and appropriate prior to the Closing, including, without limitation, the negotiation, execution and delivery to each party's reasonable satisfaction of any agreements or other documents as may be required to operate the Territory as of and after the Closing;

(b)The parties will have entered into such service arrangements, whether transitional or permanent in nature, as shall be deemed necessary by mutual agreement of the parties to operate the Territory as of and after the Closing. Such service arrangements could include, without limitation, services related to customer care, finance, accounting or human resource support as necessary to assure the smooth transition of the Territory to Bello Consolidated;

Confidential

2

(c)The parties will have mutually agreed to the form of appropriate product supply agreements applicable to the Territoryincluding, without limitation, an agency sales agreement and a service level agreement;

(d)The parties will have mutually agreed with respect to: (i) Bello Consolidated's option to participate economically in the U.S. national food service and warehouse juice businesses; and (ii) Bello Consolidated's option to participate economically in future non-DSD products and/or business models. Any such participation shall be under commercially reasonable terms and conditions to be negotiated in good faith by the parties;

(e)The parties will have mutually agreed with respect to: (i) an arrangement for the provision of logistics and transportation services to BBR by Bello Consolidated's ancillary business Red Classic Services; and (ii) the purchase of Bello Consolidated's ancillary business BYB Brands, Inc., which the parties currently anticipate will take place after the successful completion of this transaction and integration of the Territory;

(f)Bello Consolidated will have performed to its reasonable satisfaction such due diligence on the business and operations in the Territory as is customary for a transaction of this nature and complexity including, without limitation, in the areas of finance, operations, environmental, legal, tax, employees and human resources; and

(g)The parties will have performed and complied with such other terms and conditions as are customary for transactions of this nature and complexity and as will be more fully set forth in the Definitive Agreement, including, without limitation, the grant, assignment and/or transfer of such bottling agreements, licenses and other agreements as may be necessary to operate the business in the Territory in the manner in which it is operated as of the Closing.

7.    Anticipated Schedule. The parties anticipate that, shortly after their execution of this Letter of Intent, there will be a joint public announcement by the parties of the transactions contemplated herein and, subject to applicable regulatory requirements, detailed due diligence and joint integration planning and change management activities will then begin. The parties further anticipate that the Definitive Agreement and other formal legal agreements will be executed by October 1, 2013. Finally, the parties anticipate the Closing will occur in the second, third or fourth quarter of 2014. Notwithstanding the foregoing, the parties acknowledge and agree that the before mentioned dates are estimates only, and are subject to change based on the parties' discussions, changing business conditions, and other matters.

8.    Board Approvals. This Letter of Intent is subject to the approval of the respective Boards of Directors of the parties hereto.

9.    Transition Planning Period and Activities. The parties anticipate that, in order to ensure a smooth transition of the business in the Territory to Bello Consolidated and subject to applicable regulatory requirements, beginning on the date of execution of this Letter of Intent and continuing until the earlier of the termination of this Letter of Intent, execution of the Definitive Agreement, or the Closing (as applicable), they will engage in a number of joint integration planning and change management activities. These activities will include, but are not be limited to, due diligence, communications, human resource management, product supply, information technology, shared services and other areas deemed vital to a successful transition to, and integration of the business with, Bello Consolidated.

Confidential

3

10.    Expenses. Each party will bear its own fees and expenses incurred in connection with the transactions contemplated by this Letter of Intent, including with respect to any due diligence, negotiation, preparation of documentation, the Closing and legal, accounting, consulting, travel and other similar fees or expenses, whether or not a Definitive Agreement is reached.

11.    Termination. This Letter of Intent may be terminated: (a) by mutual written consent of BBR and Bello Consolidated; or (b) upon written notice by BBR or Bello Consolidated to the other party if the Definitive Agreement has not been executed on or prior to December 31, 2013.

12.    Non-Binding. This Letter of Intent expresses the present intent of the parties to enter into a Definitive Agreement and supporting operating agreements based on the principal terms and conditions set forth herein. Notwithstanding anything to the contrary contained herein, this Letter of Intent shall not be binding on the parties hereto except as to the captioned sections “Expenses”, “Termination”, “Non-Binding”, “Assignment”, “Amendment; Modification; Waiver”, “Counterparts”, “Confidentiality” and “Governing Law”, which shall be binding and expressly survive any termination hereof.

13.    Assignment. This Letter of Intent and the rights and obligations set forth herein shall not be assignable by any party hereto without the prior written consent of the other party hereto. Subject to the preceding sentence, the binding provisions of this Letter of Intent (as noted in the “Non-Binding” section above) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14.    Amendment; Modification; Waiver. This Letter of Intent may not be amended or terminated or any provision hereof waived or modified except by an instrument in writing signed by each of the parties hereto.

15.    Counterparts. This Letter of Intent may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement, and delivery of an executed signature page by facsimile transmission or other electronic transmission shall be effective as delivery of a manually executed counterpart.

16.    Confidentiality. This Letter of Intent is strictly confidential and is covered by the parties' Mutual Confidentiality and Non-Disclosure Agreement. Neither this Letter of Intent nor any of its contents may be disclosed by BBR or Bello Consolidated or any of their respective

Confidential

4

directors, officers, employees, agents, advisors or representatives, except as permitted in such agreement, and each of the parties will cause such persons not to make any such disclosure.

17.    Governing Law. This Letter of Intent will be governed by the laws of the State of Georgia.

Frank, we appreciate your team's efforts and dedication in reaching this milestone. We look forward to working with you to finalize the Definitive Agreement, close this transaction and move forward with our joint work. Please acknowledge your acceptance of the terms and conditions of this Letter of Intent by signing where indicated below and returning it to us.

Very truly yours,

/s/ Peter Maffey

Agreed to and Accepted

as of the date first written above:

BELLO-BELLO BOTTLING CO. CONSOLIDATED

By: /s/ Rex Gildo II

Name: Rex Gildo III

Title: Chairman

Confidential

5

**Exhibit A**

Comprehensive Beverage Agreement - Form of Agreement Applicable to Territory

(See attached)

Form EPB Lead Market Sub-bottler

Comprehensive Beverage Agreement

THIS AGREEMENT, made and entered into with effect from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and among THE BELLO-BELLO COMPANY, a Delaware corporation (“Company”); BELLO-BELLO REFRESHMENTS USA, INC. (“BBR”), a wholly owned subsidiary of Company; and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation (“Bottler”).

|  |  |
| --- | --- |
|  |  |
| I | RECITALS |

|  |  |
| --- | --- |
|  |  |
| A. | Company has authorized BBR to, among other things, distribute, promote, market, and sell in defined geographic territories certain shelf-stable, ready-to-drink beverages and related products identified on **Exhibit A**, as may be updated from time to time, and has granted to BBR the right to use the Trademarks listed on **Exhibit B**, as may be updated from time to time, to identify and distinguish such beverages and related products. |

|  |  |
| --- | --- |
|  |  |
| B. | BBR desires to grant to Bottler, subject to the terms and conditions set forth in this Agreement, the rights and obligations that BBR has received from Company to distribute, promote, market, and sell such beverages and related products in the Territory identified on **Exhibit C**, as may be updated from time to time, and an exclusive sub-license to use the Trademarks solely in connection with the distribution, promotion, marketing, and sale of such beverages and related products in the Territory. |

|  |  |
| --- | --- |
|  |  |
| C. | Company desires to consent to such grant, subject to agreement by BBR and Bottler to the terms and conditions of this Agreement. |

|  |  |
| --- | --- |
|  |  |
| D. | Company has a vested and legitimate interest in maintaining, promoting and safeguarding the overall performance, efficiency and integrity of Company's production, distribution and sales system, in general, and of the performance of BBR and Bottler under this Agreement, in particular, and thus desires to be a party to this Agreement and to fulfill certain obligations and benefit from certain covenants as specified herein. |

|  |  |
| --- | --- |
|  |  |
| E. | Company and Bottler are parties to certain preexisting contracts identified on **Exhibit D** under which is, among other things, authorized to manufacture in certain authorized containers, and distribute, promote, market, and sell, Bello-Bello and other beverages marketed under trademarks owned by or licensed to Company, including through Direct Store Delivery (DSD), in the territories identified in such contracts. |

The execution and delivery of this Agreement will not affect any of the rights or obligations of the parties

to such contracts, each of which will remain in force and effect in accordance with their respective terms.

Confidential

Confidential

6

|  |  |
| --- | --- |
|  |  |
| F. | Although Bottler is not authorized under this Agreement to produce Company's beverage products for sale and distribution in the Territory, Bottler will continue to be identified as “Bottler” in this Agreement, because the parties believe that use of the term “Bottler” is important to historical and continuing commercial relationships between Bottler and customers, consumers, and communities in Bottler's territory. |

Company, BBR and Bottler agree as follows:

II. DEFINITIONS

“Affiliate” means, as to any Person, another Person that Controls, is Controlled by, or is under common Control with the first Person.

“Agency Sales Agreement” means the agreement between Bottler and Company (directly or through BBR or another Company Affiliate) or a Company Authorized Supplier, in the form attached as **Exhibit E**, as amended from time to time, pursuant to which Company, BBR, such Affiliate or Company Authorized Supplier has agreed to supply Covered Beverages and Related Products in Finished Product form for distribution and sale by Bottler in the Territory in accordance with the terms of this Agreement.

“Agreement” means this Comprehensive Beverage Agreement Form EPB Lead Market Sub-bottler among Company, BBR, and Bottler, as hereafter amended by the parties in accordance with the provisions hereof.

“Alternate Route to Market Beverage” means any Beverage or Related Product that is identified through the Governance Process as an “Alternate Route to Market Beverage.”

“Alternate Route to Market Channel” means any sales channel that is identified through the Governance Process as an “Alternate Route to Market Channel.”

“Alternate Route to Market Customer” means any customer that is identified through the Governance Process as an “Alternate Route to Market Customer.”

“Beneficial Owner” means a Person having Beneficial Ownership of any securities.

“Beneficial Ownership” means (i) voting power which includes the power to vote, or to direct the voting of, any securities, or (ii) investment power which includes the power to dispose, or to direct the Disposition of, any securities; provided further Beneficial Ownership will include any such voting power or investment power which any person has or shares, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise; provided, however, that the following persons will not be deemed to have acquired Beneficial Ownership under the circumstances described: (a) a person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 will not be deemed to be the Beneficial Owner of such securities until such time as such underwriter completes its participation in the underwriting and will not thereupon or thereafter be deemed to be the Beneficial Owner of the securities acquired by other members of any underwriting syndicate or selected dealers in connection with such underwriting solely by reason of customary underwriting or selected dealer arrangements; (b) a member of a national securities exchange will not be deemed to be a Beneficial Owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction; (c) the holder of a proxy solicited by the Board of Directors of Bottler for the voting of securities of such Bottler at any annual or special meeting and any adjournment or adjournments thereof of the stockholders of such Bottler will not be deemed to be a Beneficial Owner of the securities that are the subject of the proxy solely for such reason; and (d) a Person who in the ordinary course of his business is a pledgee of securities under a written pledge agreement will not be a

Confidential

2

Beneficial Owner until the pledgee has taken all formal steps which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised.

“Beverage” means a non-alcoholic, shelf-stable beverage in pre-packaged, ready-to-drink form in bottles, cans or other factory-sealed containers, but does not include any Beverage Components.

“Beverage Component” means a beverage syrup, beverage concentrate, beverage base, beverage flavor, beverage sweetener, beverage mix, beverage powder, grounds (such as for coffee), herbs (such as for tea), liquid flavor enhancers, liquid water enhancers, or other beverage component that is not ready to drink but is intended to be mixed with other ingredients before being consumed.

“Company Authorized Supplier” means any Person expressly authorized by Company under a “Comprehensive Beverage Term Processing Appointment” to supply Bottler with Covered Beverages and Related Products for distribution and sale by Bottler in the Territory in accordance with the terms of this Agreement.

“Company Owned Distributor” means any Affiliate or operating unit of Company that distributes, promotes, markets, and sells any of the Covered Beverages or Related Products under the Trademarks through Direct Store Delivery in a geographic territory in the United States.

“Confidential Business Information” means any valuable, secret business information, other than Trade Secrets, that is designated or identified as confidential at the time of the disclosure or is by its nature clearly recognizable as confidential information to a reasonably prudent person with knowledge of the Disclosing Party's business and industry. Confidential Business Information includes any confidential business information provided to Disclosing Party by any third party which Disclosing Party is obligated to hold in confidence as confidential business information.

“Consumer Beverage Component” means a Beverage Component intended for sale to consumers directly or through retail outlets as a shelf stable, factory sealed product to be mixed by consumers with other ingredients, or dispensed from equipment owned by or leased to consumers, outside the premises of any such retail outlets before being consumed. Consumer Beverage Component will not include any Beverage Component that is intended to be used to produce a beverage dispensed from equipment on the premises of any food service customers or other chain or fountain accounts.

“Control” means the possession, directly or indirectly, of more than 50% of the outstanding voting power of a Person.

“Covered Beverage” means a Beverage identified on **Exhibit A** (as updated from time to time under Paragraphs 5(a) and 5(b)), the formulas for all of which constitute trade secrets owned by or licensed to Company or any of its Affiliates, and will include all Line Extensions of the Beverages identified on **Exhibit A** and all SKUs or packages for the Beverages identified on **Exhibit A**.

“Direct Store Delivery” or “DSD” means the distribution method whereby product is delivered from suppliers directly to retail outlet shelves for selection by consumers and does not arrive at the retail outlet via a retailer's own warehouse or warehouses operated by other wholesalers or by agents of the retailer.

“Disclosing Party” means the party disclosing any Proprietary Information under this Agreement, whether such party is Bottler or Company and whether such disclosure is directly from the Disclosing Party or through the Disclosing Party's employees or agents.

“Disposition” means any sale, merger, issuance of securities, exchange, transfer, power of attorney, proxy, redemption or any other contract, arrangement, understanding, or transaction in which, or as a result of which, any Person acquires, or obtains any contract, option, conversion privilege or other right to acquire Beneficial Ownership of any securities.

“Effective Date” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Confidential

3

“Expanding Participating Bottler” means (a) a Person that distributes Beverages under the *Bello-Bello* Trademark and other Trademarks through Direct Store Delivery in a territory in the United States of America as of [date], and that on or after such date first acquired or acquires through a grant or series of related grants from Company (or a Company Affiliate) the right to distribute all or substantially all of the Covered Beverages and Related Products in one or more geographic territories within the U. S. for which such Person did not have such distribution rights prior to such date, which acquisition(s) result in a net increase (net of any geographic territory in the United States where such Person had the right to distribute Beverages under the Bello-Bello Trademark and other Trademarks through Direct Store Delivery prior to such acquisition(s), and in connection with such acquisition(s) such rights were swapped, relinquished, or terminated) of 30% or more in the aggregate number of physical cases of Covered Beverages and Related Products sold in all of such Person's U.S. territories, determined based on the 12 month period immediately preceding the consummation of such acquisitions; and (b) a Person that does not distribute Beverages under the *Bello-Bello* Trademark and other Trademarks through Direct Store Delivery in a territory in the United States of America as of [date], and that on or after such date, first acquired or acquires through a grant or series of related grants from Company (or a Company Affiliate) the right to distribute all or substantially all of the Covered Beverages and Related Products in one or more geographic territories within the U. S. (for which such Person did not have such distribution rights prior to such date). For purposes of this Agreement, “Expanding Participating Bottler” does not include any Company Owned Distributor, provided that if, after [date], Company grants to any Person  (other than a Company Owned Distributor) the distribution rights  for all or substantially all of the Covered Beverages and Related Products in one or more geographic territories in the United States previously operated by a Company Owned Distributor, such Person will be deemed an “Expanding Participating Bottler” if it otherwise meets the requirements of this definition.[specify date, which will be the date on which Company and an EPB enter into the initial Comprehensive Beverage Agreement Form EPB, Comprehensive Beverage Agreement Form EPB Sub-bottler, Comprehensive Beverage Agreement Form EPB Lead Market, or Comprehensive Beverage Agreement Form EPB Lead Market Sub-bottler, as the case may be.]

“Finished Product” means Covered Beverages and Related Products in bottles, cans or other factory-sealed containers supplied by Company (directly or through BBR or another Company Affiliate) or a Company Authorized Supplier pursuant to the Agency Sales Agreement for distribution and sale by Bottler in the Territory in accordance with the terms of this Agreement.

“Full Line Operator” means a Person that provides vending or foodservice management services to business, industry, educational, healthcare and public locations and sells a wide range of products which can include candy, cookies, chips, fresh fruit, milk, cold food, coffee and other hot drinks, sparkling beverages, and often frozen products like ice cream.

“Governance Process” means the applicable Bello-Bello System customer governance process as established and in effect from time to time during the Term.

“Governmental Authority” means any government or subdivision thereof, whether foreign or domestic, national, state, county, municipal or regional, any agency or instrumentality of any such government or subdivision thereof, any other governmental entity, or a court.

“Incubation Beverage” means a Beverage that would otherwise constitute a New Beverage Product but has not achieved sales volume nationally of at least twelve (12) million physical cases and annual sales revenue of at least $100 million USD in the immediately preceding 12 month period. “Incubation Beverage” will not include a Line Extension of a then existing Covered Beverage. Upon achieving the above volume and revenue thresholds, an Incubation Beverage will be deemed to be a New Beverage Product subject to Paragraph 5 (and if it becomes a Covered Beverage, it will thereafter continue to be a Covered Beverage regardless of whether it continues to meet the volume and revenue thresholds specified above). A discontinued Covered Beverage cannot thereafter become an Incubation Beverage.

“Line Extension” means (i) with respect to a Covered Beverage, a flavor, calorie or other variation of the Covered Beverage, introduced by Company after the Effective Date that is identified by the primary Trademark that also identifies the Covered Beverage (or any modification of such Trademark (i.e., the addition of a prefix,

Confidential

4

suffix or other modifier used in conjunction with any such Trademark)), and (ii) with respect to a Related Product, a flavor, calorie or other variation of the Related Product, introduced by Company after the Effective Date, that is identified by the Trademark that also identifies the Related Product (or any modification of such Trademark).

“New Beverage Product” means a Beverage or Consumer Beverage Component that (i) Company or any of its Affiliates hereafter develops, acquires, creates, licenses, or otherwise obtains sufficient rights to market, distribute and sell in the Territory, or that Company or any of its Affiliates either does not distribute or distributes via a method other than Direct Store Delivery as of the Effective Date, and (ii) does not appear on **Exhibit A** or **Exhibit G** as of the Effective Date, and (iii) Company determines, in its sole discretion, will be distributed in the Territory through Direct Store Delivery after the Effective Date. “New Beverage Product” will not include an Incubation Beverage, Line Extensions of Covered Beverages or Related Products, or new SKUs or packages for Covered Beverages or Related Products.

“Person” means an individual, a corporation, a company, a voluntary association, a partnership, a joint venture, a limited liability company, a trust, an estate, an unincorporated organization, a Governmental Authority, or any other entity.

“Proprietary Information” means Trade Secrets, Confidential Business Information**,**and any other information or materials that in whole or in part include or are developed or based on any Trade Secrets or Confidential Business Information. Proprietary Information does not include any information that: (i) was in the Receiving Party's possession without restriction as to confidentiality, before receipt from the Disclosing Party; (ii) is or becomes a matter of public knowledge through no breach of agreement or other fault of the Receiving Party; (iii) is rightfully received by the Receiving Party from a third party without a duty of confidentiality; (iv) is disclosed by the Disclosing Party to a third party without a duty of confidentiality on the third party; (v) is independently developed by the Receiving Party without regard to the Proprietary Information of the Disclosing Party; or (vi) is disclosed by the Receiving Party with the Disclosing Party's prior written approval.

“Receiving Party” means the party receiving any Proprietary Information under this Agreement, whether such party is Bottler or Company and whether such disclosure is received directly or through the Receiving Party's employees or agents.

“Related Agreement” means any agreement between Company and any of Company's Affiliates and Bottler and any of Bottler's Affiliates relating to the marketing, promotion, distribution and sale of Covered Beverages and Related Products in the Territory (e.g., the Agency Sales Agreement).

“Related Product” means a product listed on **Exhibit G**, as may be updated by the parties from time to time, that does not fall within the definition of “Beverage,” and will include (i) any Consumer Beverage Component that becomes a Related Product under the terms of Paragraph 5, (ii) all Line Extensions of the Related Products identified on **Exhibit G**, and (iii) all SKUs or packages for the Related Products identified on **Exhibit G**.

“SKU” means a stock-keeping unit or other uniquely identifiable type of Beverage or other product configuration, distinguished by the use of a different primary or secondary packaging and/or different flavoring or other characteristics from other Beverage or product configurations, such that such configuration requires the use of a separate UPC code to distinguish it from other forms of Beverage or product configurations.

“Term” means the Initial Term and any Additional Term(s).

“Territory” means the territory in which Bottler is authorized to distribute, promote, market, and sell the Covered Beverages and Related Products under this Agreement, as set forth on **Exhibit C**, as may be updated by the parties from time to time.

“Trade Secrets” mean trade secrets of Disclosing Party as defined under applicable law, as amended from time to time, including, without regard to form, technical or non-technical data, a formula, a pattern, a compilation, a program, a software program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, non-public forecasts, studies, projections, analyses, all customer data of any kind, or a list

Confidential

5

of actual or potential customers or suppliers, business and contractual relationships, or any information similar to the foregoing that: (i) derives economic value, actual or potential, from not being generally known and not being readily ascertainable by proper means to other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade Secrets include any trade secret information provided to Disclosing Party by any third party which Disclosing Party is obligated to hold in confidence as a trade secret.

“Trademarks” means the trademarks owned or licensed by Company identified on **Exhibit B**, as may be updated by the parties from time to time.

III. GRANT BY BBR OF RIGHTS, AND OBLIGATIONS OF BOTTLER TO DISTRIBUTE, PROMOTE, MARKET, AND SELL

|  |  |
| --- | --- |
|  |  |
| 1. | In consideration of payment by Bottler to BBR on a quarterly basis of **[XX percent of Bottler's Gross Profit from sales by Bottler of Covered Beverages and Related Products in the Territory as more specifically set forth in Schedule 1]**, upon the terms and conditions set forth in this Agreement, (a) BBR hereby appoints Bottler as the sole and exclusive distributor of Covered Beverages and Related Products under the Trademarks for sale in and throughout the Territory (except as may be provided in this Agreement), and (b) in furtherance of such appointment, BBR hereby authorizes Bottler, and Bottler undertakes, upon the terms and conditions set forth in this Agreement, to purchase from Company (directly or through BBR or another Company Affiliate) or a Company Authorized Supplier, the Covered Beverages and Related Products, and to distribute, promote, market, and sell such Covered Beverages and Related Products under the Trademarks in and throughout, but only in and throughout, the Territory. |

|  |  |
| --- | --- |
|  |  |
| 2. | Except as may be provided in this Agreement or as provided by the other party's prior written consent, neither Company, BBR, nor any other of Company's Affiliates will sell or distribute, or authorize any other party to sell or distribute, Covered Beverages or Related Products in the Territory; and Bottler will not authorize any wholesalers or other distributors to sell or distribute, within or outside the Territory, Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement; provided, however, that Bottler may sell Covered Beverages and Related Products supplied to Bottler under the Agency Sales Agreement to Full Line Operators in the Territory for further distribution of such Covered Beverages and Related Products by such Full Line Operators in the Territory. |

|  |  |
| --- | --- |
|  |  |
| a. | Company reserves the right to market, promote, distribute and sell, or authorize others to market, promote, distribute and sell, in the Territory (i) any Covered Beverage, Related Product, or other product that is identified through the Governance Process as an “Alternate Route to Market Beverage,” and (ii) any Covered Beverage, Related Product or other product in any sales channel or to any customer that is identified by the Governance Process as an “Alternate Route to Market Channel” or “Alternate Route to Market Customer.” The exception to Paragraph 2 for an Alternate Route to Market Beverage, Alternate Route to Market Channel or Alternate Route to Market Customer will apply only to the extent and for the time period determined and specified by Governance Process. |

|  |  |
| --- | --- |
|  |  |
| b. | Company and Bottler acknowledge that the sale of certain Covered Beverages or Related Products to certain customers or distributors in the Territory may be required under pre-existing contractual commitments as identified on Schedule 2, and Company and Bottler agree that such sale or distribution may continue until the expiration of such contractual commitments (but neither Company nor any of its Affiliates will exercise any voluntary rights to extend or renew the term of any such contractual commitments, and, if an agreement provides for automatic renewal, Company will use good faith efforts to provide a notice of termination rather than allow the agreement to automatically renew, if Company may do so without breaching the agreement or incurring any penalties). |

|  |  |
| --- | --- |
|  |  |
| c. | Notwithstanding the foregoing provisions of this Paragraph 2, Company and Bottler agree that once an Incubation Beverage ceases to meet the criteria for Incubation Beverage (i.e., by achieving sales |

Confidential

6

volume nationally of at least twelve (12) million physical cases and annual sales revenue of at least $100 million USD in the immediately preceding 12 month period), such beverage will be treated as a New Beverage Product subject to the provisions of Paragraph 5 of this Agreement. To facilitate this transition, Company and Bottler will, as applicable (i) terminate (without compensation or liability to one another) any agreement relating to the distribution, promotion, marketing, or sale of such beverage binding only Company (or one of its Affiliates) and Bottler; or (ii) negotiate in good faith, on terms mutually agreeable to Company and Bottler, the termination of any such agreement binding on any party other than Company (or one of its Affiliates) and Bottler.

|  |  |
| --- | --- |
|  |  |
| 3. | If Bottler identifies any Beverage offered by a third party in a beverage category for which there is likely substantial demand in the Territory and in which category Company does not have a current or proposed entry, Company will, at Bottler's request, evaluate such Beverage, and may, in Company's sole discretion, negotiate a licensing or other business arrangement with such third party that would facilitate distribution and sale of such Beverage in the Territory on terms acceptable to Company and Bottler. |

|  |  |
| --- | --- |
|  |  |
| 4. | Company has the sole and exclusive right and discretion to reformulate any of the Covered Beverages or Related Products. |

|  |  |
| --- | --- |
|  |  |
| 5. | If Company or any Affiliate of Company proposes to sell or distribute, or authorize the sale or distribution of, any New Beverage Product in the Territory: |

a.Any such New Beverage Product will be offered by Company in writing to Bottler, and Bottler will have the option to distribute and sell such New Beverage Product in the Territory pursuant to the terms and conditions of this Agreement. Bottler's option under this Paragraph 5(a) must be exercised by Bottler, if at all, by giving Company written notice of such election within sixty (60) days following the date on which Company notifies Bottler in writing that Company intends to introduce the New Beverage Product in the Territory and provides Bottler with an operating plan for, and samples of, the New Beverage Product. If Bottler gives Company timely notice of Bottler's exercise of such option with respect to a New Beverage Product within such sixty (60) day period, then, in the case of a new Beverage, **Exhibit A** will be deemed automatically amended by adding such new Beverage to the list of Covered Beverages set forth on **Exhibit A**, and, in the case of a new Related Product, **Exhibit G** will be deemed automatically amended by adding such new Related Product to the list of Related Products set forth on **Exhibit G**. If Bottler does not give Company timely notice of Bottler's exercise of such option within such period, then Company will have the right to market, promote, distribute and sell or authorize others to market, promote, distribute and sell, in the Territory and otherwise undertake any activity with respect to that New Beverage Product, including use of the Trademarks in connection with the distribution, promotion, marketing, and sale of the New Beverage Product in the Territory. If a New Beverage Product is not owned by Company, then the parties may enter into a separate agreement with respect to the distribution and sale of that New Beverage Product in the Territory.

b.If Company or one of its Affiliates acquires or licenses a New Beverage Product that becomes a Covered Beverage or Related Product under this Paragraph 5, then Bottler's rights to market, promote, distribute and sell such new Covered Beverage or Related Product will be subject to the terms of any agreements with third parties (including distribution agreements) that may be in effect as of the time that Company (or Company's Affiliate) acquires or licenses the new Covered Beverage or the new Related Product. Company and Bottler will, as applicable, (i) terminate (without compensation or liability to one another) any agreement relating to the distribution, promotion, marketing or sale of such New Beverage Product binding only Company (or one of its Affiliates) and Bottler (or one of its Affiliates), or (ii) negotiate in good faith, on terms mutually agreeable to Company and Bottler, the termination of any such agreement binding on any party other than Company (or one of its Affiliates) and Bottler (or one of its Affiliates).

Confidential

7

c.Bottler and Company acknowledge that a New Beverage Product may constitute a Multiple Route to Market Beverage. Bottler will be the sole and exclusive distributor of the Multiple Route to Market Beverage via Direct Store Delivery in the Territory. However, Company may also distribute the Multiple Route to Market Beverage in the Territory via means other than Direct Store Delivery, and Company may authorize third parties to distribute the Multiple Route to Market Beverage in the Territory via means other than Direct Store Delivery. A “Multiple Route to Market Beverage” means a New Beverage Product that Company determines, in its sole discretion, will be distributed in the Territory through both Direct Store Delivery and other means. “Multiple Route to Market Beverage” will not include a Line Extension of an existing Covered Beverage or Related Product or an SKU or package of an existing Covered Beverage or Related Product.

|  |  |
| --- | --- |
|  |  |
| 6. | Company has the sole and exclusive right and discretion to discontinue, on a temporary or permanent basis, any of the Covered Beverages or Related Products under this Agreement provided (i) any such Covered Beverage is discontinued for all Expanding Participating Bottlers in the United States, and (ii) Company does not discontinue all Covered Beverages under this Agreement. If Company discontinues all SKUs and packages of any Covered Beverage, **Exhibit A** will be deemed automatically amended by deleting the discontinued Covered Beverage from the list of Covered Beverages. If Company discontinues all SKUs and packages of any Related Product, **Exhibit G** will be deemed automatically amended by deleting the discontinued Related Product from the list of Related Products. This right must be exercised by Company, if at all, by giving ninety (90) days' prior written notice to Bottler of such discontinuation. If Company discontinues a Covered Beverage or Related Product as contemplated under this Paragraph 6, then Bottler will have the right to continue to market, promote, distribute and sell unused inventories of the discontinued Covered Beverage or Related Product in the Territory in accordance with the provisions of this Agreement for a period not to exceed the earlier of the expiration date of such Covered Beverage or Related Product or six (6) months following Bottler's receipt of written notice of the discontinuation of such Covered Beverage or Related Product. If Company proposes to reintroduce any such discontinued Covered Beverage or Related Product (or reintroduce a Line Extension of a Covered Beverage that is a discontinued Covered Beverage) through any channel of retail distribution and sale in the United States of America, such product shall first be offered to the Bottler under Paragraph 5 (except that such Beverage may not be designated by Company as a Multiple Route to Market Beverage under Paragraph 5(c)). If Company discontinues any Covered Beverage or Related Product and Company or one of its Affiliates subsequently wishes to transfer, assign or sell its rights in and to such discontinued Covered Beverage or Related Product (a “Transfer”) to a third party (a “Transferee”) within twelve (12) months following the date which is the later of (x) the date on which Company (through a Company Owned Distributor or otherwise) ceases distribution of a Covered Beverage or Related Product in all SKUs and packages and through all means of distribution, or (y) the expiration of the six (6) month period Bottler has to sell unused inventories of the discontinued Covered Beverage or Related Product, then Company (or its Affiliate) must first offer such discontinued Covered Beverage or Related Product to Bottler under Paragraph 5, and if Bottler elects to continue distributing such discontinued Covered Beverage or Related Product, then Company (or its Affiliate) must Transfer such discontinued Covered Beverage or Related Product to the Transferee subject to Bottler's distribution rights under this Agreement with respect to such discontinued Covered Beverage or Related Product (as if the Covered Beverage or Related Product had not been discontinued), and Bottler's distribution rights with respect to the discontinued Covered Beverage or Related Product will be binding upon the Transferee. |

|  |  |
| --- | --- |
|  |  |
| 7. | Bottler has the right to discontinue the distribution and sale, on a temporary or permanent basis, in all of the Territory, of any Covered Beverage or Related Product (or any Line Extension, SKU or package for a Covered Beverage or Related Product). This right must be exercised by Bottler, if at all, by giving ninety (90) days' prior written notice to Company of such discontinuation, specifying that the notice of discontinuation applies to all of the Territory. Upon expiration of such ninety (90) day period, Bottler may cease the distribution, promotion, marketing, and sale of the discontinued Covered Beverage or Related Product (or Line Extension, SKU or package for a Covered Beverage or Related Product) in all |

Confidential

8

of the Territory, and, if Bottler is discontinuing distribution of all Line Extensions, SKUs and packages of a Covered Beverage or Related Product, **Exhibit A** or **Exhibit G** will be deemed automatically amended by deleting the discontinued Covered Beverage or Related Product from the list of Covered Beverages or Related Products, as applicable, set forth on **Exhibit A** or **Exhibit G**. If (and only if) Bottler discontinues all Line Extensions, SKUs and packages of a Covered Beverage or Related Product, Company may distribute and sell the discontinued Covered Beverage or Related Product in the Territory or authorize any of its Affiliates or others to do so. Further, Bottler has the right to discontinue the distribution and sale of any Line Extension, SKU or package in any portion of the Territory without providing prior written notice to Company, and Company may not distribute or sell the discontinued Line Extension, SKU or package in the Territory or authorize any of its Affiliates or others to do so unless Bottler has discontinued all Line Extensions, SKUs and packages of the Covered Beverage or Related Product. If Bottler discontinues some (but not all) Line Extensions, SKUs or packages for a Covered Beverage or Related Product, then Bottler may thereafter reinstate the discontinued Line Extension, SKU or package.

|  |  |
| --- | --- |
|  |  |
| 8. | Bottler recognizes that Company has entered into or may enter into agreements relating to the Covered Beverages and Related Products with other parties outside the Territory, and Bottler accepts the territorial limitations in this Agreement imposed on Bottler in the conduct of its business under this Agreement. Bottler further agrees to make every reasonable effort to amicably settle any disputes that arise with such other parties. |

|  |  |
| --- | --- |
|  |  |
| 9. | Bottler must not distribute or sell any Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement outside of the Territory. Bottler must not sell any of such Covered Beverages or Related Products to any Person if Bottler knows or should know that such Person will redistribute the Covered Beverages or Related Products for ultimate sale outside the Territory. |

|  |  |
| --- | --- |
|  |  |
| a. | If any of such Covered Beverages or Related Products distributed or sold by Bottler are found in the territory of another authorized bottler, including a Company Owned Distributor (the "Injured Bottler"), then Bottler shall be deemed to have transshipped such Covered Beverage or Related Product and shall be deemed to be a “Transshipping Bottler” for purposes of this Agreement; provided, however, that if the Injured Bottler (other than a Company Owned Distributor) has not agreed to terms substantially similar to this Paragraph 9 with respect to the transshipment of Covered Beverages or Related Products, Bottler shall only be deemed to be a “Transshipping Bottler” if Bottler knew or should have known that the purchaser would redistribute the Covered Beverage or Related Product outside of the Territory prior to ultimate sale. If any Covered Beverages or Related Products (or any other products identified by the primary Trademark that also identifies any of the Covered Beverages or Related Products or any modification of such Trademark (i.e., the addition of a prefix, suffix or other modifier used in conjunction with any such Trademark)) distributed or sold by another authorized bottler (including a Company Owned Distributor) are found in Bottler's Territory, then Bottler shall be referred to herein as the “Injured Bottler” and such other authorized bottler shall be referred to herein as the “Transshipping Bottler”; provided, however, that if the bottler that distributed or sold such products (other than a Company Owned Distributor) has not agreed to terms substantially similar to this Paragraph 9 with respect to the transshipment of Company's products, Bottler will only be deemed to be an “Injured Bottler” if such bottler knew or should have known that the purchaser would redistribute the products outside of such bottler's territory prior to ultimate sale. If Company does not have sufficient contractual rights to fully implement the transshipping remedies provided for in this Paragraph 9, Company will nevertheless use reasonable efforts to enforce its transshipping policy against the transshipping bottler to (i) prevent future transshipments, and (ii) cause the transshipping bottler to compensate Bottler to the extent possible. Bottler will only be an Injured Bottler if the product transshipped into Bottler's Territory is a Covered Beverage or Related Product (or any other product that is identified by the primary Trademark that also identifies any of the Covered Beverages or Related Products or any modification of such trademark (i.e., the addition of a prefix, suffix or other modifier used in conjunction with any such trademark)). |

Confidential

9

|  |  |
| --- | --- |
|  |  |
| b. | In addition to all other remedies Company may have against Transshipping Bottler for violation of this Paragraph 9, Company, in the case where both the Transshipping Bottler and the Injured Bottler are Expanding Participating Bottlers (or an Expanding Participating Bottler and a Company Owned Distributor), will use commercially reasonable good faith efforts, and in all other cases, may determine, in its sole discretion, to: |

|  |  |
| --- | --- |
|  |  |
| i. | (A) charge any Transshipping Bottler an amount equal to three times the Injured Bottler's most current average gross profit margin per case for all cases sold across all channels of the Covered Beverage or Related Product transshipped, as reasonably estimated by Company. Injured Bottler shall provide Company with any supporting documentation as reasonably requested by Company; or (B) purchase any of the Covered Beverages or Related Products distributed or sold by Transshipping Bottler found in the Injured Bottler's territory, and Transshipping Bottler will, in addition to any other obligation it may have under this Agreement, reimburse Company for Company's cost of purchasing, transporting and/or destroying such Covered Beverages or Related Products; and |

|  |  |
| --- | --- |
|  |  |
| ii. | require Transshipping Bottler and/or Injured Bottler, as the case may be, to make available to representatives of Company all sales agreements and other records relating to the Covered Beverages or Related Products and assist Company in all investigations relating to the sale and distribution of Covered Beverages or Related Products outside Transshipping Bottler's Territory or to the transshipment of products by another bottler into Injured Bottler's Territory. |

|  |  |
| --- | --- |
|  |  |
| c. | Bottler, BBR, and Company acknowledge and agree that the amounts provided for under Paragraph 9(b) reasonably reflect the damages to Company, the Injured Bottler, and the Bello-Bello system. Transshipping Bottler must promptly pay to Company all amounts charged pursuant to this Paragraph 9. The Injured Bottler will be paid when Company has received payment from Transshipping Bottler and will be paid an amount not less than seventy percent (70%) of the amount recovered by Company from the Transshipping Bottler under Paragraph 9(b)(i). Company has the right to collect any amounts payable by Transshipping Bottler under this Paragraph 9 by offset against any undisputed amounts otherwise payable to Transshipping Bottler by Company. |

|  |  |
| --- | --- |
|  |  |
| d. | Bottler must create, implement and monitor an internal anti-transshipment compliance policy and will provide such policy to Company for review and approval. Company will have the right to audit Bottler's compliance with the policy. |

|  |  |
| --- | --- |
|  |  |
| e. | If Company determines that a customer of Bottler has repeatedly transshipped Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement outside of the Territory, Company may require that Bottler develop and implement a remediation plan that will address and resolve the issue. Bottler will submit the remediation plan to Company for review and approval, and, once approved by Company, Bottler will implement the plan. |

|  |  |
| --- | --- |
|  |  |
| 10. | Company has the unrestricted right**,**in its sole discretion**,** to use the Trademarks on the Covered Beverages and Related Products and on all other products and merchandise, to determine which Trademarks will be used on which Covered Beverages and Related Products, and to determine how the Trademarks will be displayed and used on and in connection with the Covered Beverages and Related Products. |

|  |  |
| --- | --- |
|  |  |
| 11. | Company reserves all rights not expressly granted to Bottler under this Agreement or Related Agreements. |

|  |  |
| --- | --- |
|  |  |
| 12. | If Company or a Company Affiliate on or after [date] (a) enters into a new authorization agreement with respect to territories in the United States of America with another Expanding Participating Bottler that is |

Confidential

10

more favorable to such other Expanding Participating Bottler than the terms and conditions of this Agreement in any material respect, or (b) agrees to an amendment of the terms of an existing authorization agreement with respect to territories in the United States with another Expanding Participating Bottler that is more favorable to such other Expanding Participating Bottler than the terms and conditions of this Agreement in any material respect, then Company will offer such other new agreement or amended agreement, as the case may be, in its entirety, to Bottler. The parties agree to cooperate in taking such other actions as may reasonably be required to further document any amendments and modifications resulting from the foregoing. The foregoing obligation shall not apply to any consent, waiver or approval provided under this Agreement or under any agreement held by another Expanding Participating Bottler. If BBR grants to Bottler after the Effective Date the rights to distribute, promote, market, and sell Covered Beverages and Related Products under the Trademarks in additional geographic territories under the terms of a different form of agreement, this Agreement shall be amended and restated in the form of the agreement reflecting such additional grant. [Note: specify same date as used for definition of Expanding Participating Bottler]

IV. GRANT BY BBR OF SUBLICENSE TO USE THE TRADEMARKS AND OBLIGATIONS OF BOTTLER RELATIVE TO THE TRADEMARKS AND OTHER MATTERS

|  |  |
| --- | --- |
|  |  |
| 13. | Bottler acknowledges and agrees that Company is the sole and exclusive owner of all rights, title and interest in and to the Trademarks. Bottler agrees not to dispute the validity of the Trademarks or their exclusive ownership by Company either during the Term or thereafter, notwithstanding any applicable doctrines of licensee estoppel. BBR grants to Bottler only an exclusive, royalty-free license to use the Trademarks, solely in connection with the distribution, promotion, marketing, and sale of the Covered Beverages and Related Products in the Territory, and in accordance with standards adopted and issued by Company from time to time, and made available to Bottler through written, electronic, on-line or other form or media, subject to the rights reserved to Company under this Agreement. Nothing in this Agreement, nor any act or failure to act by Bottler, BBR or Company, will give Bottler any proprietary or ownership interest of any kind in the Trademarks or in the goodwill associated therewith. BBR and Bottler acknowledge and agree that all use by Bottler of the Trademarks will inure to the benefit of Company**.** |

|  |  |
| --- | --- |
|  |  |
| 14. | Bottler covenants and agrees (subject to any requirements imposed upon Bottler under applicable law): |

a.Not to produce, manufacture, prepare, package, distribute, sell, deal in or otherwise use or handle:

|  |  |
| --- | --- |
|  |  |
| i. | any Beverage, Beverage Component or other beverage product which is likely to be confused with or passed off for any of the Covered Beverages or Related Products or for any Beverage Component for any Covered Beverage or Related Product; |

|  |  |
| --- | --- |
|  |  |
| ii. | during the Term and for an additional period of two years following expiration or termination of this Agreement, (A) any Beverage, Beverage Component or other beverage product the name of which includes the word “cola” (whether alone or in conjunction with any other word or words) or any phonetic equivalent thereof, or (B) any Beverage, Beverage Component or other beverage product that is an imitation of any of the Covered Beverages or Related Products (or of any Beverage Component for any Covered Beverage or Related Product) as of the expiration or termination of this Agreement or is likely to be substituted for any of such Covered Beverages or Related Products (or for any such Beverage Component) in the Territory; |

|  |  |
| --- | --- |
|  |  |
| iii. | any product that uses any trade dress or any container that (A) is an imitation**,**infringement or dilution of, or (B) is likely to be confused with**,** be perceived by consumers as confusingly similar to, be passed off as, or cause dilution of, any trade dress or container in which Company claims a proprietary right or interest; |

Confidential

11

|  |  |
| --- | --- |
|  |  |
| iv. | any product that (A) uses any trademark or other designation that is an imitation, counterfeit, copy, infringement or dilution of, or confusingly similar to any of the Trademarks**,** or (B) is likely to be passed off in the Territory as a product of Company because of Bottler's association with the business of distributing and selling the Covered Beverages and Related Products; or |

|  |  |
| --- | --- |
|  |  |
| v. | any Beverage, Beverage Component, or other beverage product in the Territory; |

provided, however, that Bottler and its Affiliates may produce, manufacture, prepare, package, distribute, sell, deal in or otherwise use or handle (as applicable):

|  |  |
| --- | --- |
|  |  |
| (1) | Covered Beverages and Related Products, subject to the terms and conditions of this Agreement and any Related Agreement, |

|  |  |
| --- | --- |
|  |  |
| (2) | Beverages, Beverage Components and other beverage products, if and to the extent required in order for Bottler or any of its Affiliates to comply with its obligations under any separate written agreement with Company or any of its Affiliates, |

|  |  |
| --- | --- |
|  |  |
| (3) | Beverages, Beverage Components and other beverage products identified on Schedule 14(a) (“Permitted Beverage Products”), including (A) any Beverages, Beverage Components and other beverage products as to which Company hereafter provides prior written consent (which consent will result in the amendment of Schedule 14(a) to include such approved Beverages, Beverage Components and other beverage products), and (B) any line extension of a Permitted Beverage Product, which, solely for purposes of this Paragraph 14(a)(3), means a beverage product introduced by the licensor of the Permitted Beverage Product after the Effective Date, that is identified by the primary trademark that also identifies the Permitted Beverage Product, together with a modification of such trademark (i.e., the addition of a prefix, suffix or other modifier used in conjunction with any such trademark), including a flavor, calorie or other variation of such Permitted Beverage Product that in the reasonable judgment of Company is marketed in the same beverage category as the Permitted Beverage Product, and/or |

|  |  |
| --- | --- |
|  |  |
| (4) | Beverages, Beverage Components and other beverage products handled, distributed or sold by Bottler in connection with an ancillary business identified on Schedule 14(a), including any ancillary business as to which Company hereafter provides prior written consent (which consent will result in the amendment of Schedule 14(a) to include such approved ancillary business). For this purpose, Company will not unreasonably withhold its consent to a proposed ancillary business that (i) is not directly and primarily involved in the manufacture, marketing, promotion, distribution or sale of Beverages, Beverage Components and other beverage products (e.g., sale, lease or servicing of equipment used in the distribution of beverages to third parties), or (ii) provides office coffee service to offices or facilities. |

b.Not to acquire or hold directly or indirectly through any Affiliate any ownership interest in any person or entity that engages in the Territory in any of the activities prohibited under Paragraphs 14(a)(i) - 14(a)(v) (as subject to the exceptions in Paragraph 14(a)), and not enter into any contract or arrangement with respect to the management or control of any person or legal entity that would enable Bottler or any Affiliate of Bottler acting collectively with such person or legal entity to indirectly engage in the Territory in any of the activities prohibited under Paragraphs 14(a)(i) - 14(a)(v) (as subject to the exceptions in Paragraph 14(a)); provided, that Bottler and its Affiliates will be permitted to acquire and own securities registered pursuant to the Securities Exchange Act of 1934, as amended, or registered for public sale under similar laws of a foreign country, of a company that engages in any of the activities prohibited under Paragraphs 14(a)(i) - 14(a)(v) (as subject to the exceptions in

Confidential

12

Paragraph 14(a)), in pension, retirement, annuity, life insurance, and estate planning accounts, plans and funds administered by Bottler or any of its Affiliates for the benefit of employees, officers, shareholders or directors of Bottler or any of its Affiliates, where investment decisions involving such securities are made by independent outside investment or fund managers that are not Affiliates of Bottler, so long as such ownership represents a passive investment and that neither Bottler nor any Affiliate of Bottler in any way, either directly or indirectly, manages or exercises control of such company, guarantees any of its financial obligations, consults with, advises, or otherwise takes any part in its business (other than exercising rights as a shareholder), or seeks to do any of the foregoing; or

c.Not to use in the Territory any delivery vehicles, cases, cartons, coolers, vending machines or other equipment bearing Company's Trademarks in connection with any line of business in the Territory other than the distribution and sale of Covered Beverages and Related Products or assign personnel or management whose primary duties relate to delivery or sales of Covered Beverages or Related Products in the Territory (other than executive officers of Bottler) to any line of business in the Territory other than the distribution, promotion, marketing, and sale of Covered Beverages and Related Products; provided, however, that:

|  |  |
| --- | --- |
|  |  |
| i. | any of Bottler's assets and personnel or management whose primary duties relate to delivery or sales of Covered Beverages or Related Products within the Territory may be used in (A) a permitted line of business listed on Schedule 14(c), including any line of business as to which Company hereafter provides prior written consent, which consent will not be unreasonably withheld by Company and will result in the amendment of Schedule 14(c) to include such approved line of business, or (B) a business that is otherwise expressly permitted under Paragraph 14(a)(1) - (4) (collectively, “Approved Lines of Business”), and Bottler may engage in Approved Lines of Business anywhere within (or, as applicable, outside of) Bottler's Territory without further approvals from Company; and |

|  |  |
| --- | --- |
|  |  |
| ii. | Company and Bottler acknowledge that to meet competition Bottler may from time to time be required to agree to deliver a *de minimis*volume of non-alcoholic beverage products and/or other consumable products in the Territory that would otherwise be prohibited by Paragraph 14(a) or Paragraph 14(c) to certain local, on-premise vending, cafeteria and workplace customers that offer a contract for the supply of all such beverage and consumable products that are delivered to a particular location (e.g., a vending machine, office location, arena, or on premise employee store). In such circumstances, Bottler agrees to use best efforts to comply with Paragraph 14(a) and Paragraph 14(c); provided however that Company consents to delivery by Bottler of a *de minimis* volume of such products to such customers in the Territory to the extent that, despite Bottler's best efforts to satisfy customer demand for Covered Beverages and Related Products consistent with Paragraphs 14(a) and Paragraph 14(c), such customers nonetheless require such delivery by Bottler to meet competition. For each such instance, if requested by Company, Bottler agrees to provide to Company such information as may reasonably be requested by Company so that Company can assess Bottler's compliance with this Paragraph 14(c)(ii) (including information regarding the nature of the competitive threat and the volumes of product involved). |

15. Except as set forth on Schedule 15 or as otherwise permitted under separate written agreement between Bottler and Company or a Company Affiliate, Bottler must not adopt or use any name, corporate name, trading name, title of establishment or other commercial designation or logo that includes the words “Bello-Bello”, “Coca”, “Cola”, “Bello”, or any of them, or any word**,**name or designation that is confusingly similar to any of them, or any graphic or visual representation of the Trademarks or any other Trademark or intellectual property owned by Company, without the prior written consent of Company, which consent shall not be unreasonably withheld and will be contingent on Bottler's compliance with this Agreement.

Confidential

13

16. Bottler, recognizing the important benefit to the Trademarks**,**to the successful marketing of the Covered Beverages, Related Products, and to the Bello-Bello system of a uniform external appearance of the distribution and other equipment and materials used under this Agreement, agrees to the extent such Trademarks are utilized by Bottler in the Territory to accept and within a reasonable period of time apply any new or modified standards adopted and issued from time to time by Company that are generally applicable, and made available to Bottler through written, electronic, on-line or other form or media for the design and decoration of trucks and other delivery vehicles, cases, cartons, coolers, vending machines and other materials and equipment that bear such Trademarks and are used in the distribution, promotion, marketing, and sale of Covered Beverages and Related Products in the Territory. If Company changes such standards, the new standards will apply to any such assets acquired by Bottler following notice of the change in standards to the extent Bottler uses the trademark on such assets in the Territory, and will be applied to such existing assets in the normal course of Bottler's business (e.g., trucks would be repainted consistent with normal maintenance cycles).

|  |  |
| --- | --- |
|  |  |
| V. | OBLIGATIONS OF BOTTLER RELATIVE TO DISTRIBUTION, SALES, MARKETING, COMMERCIAL, MANAGEMENT, REPORTING AND PLANNING ACTIVITIES |

|  |  |
| --- | --- |
|  |  |
| 17. | Bottler will: |

a.    make capital expenditures in Bottler's business of distributing, promoting, marketing and selling Covered Beverages and Related Products in the Territory as reasonably required for Bottler to comply with its obligations under this Agreement, for the organization, installation, operation, maintenance and replacement within the Territory of such warehousing, distribution, delivery, transportation, vending equipment, merchandising equipment, and other facilities, infrastructure, assets, and equipment;

b.    buy exclusively from Company (directly or through BBR or another Company Affiliate) or a Company Authorized Supplier, in accordance with the terms and conditions of the Agency Sales Agreement, Covered Beverages and Related Products in the quantities required to satisfy fully the demand for the Covered Beverages and Related Products in the Territory;

c.    budget and expend such funds for its own account for marketing and promoting the Covered Beverages and Related Products as reasonably required to create, stimulate and sustain the demand for the Covered Beverages and Related Products in the Territory, provided that Bottler must use, publish, maintain or distribute within the Territory only such advertising, marketing, promotional or other materials relating to the Covered Beverages or the Related Products that are in accordance with standards adopted and issued by Company from time to time or that Company has otherwise approved or authorized. Company may agree from time to time and subject to such terms and conditions as Company stipulates in each case to contribute financially to Bottler's marketing programs. Company may also undertake, at its own expense and independently from Bottler, any additional advertising, marketing or promotional activities in the Territory that Company deems useful or appropriate;

d.use all approved means as may be reasonably necessary to meet the continuing responsibility of Bottler to develop and stimulate and satisfy fully the demand for Covered Beverages and Related Products within the Territory and maintain the consolidated financial capacity reasonably necessary to assure that the Bottler and all Bottler Affiliates will be financially able to perform their respective duties and obligations under this Agreement;

e.provide to Company each year and review with Company an annual and long range operating plan and budget for the distribution and sale of Covered Beverages and Related Products in the Territory, including financials and capital investment budgets, and, if requested by Company, discuss changes in general management and senior management of Bottler whose primary duties relate to the distribution

Confidential

14

and sale of Covered Beverages and Related Products in the Territory, except to the extent otherwise prohibited by applicable law;

f.maintain accurate books, accounts and records relating to the purchasing, distribution, promotion, marketing, and sale of Covered Beverages and Related Products in the Territory; and

g.provide to Company such operational, financial, accounting, forecasting, planning and other information, including audited and unaudited financial statements, income statements, balance sheets, statements of cash flow, operating metrics, and total and outlet level volume performance for each and all Covered Beverages and Related Products in the Territory, to the extent, in the form and manner, and at such times as reasonably required by Company to determine whether Bottler is performing its obligations under this Agreement, including Paragraphs 17(a) - 17(d) (the “Financial Information”). The parties recognize that the Financial Information is critical to the ability of BBR and Company to maintain, promote, and safeguard the overall performance, efficiency, and integrity of the customer management, distribution and sales system. Company will hold the Financial Information provided by Bottler in accordance with the confidentiality provisions of Paragraph 54 and shall not use such information for any purpose other than determining compliance with this Agreement or any Related Agreement.

VI. OBLIGATIONS OF BOTTLER RELATIVE TO THE STORAGE AND HANDLING OF THE COVERED BEVERAGES AND RELATED PRODUCTS

|  |  |
| --- | --- |
|  |  |
| 18. | Bottler's handling, storage, delivery and merchandising of the Covered Beverages and Related Products supplied to Bottler under the Agency Sales Agreement must at all times conform to the quality and safety standards and instructions, including quality, hygienic, environmental and otherwise, established in writing, including through electronic systems and media, from time to time by Company and must, in all events, conform with all applicable food, health, environmental, safety, sanitation and other relevant laws, regulations and other legal requirements applicable in the Territory. |

|  |  |
| --- | --- |
|  |  |
| 19. | If Company or BBR determines or becomes aware of the existence of any quality or technical problems relating to Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement, BBR or Company will immediately notify Bottler by telephone, fax, e-mail or any other form of immediate communication. BBR or Company may require Bottler to take all necessary action to recall all of the Covered Beverages or Related Products in the Territory, or withdraw immediately any such Covered Beverages or Related Products from the market or the trade, as the case may be. BBR or Company will notify Bottler by telephone, fax, e-mail or any other form of immediate communication with written confirmed receipt, of the decision by BBR or Company to require Bottler to recall Covered Beverages or Related Products in the Territory or withdraw such Covered Beverages or Related Products from the market or trade, and Bottler must, upon receipt of such notice, immediately cease distribution of such Covered Beverages or Related Products in the Territory and take such other actions as may be required by Company or BBR in connection with the recall of Covered Beverages or Related Products in the Territory or withdrawal of such Covered Beverages or Related Products in the Territory from the market or trade. |

|  |  |
| --- | --- |
|  |  |
| 20. | If Bottler determines or becomes aware of the existence of quality or technical problems relating to Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement, then Bottler must immediately notify BBR and Company by telephone, fax, e-mail or any other form of immediate communication with written confirmed receipt. This notification must include: (1) the identity and quantities of Covered Beverages or Related Products involved, including the specific packages, (2) coding data, and (3) all other relevant data that will assist in tracing such Covered Beverages or Related Products. |

Confidential

15

|  |  |
| --- | --- |
|  |  |
| 21. | If any withdrawal or recall is caused by quality or technical defects arising from the manufacture, packaging, storage or shipment of the Covered Beverages or Related Products or other packaging or materials supplied by Company (directly or through BBR or another Company Affiliate) or a Company Authorized Supplier prior to delivery to Bottler, Company, BBR, other Company Affiliate or the other Company Authorized Supplier, as the case may be, will reimburse Bottler for all reasonable expenses incurred by Bottler in connection with such withdrawal or recall. If any withdrawal or recall of any Covered Beverage or Related Product supplied to Bottler under the Agency Sales Agreement is caused by Bottler's failure to handle the Covered Beverage or Related Product properly after delivery to Bottler, then Bottler will bear the reasonable expenses of such withdrawal or recall and reimburse Company (or BBR or another Company Affiliate) or the Company Authorized Supplier, as the case may be, for all reasonable expenses incurred in connection with such withdrawal or recall. |

|  |  |
| --- | --- |
|  |  |
| 22. | Bottler will permit Company, its officers, agents or designees, at all times upon reasonable request by Company**,**to enter and inspect the facilities, equipment and methods used by Bottler, whether directly or incidentally, in or for the storage and handling of the Covered Beverages and Related Products to be distributed in the Territory to ascertain whether Bottler is complying with the terms of this Agreement, including Paragraphs 18 and 19. Bottler will also provide Company with all the information regarding Bottler's compliance with the terms of this Agreement, including Paragraphs 18 and 19, as Company may reasonably request from time to time. |

|  |  |
| --- | --- |
|  |  |
| 23. | Reserved. |

|  |  |
| --- | --- |
|  |  |
| VII. | CONDITIONS OF PURCHASE AND SALE |

|  |  |
| --- | --- |
|  |  |
| 24. | Company (directly or through BBR or another Company Affiliate) will furnish the Covered Beverages and Related Products for sale and distribution in the Territory in accordance with the pricing terms and other terms and conditions set forth in the Agency Sales Agreement. Bottler acknowledges and agrees that Company (directly or through BBR or another Company Affiliate) reserves the right to establish and revise at any time, in its sole discretion, the price of the Covered Beverages and Related Products, subject to the provisions of the Agency Sales Agreement. Bottler further acknowledges that Company reserves the right to establish and revise at any time, in its sole discretion, the price of concentrate, beverage base, or any other constituent part sold by Company to BBR, another Company Affiliate, or any other Company Authorized Supplier for the manufacture of the Covered Beverages and Related Products. If Bottler rejects a change in price or the other terms and conditions contained in any such notice, then Bottler shall so notify BBR and Company within thirty (30) days of receipt of such notice, and this Agreement will terminate ninety (90) days after the date of such notification of rejection of the change by Bottler. The change in price so rejected by Bottler shall not apply to purchases of Covered Beverages and Related Products by Bottler during such ninety (90) day period preceding termination. Failure by Bottler to notify Company and BBR of its rejection of the changes in price or such other terms and conditions shall be deemed acceptance thereof by Bottler. |

|  |  |
| --- | --- |
|  |  |
| 25. | Additional terms and conditions of purchase and sale, including warranties, quantities, shipment, risk of loss and delivery of Covered Beverages and Related Products are as set forth in the Agency Sales Agreement. |

VIII. OWNERSHIP AND CONTROL OF BOTTLER

|  |  |
| --- | --- |
|  |  |
| 26. | Bottler hereby acknowledges the personal nature of Bottler's obligations under this Agreement, including with respect to the performance standards applicable to Bottler, the dependence of the Trademarks on proper quality control, the level of marketing effort required of Bottler to stimulate and maintain demand for the Covered Beverages and Related Products in the Territory, and the confidentiality required for protection of Company's trade secrets and confidential information. Bottler represents and warrants to |

Confidential

16

Company that, prior to execution of this Agreement, Bottler has made available to Company a complete and accurate list of any of Bottler's owners that own more than five percent (5%) of the outstanding securities of Bottler, and/or of any third parties having a right to, or effective power of, control or management of Bottler. Bottler covenants and agrees:

a.    to inform Company without delay of any changes in the record ownership (or, if known to Bottler, any change in the Beneficial Ownership) of more than 10% of the shares of Bottler's outstanding equity interests in a transaction or series of related transactions, provided, that if Bottler is subject to the disclosure and reporting requirements of the Securities Exchange Act of 1934, as amended, this provision shall not apply; and

b.    not to change its legal form of organization without first obtaining the written consent of Company, which consent will not be unreasonably withheld, conditioned or delayed. It is understood and agreed that Company will not withhold its consent unless the change in legal form could reasonably be expected to affect Bottler's obligations under this Agreement. For this purpose, (i) the making of an election to be taxed as a Subchapter S corporation for federal income tax purposes, or termination of such an election, and/or (ii) reincorporation in another state within the United States of America, will not be considered a change in Bottler's legal form of organization and will not require Company's consent.

|  |  |
| --- | --- |
|  |  |
| 27. | Bottler acknowledges that Company has a vested and legitimate interest in maintaining, promoting and safeguarding the overall performance, efficiency and integrity of Company's bottling, distribution and sales system. Bottler therefore covenants and agrees: |

a.    Not to assign, transfer or pledge this Agreement or any interest herein, in whole or in part, whether voluntarily, involuntarily, or by operation of law (including by merger or liquidation), or sublicense its rights under this Agreement, in whole or in part, to any third party or parties, without the prior written consent of Company; and

b.    Not to delegate any material element of Bottler's performance under this Agreement, in whole or in part, to any third party or parties without the prior written consent of Company.

c.    Any attempt to take such actions prohibited by this Paragraph 27 without such consent shall be void and shall be deemed to be a material breach of this Agreement.

d.    Notwithstanding the foregoing, the following shall be expressly permitted hereunder:

|  |  |
| --- | --- |
|  |  |
| i. | Bottler may, after written notice to Company, assign, transfer or pledge this Agreement or any interest herein, in whole or in part, or delegate any material element of Bottler's performance of this Agreement, in whole or in part, to any wholly-owned Affiliates of Bottler; provided that (a) any such Affiliate must agree in writing to be bound by and comply with the terms and conditions of this Agreement, and (b) any such assignment, transfer, pledge or delegation will not relieve Bottler of any of its obligations under this Agreement; and |

|  |  |
| --- | --- |
|  |  |
| ii. | Bottler may engage third party contractors and service providers for the purpose of receiving services relating to non-core functions (e.g., back-office administrative services, HR, payroll, information technology services and similar services); provided that (i) Bottler will retain full responsibility to Company for all of Bottler's obligations under this Agreement; and (ii) Bottler may not subcontract core functions (i.e., market/customer facing functions) without the prior consent of Company. |

|  |  |
| --- | --- |
|  |  |
| 28. | Reserved. |

Confidential

17

IX. TERM OF AGREEMENT

|  |  |
| --- | --- |
|  |  |
| 29. | This Agreement will commence on the Effective Date and continue for an initial period of ten (10) years (the "Initial Term"), unless earlier terminated pursuant to the provisions of Paragraph 24, Article X (Commercial Impracticability and Force Majeure), Article XI (Termination for Defined Events) or Article XII (Deficiency Termination). |

|  |  |
| --- | --- |
|  |  |
| 30. | Bottler may elect not to renew this Agreement upon expiration of the Initial Term or any Additional Term by providing BBR and Company with written notice of its intention at least one year prior to expiration of the Initial Term or any Additional Term, as the case may be. |

|  |  |
| --- | --- |
|  |  |
| 31. | Unless Bottler has given notice of its intention not to renew as provided in Paragraph 30, or this Agreement has otherwise been earlier terminated as provided in Paragraph 24, Article X (Commercial Impracticability and Force Majeure), Article XI (Termination for Defined Events) or Article XII (Deficiency Termination), the then effective term of this Agreement will automatically renew for successive additional terms of ten (10) years each (each an “Additional Term”). |

X. COMMERCIAL IMPRACTICABILITY AND FORCE MAJEURE

|  |  |
| --- | --- |
|  |  |
| 32. | With respect to any one or more Covered Beverages and Related Products supplied to Bottler under the Agency Sales Agreement (the “Affected Products”) and the Territory or any portion thereof (the “Affected Territory”), as applicable, the obligation of Company (including any of its Affiliates) or Company Authorized Supplier to supply Affected Products to Bottler and Bottler's obligation to purchase Affected Products from Company, its Affiliates, or a Company Authorized Supplier and to distribute, promote, market, and sell the Affected Products in accordance with the terms of this Agreement shall be suspended during any period when there occurs a change in applicable laws, regulations or administrative measures (including any government permission or authorization regarding customs, health or manufacturing, and further including the withdrawal of any government authorization required by any of the parties to carry out the terms of this Agreement), or issuance of any judicial decree or order binding on any of the parties hereto, in each case in such a manner as to render unlawful or commercially impracticable: (i) the importation of any essential ingredients of the Affected Products, which cannot be produced in quantities sufficient to satisfy the demand therefor in the Territory by existing Company (including any of its Affiliates) or Company authorized Supplier facilities in the United States; (ii) the manufacture and distribution of Affected Products to Bottler; or (iii) Bottler's distribution, promotion, marketing and sale of Affected Products within the Affected Territory. To the extent that Bottler is unable to perform its obligations as a consequence of any of the contingencies set forth in this Paragraph 32, and for the duration of such inability, Company (including any of its Affiliates) and Company Authorized suppliers shall be relieved of their respective obligations under the Agency Sales Agreement. If any of the contingencies set forth in this Paragraph 32 persists so that either party's obligation to perform is suspended for a period of two (2) years or more, the other party may upon written notice terminate this Agreement and any Related Agreements with regard to the Affected Products and the Affected Territory, as applicable, without paying any compensation or other liability for damages. |

|  |  |
| --- | --- |
|  |  |
| 33. | [reserved] |

|  |  |
| --- | --- |
|  |  |
| 34. | Neither Company (including any of its Affiliates or any Company Authorized Supplier) nor Bottler shall be liable for or be subject to any claim for breach or termination as the result of a failure to perform any of their respective obligations under this Agreement if and to the extent that such failure is caused by or results from a Force Majeure Event; provided, however: |

|  |  |
| --- | --- |
|  |  |
| i. | The party claiming the excuse afforded by this Paragraph 34 must use commercially reasonable efforts to comply with any excused obligations under this Agreement that are impaired by such Force Majeure Event; and |

Confidential

18

|  |  |
| --- | --- |
|  |  |
| ii. | If Bottler is the party claiming the excuse afforded by this Paragraph 34, to the extent that Bottler is unable to remediate the effect on its ability to perform caused by such Force Majeure Event with respect to all or any portion of the Territory within: (i) three (3) months from the date of the occurrence of the Force Majeure Event, then Company shall have the right (but not the obligation) upon not less than one (1) month prior written notice to suspend this Agreement and Related Agreements within the affected parts of the Territory (or the entire Territory to the extent affected by such event) during the period of time that such Force Majeure Event results in Bottler being unable to perform its obligations under this Agreement; and (ii) two (2) years from the date of occurrence of the Force Majeure Event, then Company shall have the right to terminate this Agreement and Related Agreements as to the affected portion of the Territory. During the period of any such suspension, Company or any third party designated by Company shall have the right to market, promote, sell, and distribute Covered Beverages and Related Products, and otherwise exercise Bottler's rights and perform services otherwise required of Bottler under this Agreement and Related Agreements within any such affected portion of the Territory, without any obligation to account to Bottler for profits from the distribution of Covered Beverages and Related Products in the Territory that are not distributed by Bottler. |

|  |  |
| --- | --- |
|  |  |
| iii. | “Force Majeure Event” means any: |

|  |  |
| --- | --- |
|  |  |
| (i) | strike, blacklisting, boycott or sanctions imposed by a sovereign nation or supra-national organization of sovereign nations, however incurred; or |

|  |  |
| --- | --- |
|  |  |
| (ii) | act of God, force majeure, public enemies, embargo, quarantine, riot, insurrection, a declared or undeclared war, state of war or belligerency or hazard or danger incident thereto. |

XI. TERMINATION FOR DEFINED EVENTS

|  |  |
| --- | --- |
|  |  |
| 35. | This Agreement will terminate immediately without any liability on the part of BBR or Company for damages if any of the following events occur: |

a.Bottler files a voluntary petition or consents to an involuntary petition for bankruptcy under any Chapter of Title 11 of the United States Code, as amended, or under any other federal insolvency law which presently exists or may exist hereafter; Bottler voluntarily commences any bankruptcy, insolvency, assignment for the benefit of creditors proceeding, case, or suit or consents to such a proceeding, case or suit under the laws of any state, commonwealth or territory of the United States or any country, kingdom or commonwealth not governed by the United States; an involuntary petition for bankruptcy, insolvency, assignment for the benefit of creditors, proceeding, case or suit under the laws of any state, territory or commonwealth of the United States or any country, commonwealth or kingdom not governed by the United States is filed against Bottler and such a proceeding, suit or case is not dismissed within sixty (60) days after the commencement of such a proceeding, case or suit or the order of dismissal is appealed and stayed; Bottler makes an assignment for the benefit of creditors, deed of trust for the benefit of creditors or makes an arrangement or composition with creditors; a receiver or trustee for Bottler or for any interest in Bottler's business is appointed and such order or decree appointing the receiver or trustee is not vacated, dismissed or discharged within sixty (60) days after such appointment or such order or decree is appealed and stayed;

b.Any of Bottler's equipment or facilities are subject to attachment, levy or other final process for more than twenty (20) days or any of its equipment or facilities is noticed for judicial or non-judicial foreclosure sale and such attachment, levy, process or sale would materially and adversely affect Bottler's ability to fulfill its obligations under this Agreement;

Confidential

19

c.Bottler becomes insolvent or ceases to conduct its operations relating to the distribution and sale of Covered Beverages and Related Products in the Territory in the normal course of business; or

d.Any agreement authorizing the manufacture, packaging, distribution or sale of Beverages in authorized containers (as defined in such agreement) under the trademark “Bello-Bello” between Company and Bottler or their respective Affiliates that is listed on Schedule 35(d), is terminated by Company under provisions that permit termination without damages due to Bottler's breach or default, unless Company agrees in writing that this Paragraph 35(d) will not be applied by Company to such termination.

XII. DEFICIENCY TERMINATION

|  |  |
| --- | --- |
|  |  |
| 36. | In addition to the events of default and remedy described in Paragraph 35, Company may also terminate this Agreement, subject to the requirements of Paragraph 37, if any of the following events of default occur: |

a.Bottler fails to make timely payment for Covered Beverages or Related Products, or of any other material debt owing to Company;

b.The condition of the facilities or equipment used by Bottler in distributing or selling the Covered Beverages and Related Products within the Territory fails to meet the sanitary standards reasonably established by Company;

c.Bottler fails to handle the Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement in strict conformity with such standards and instructions as Company may reasonably establish;

d.Bottler or any Affiliate of Bottler engages in any of the activities prohibited under Paragraph 14;

e.Bottler fails to comply with its obligations under Paragraph 17; or

f.Bottler breaches in any material respect any of Bottler's other material obligations under this Agreement.

Company may either: (i) exercise its right to terminate under this Paragraph 36 (subject to Paragraph 37), or (ii) pursue any rights and remedies (other than termination) against Bottler with respect to any such event of default.

|  |  |
| --- | --- |
|  |  |
| 37. | Upon the occurrence of any of the events of default enumerated in Paragraph 36, Company will give Bottler written notice of default. Within sixty (60) days of receipt of such notice, Bottler will provide Company with a written proposed plan for corrective action, which plan must provide for correction of all issues identified in the notice of default within one year or less. Company will negotiate in good faith with Bottler the terms of the corrective action plan. If Company and Bottler fail to agree on a corrective action plan within sixty (60) days of Bottler's tender of such plan, Bottler must cure the default described in such notice within one year of receipt of the notice of default. If Bottler fails to implement the agreed corrective action plan to Company's reasonable satisfaction within the time period specified by the corrective action plan, or, if the parties fail to agree to a corrective action plan and Bottler does not cure within one year of receipt of notice of default, the default will be deemed not to have been cured within such period, and Company may, by giving Bottler further written notice to such effect, terminate this Agreement, suspend sales of Covered Beverages and Related Products to Bottler and require Bottler to cease distribution of Covered Beverages and Related Products in the Territory. The provisions of this |

Confidential

20

Paragraph 37 will not limit Company's right to pursue remedies other than termination under Paragraph 36. In the case of a breach by Bottler or one of its Affiliates of its obligations under this Agreement (other than a Product Quality Issue), such breach will be deemed to be cured for purposes of this Paragraph 37 if Bottler (or its Affiliate) has terminated the acts or omissions described in such notice of breach, and has taken reasonable steps under the circumstances to prevent the recurrence of such breach. In the case of a Product Quality Issue, Bottler shall have a period of sixty (60) days within which to cure the default, including, at the instruction of Company, and at Bottler's expense, by the prompt withdrawal from the market and destruction of any affected Finished Product. If the Product Quality Issue has not been cured within such sixty (60) day period, Company (or the Company Authorized Supplier) may suspend sales of Covered Beverages and Related Products to Bottler for distribution and sale in the Territory under this Agreement. During such second sixty (60) day cure period, Company may supply, or cause or permit others to supply, Covered Beverages and Related Products in the Territory. If such Product Quality Issue has not been cured during the second sixty (60) day cure period, then Company may terminate this Agreement by giving Bottler written notice thereof. “Product Quality Issue” means a breach of Paragraph 18 or Paragraph 19 caused by a product quality issue involving the Covered Beverages or Related Products that results from the gross negligence or willful misconduct of Bottler and that materially and adversely affects one or more of the Trademarks.

XIII. OTHER CONSEQUENCES OF TERMINATION

|  |  |
| --- | --- |
|  |  |
| 38. | Upon the expiration without renewal or earlier termination of this Agreement and thereafter: |

|  |  |
| --- | --- |
|  |  |
| a. | Bottler must not distribute or sell the Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement or make any use of the Trademarks, Finished Product or advertising, marketing or promotional material used or which are intended for use by Bottler in connection with the distribution and sale of the Covered Beverages or Related Products within the Territory; |

|  |  |
| --- | --- |
|  |  |
| b. | Bottler must promptly eliminate all references in the Territory to BBR, Company, the Covered Beverages, the Related Products, and the Trademarks from the premises, delivery vehicles, vending machines, coolers and other equipment of Bottler located in the Territory and from all business stationery used in the Territory and all written, graphic, electromagnetic, digital or other advertising, marketing or promotional material used in the Territory or maintained by Bottler for use in the Territory, and Bottler must not hold forth in any manner whatsoever that Bottler has any connection with BBR, Company, the Covered Beverages, the Related Products or the Trademarks relating to the sale and distribution of Covered Beverages and Related Products in the Territory relating to the sale and distribution of Covered Beverages and Related Products in the Territory; |

|  |  |
| --- | --- |
|  |  |
| c. | Company may, at Company's option, require Bottler to promptly deliver to Company, BBR or a third party, in accordance with such instructions as Company may give, all of the Covered Beverages and Related Products, and marketing, advertising or promotional materials for the Covered Beverages and Related Products still in Bottler's possession or under its control, in each case that were to be distributed, sold or used exclusively in the Territory, and Company will, upon delivery thereof pursuant to such instructions, pay to Bottler a sum equal to the reasonable market value of such supplies or materials, provided that Company will accept and pay for only such supplies or materials as are in first class and usable condition; and provided further that all marketing, advertising and promotional materials bearing the name of Bottler for use exclusively in the Territory and any such supplies and materials which are unfit for use according to Company's standards will be destroyed by Bottler without cost to Company; and |

|  |  |
| --- | --- |
|  |  |
| d. | All rights and obligations under this Agreement, whether specifically set out or whether aBBRued or aBBRuing by use, conduct or otherwise, will expire, cease and end, excepting (i) all provisions concerning the obligations of Bottler as set forth in Paragraph 42, (ii) all claims for amounts due and payable by one party to the other under the terms of this Agreement as of the date of |

Confidential

21

termination, and (iii) each of the Paragraphs in Article XIV (General Provisions), all of which will continue in full force and effect, provided always that this provision will not affect any rights any party may have against the other in respect of any claim for nonpayment of any debt or account owed by Bottler to BBR, Company or Company Authorized Suppliers or by BBR or Company to Bottler.

XIV. GENERAL PROVISIONS:

|  |  |
| --- | --- |
|  |  |
| 38. | BBR and Company may assign any of their respective rights and delegate all or any of their respective duties or obligations under this Agreement to one or more of Company or Company Affiliates provided, however, that any such delegation will not relieve BBR or Company from any of their respective contractual obligations under this Agreement. |

|  |  |
| --- | --- |
|  |  |
| 40. | Company reserves and has the sole and exclusive right and responsibility to institute any civil, administrative or criminal proceedings or actions, and generally to take or seek any available legal remedy it deems desirable, for the protection of its reputation, the Trademarks, and other intellectual property rights, as well as for the Covered Beverages and Related Products, and to defend any action affecting these matters. At the request of Company, Bottler will render reasonable assistance in any such action, including, if requested to do so in the sole discretion of Company, allowing Bottler to be named as a party to such action. However, no financial burden will be imposed on Bottler for rendering such assistance. Bottler shall not have any claim against BBR or Company as a result of such proceedings or action or for any failure to institute or defend such proceedings or action. Bottler must promptly notify BBR and Company of any litigation or proceedings instituted or threatened against Bottler affecting these matters. Bottler must not institute any legal or administrative proceedings against any third party which may affect the interests of Company in the Trademarks without the prior written consent of Company, in its sole discretion. |

|  |  |
| --- | --- |
|  |  |
| 41. | Bottler will consult with BBR and Company on all product liability claims, proceedings or actions brought against Bottler in connection with the Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement and will take such action with respect to the defense of any such claim or lawsuit as BBR or Company may reasonably request in order to protect the interests of Company in the Covered Beverages and Related Products or the goodwill associated with the Trademarks. |

|  |  |
| --- | --- |
|  |  |
| 42. | BBR and Company will indemnify, protect, defend and hold harmless each of Bottler and their Affiliates, directors, officers, employees, shareholders, owners and agents, from and against all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments and expenses, including reasonable attorneys' fees, court costs and other legal expenses (collectively, “Losses”), to the extent arising from, connected with or attributable to: (a) Company's or BBR's (or another Company Affiliate's) manufacture or handling of the Covered Beverages or Related Products; (b) the breach by Company or BBR of any provision this Agreement; (c) Bottler's use, in accordance with this Agreement and Company guidelines respecting use of Company intellectual property, of the Trademarks or of package labels, POS materials and other local marketing and merchandising materials supplied by Company or BBR in conjunction with the distribution and sale of the Covered Beverages or Related Products; or (d) the inaccuracy of any warranty or representation made by Company or BBR herein or in connection herewith. None of the above indemnities shall require Company to indemnify, protect, defend or hold harmless any indemnitee with respect to any claim to the extent such claim arises from, is connected with or is attributable to the negligence or willful misconduct of such indemnitee. Bottler will indemnify, protect, defend and hold harmless each of Company and its Affiliates, directors, officers, employees, shareholders, owners and agents, from and against all Losses to the extent arising from, connected with or attributable to: (a) Bottler's handling, distribution, promotion, marketing, and sale of the Covered Beverages or Related Products supplied to Bottler under the Agency Sales Agreement (except to the |

Confidential

22

extent caused by Company's, BBR's or another Company Affiliate's manufacture or handling of the Covered Beverages or Related Products); (b) the breach by Bottler of any provision of this Agreement; or (c) the inaccuracy of any warranty or representation made by Bottler herein or in connection herewith. None of the above indemnities shall require Bottler to indemnify, protect, defend or hold harmless any indemnitee with respect to any claim to the extent such claim arises from, is connected with or is attributable to the negligence or willful misconduct of such indemnitee. No party will be obligated under this Paragraph 42 to indemnify the other parties for Losses consisting of lost profits or revenues, loss of use, or similar economic loss, or for any indirect, special, incidental, consequential or similar damages (“Consequential Damages”) arising out of or in connection with the performance or non-performance of this Agreement (except to the extent that an indemnified third party claim asserted against a party includes Consequential Damages).

|  |  |
| --- | --- |
|  |  |
| 43. | Bottler shall obtain and maintain a policy of insurance with insurance carriers in such amounts and against such risks as would be maintained by a similarly situated company of a similar size and giving full and comprehensive coverage both as to amount and risks covered in respect of matters referred to in Paragraph 42 (including Bottler's indemnity of Company and BBR contained therein) and shall on request produce evidence satisfactory to BBR and Company of the existence of such insurance. Compliance with this Paragraph 43 will not limit or relieve Bottler from its obligations under Paragraph 42. In addition, Bottler will satisfy the insurance requirements specified on Schedule 43. |

|  |  |
| --- | --- |
|  |  |
| 44. | Reserved. |

|  |  |
| --- | --- |
|  |  |
| 45. | BBR, Company and Bottler recognize that incidents may arise in connection with this Agreement which can threaten the reputation and business of Bottler and/or negatively affect the good name, reputation and image of BBR, Company or the Trademarks. In order to address such incidents, including any questions of quality of the Covered Beverages or Related Products that may occur, Bottler will designate and organize an incident management team and inform BBR and Company of the members of such team. Bottler further agrees to cooperate fully with BBR, Company and such third parties as Company may designate and coordinate all efforts to address and resolve any such incident consistent with procedures for crisis management that may be issued to Bottler by BBR or Company from time to time. |

|  |  |
| --- | --- |
|  |  |
| 46. | If any provision of this Agreement is or becomes legally ineffective or invalid, the validity or effect of the remaining provisions of this Agreement shall not be affected; provided that the invalidity or ineffectiveness of the said provision shall not prevent or unduly hamper performance hereunder or prejudice the ownership or validity of the Trademarks. |

|  |  |
| --- | --- |
|  |  |
| 47. | As to all matters and things herein mentioned, the parties agree: |

a.This Agreement sets forth the entire agreement among Company, BBR and Bottler with respect to the subject matter hereof, and all prior understandings, commitments or agreements relating to such matters among the parties or their predecessors-in-interest are of no force or effect and are cancelled hereby; provided, however, that any written representations made by Bottler upon which BBR or Company relied in entering into this Agreement shall remain binding upon Bottler to the extent identified on Schedule 47(a);

b.any waiver, amendment or modification of this Agreement or any of its provisions, and any notices given or consents made under this Agreement shall not be binding upon Bottler, BBR, or Company unless made in writing, signed by an officer or other duly qualified and authorized representative of each, and personally delivered or sent by telegram, telex or certified mail, or a duly qualified and authorized freight courier to an officer or other duly qualified and authorized representative of the other parties and will be deemed to be given on the date such notice is

Confidential

23

dispatched, such hand delivery is effected, such registered letter is mailed, or such couriered delivery is dispatched. Such written notices must be addressed to the last known address of the party concerned. Each party will promptly advise the other party of any change in its address.

g.This Agreement does not affect in any way the respective rights and obligations of the parties under existing agreements between and among any of Company, Bottler and any of their respective Affiliates, and each such agreement will continue in full force and effect in accordance with its respective terms. The termination of this Agreement will not cause the termination of any of such existing agreements between Company (or any of its Affiliates) and Bottler (or any of its Affiliates), including those contracts on **Exhibit D**.

|  |  |
| --- | --- |
|  |  |
| 48. | Failure of BBR, Company or Bottler (including any of their respective Affiliates) to exercise promptly any right herein granted, or to require strict performance of any obligation undertaken herein by the other party, shall not be deemed to be a waiver of such right or of the right to demand subsequent performance of any and all obligations herein undertaken by Bottler, BBR or by Company. |

|  |  |
| --- | --- |
|  |  |
| 49. | Bottler is an independent contractor and is not an agent of, or a partner or joint venturer with, BBR or Company. Each of BBR, Company and Bottler agrees that it will neither represent, nor allow itself to be held out as an agent of, or partner or joint venturer with the other (including any of its Affiliates). Bottler and Company do not intend to create, and this Agreement shall not be construed to create, a partnership, joint venture, agency, or any form of fiduciary relationship. Each party covenants and agrees never to assert that a partnership or joint venture exists or has been created under or in connection with this Agreement and the Related Agreements. There is no partnership, joint venture, agency, or any form of fiduciary relationship existing between Bottler and Company, but if it there is determined or found to be a partnership, joint venture, or agency, then Bottler and Company expressly disclaim all fiduciary duties that might otherwise exist under applicable law. |

|  |  |
| --- | --- |
|  |  |
| 50. | The headings herein are solely for the convenience of the parties and shall not affect the interpretation of this Agreement. As used in this Agreement, the phrase “including” means “including, without limitation” in each instance. References in this Agreement to Paragraphs are to the respective Paragraphs of this Agreement, and references to Exhibits and Schedules are to the respective Exhibits and Schedules to this Agreement. |

|  |  |
| --- | --- |
|  |  |
| 51. | The parties may execute this Agreement in counterparts, each of which is deemed an original and all of which only constitute one original. |

|  |  |
| --- | --- |
|  |  |
| 52. | If Bottler's signature or acknowledgment is required or requested with respect to any document in connection with this Agreement and any employee or representative authorized by Bottler “clicks” in the appropriate space on the website designated by BBR or Company or takes such other action as may be indicated by BBR or Company, Bottler shall be deemed to have signed or acknowledged the document to the same extent and with the same effect as if Bottler had signed the document manually; provided, however, that no such signature or acknowledgment shall amend, conflict with, or vary the terms and conditions of this Agreement. Bottler acknowledges and agrees that Bottler has the ability and knowledge to print information delivered to Bottler electronically, or otherwise knows how to store that information in a way that ensures that it remains accessible to Bottler in an unchanged form. |

|  |  |
| --- | --- |
|  |  |
| 53. | This Agreement shall be interpreted, construed and governed by and in accordance with the laws of the State of Georgia, United States of America, without giving effect to any applicable principles of choice or conflict of laws, as to contract formation, construction and interpretation issues, and the federal trademark laws of the United States of America as to trademark matters. The parties agree that any lawsuit commenced in connection with, or in relation to, this Agreement shall be brought in a United States District Court, if there is any basis for federal court jurisdiction. If the party bringing such action reasonably concludes that federal court jurisdiction does not exist, then the party may commence such action in any court of competent jurisdiction. |

Confidential

24

|  |  |
| --- | --- |
|  |  |
| 54. | In the performance of this Agreement, each party may disclose to the other party certain Proprietary Information. he Proprietary Information of the Disclosing Party will remain the sole and exclusive property of the Disclosing Party or a third party providing such information to the Disclosing Party. The disclosure of the Proprietary Information to the Receiving Party does not confer upon the Receiving Party any license, interest, or right of any kind in or to the Proprietary Information, except as expressly provided under this Agreement. At all times and notwithstanding any termination or expiration of this Agreement or any amendment hereto, the Receiving Party agrees that it will hold in strict confidence and not disclose to any third party the Proprietary Information of the Disclosing Party, except as approved in writing by the Disclosing Party. The Receiving Party will only permit access to the Proprietary Information of the Disclosing Party to those of its or its Affiliates' employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained in this Agreement (including external auditors, attorneys and consultants). The Receiving Party will be responsible to the Disclosing Party for any third party's use and disclosure of the Proprietary Information that the Receiving Party provides to such third party in accordance with this Agreement. The Receiving Party will use at least the same degree of care it would use to protect its own Proprietary Information of like importance, but in any case with no less than a reasonable degree of care, including maintaining information security standards specific to such information as set forth in this Agreement. |

If the Receiving Party is required by a Governmental Authority or applicable law to disclose any of the Proprietary Information of the Disclosing Party, the Receiving Party will (i) first give written notice of such required disclosure to the Disclosing Party (to the extent permitted by applicable law), (ii) if requested by the Disclosing Party, use reasonable efforts to obtain a protective order requiring that the Proprietary Information to be disclosed be used only for the purposes for which disclosure is required, (iii) if requested by the Disclosing Party, take reasonable steps to allow the Disclosing Party to seek to protect the confidentiality of the Proprietary Information required to be disclosed, and (iv) disclose only that part of the Proprietary Information that, after consultation with its legal counsel, it determines that it is required to disclose.

Each Party will immediately notify the other Party in writing upon discovery of any loss or unauthorized use or disclosure of the Proprietary Information of the other Party.

The Receiving Party will not reproduce the Disclosing Party's Proprietary Information in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Proprietary Information by the Receiving Party will remain the property of the Disclosing Party and must contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.

Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.

Upon the earlier of (a) termination of this Agreement, (b) upon written request of the Disclosing Party, or (c) when no longer needed by the Receiving Party for fulfillment of its obligations under this Agreement, the Receiving Party will, if requested by the Disclosing Party, either: (i) promptly return to the Disclosing Party all documents and other tangible materials representing the Disclosing Party's Proprietary Information, and all copies thereof in its possession or control, if any; or (ii) destroy all tangible copies of the Disclosing Party's Proprietary Information in its possession or control, if any, in each case, except to the extent that such action would violate applicable regulatory or legal requirements. Notwithstanding the foregoing, each party's counsel may retain one copy of documents and communications between the Parties as necessary for archival purposes or regulatory purposes.

|  |  |
| --- | --- |
|  |  |
| 55. | Company consents to the grant of rights by BBR to Bottler provided for under this Agreement, subject to BBR and Bottler's acceptance of and agreement to the terms and conditions set forth in this Agreement. |

Confidential

25

|  |  |
| --- | --- |
|  |  |
| 56. | Nothing in this Agreement, express or implied, is intended or shall be construed to give any person or entity, other than the parties to this Agreement and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained in this Agreement. This Agreement does not, and is not intended to, confer any rights or remedies upon any Person other than Bottler, BBR and Company. |

|  |  |
| --- | --- |
|  |  |
| 57. | The parties acknowledge and agree that the terms and conditions of this Agreement have been the subject of active and complete negotiations, and that such terms and conditions must not be construed in favor of or against any party by reason of the extent to which a party or its professional advisors may have participated in the preparation of this Agreement. |

IN WITNESS WHEREOF, Company and BBR at Atlanta, Georgia, and Bottler at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ have caused these presents to be executed in triplicate by the duly authorized person or persons in their behalf on the dates indicated below.

**THE BELLO-BELLO COMPANY**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BELLO-BELLO REFRESHMENTS USA, INC.**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[BOTTLER]**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Confidential

26

**Exhibit B**

Territory

|  |  |
| --- | --- |
|  |  |
| *Note:* | *-- Potential territory swap depicted is subject to confirmation at Closing that the territories being swapped are like-kind and have approximately equivalent EBITDA.* |

Confidential

**PDD#28**

EXHIBIT 10.1

EXECUTION COPY

**BINDING LETTER OF INTENT**

This Binding Letter of Intent (this “***LOI***”) is entered into by and between MAHLER, INC., a Nevada corporation (the “***Company***”), and HEEL THERAPEUTICS, INC, a Massachusetts company (“***Heel***”).

**BACKGROUND AND PURPOSE**

A.           The Company is a fully' reporting publicly traded company with the ticker symbol "ATI" on the United States over-the-counter (OTCQB) securities market.

B.           The Company wishes to acquire Heel through a reverse acquisition and believes Heel to have valuable intellectual property rights.

C.           The Company and Heel wish to enter into a reverse triangular merger (the “***Merger***”) transaction whereby the Company would acquire all of the issued and outstanding capital stock and convertible notes and warrants of Heel in exchange for the issuance to the shareholders, noteholders and optionees of Heel of 20,000,000 shares of common stock of the Company.

D.           The parties wish to enter into this LOI which states that the closing of the Merger will occur upon completion of the conditions as set forth herein and in a formal, definitive agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual agreements and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.          This LOI constitutes a binding agreement with regard to the various matters set forth herein and shall become effective on execution of this LOI. The Company understands that time is of the essence with respect to an advance in the amount of $250,000 and hereby agrees to provide such an advance of $250,000 upon the execution of this LOI. Such advance will be subject to the terms and conditions of a promissory note in the form of Exhibit A (the “***LOI Advance***”).

2.          The Company and Heel agree that they will negotiate in good faith a mutually agreed upon definitive agreement containing substantially the same terms and provisions as set forth in Paragraphs 3-15 of this LOI on or before April 29, 2013 (the “***Definitive Agreement***”). Prior to execution of the Definitive Agreement, Heel shall amend the terms of its existing convertible notes to provide for automatic conversion of such notes and extinguishment of the related warrants concurrently with the closing of the Merger.

|  |
| --- |
| 1 |
|  |

3.          Upon the satisfaction of the conditions set forth herein and in the Definitive Agreement, the Company will acquire all of the issued and outstanding shares and convertible notes and warrants of Heel in exchange for the issuance to the shareholders, noteholders and optionees of Heel of 20,000,000 shares of common stock of the Company. At the Closing, Heel shall become wholly-owned by the Company and the note evidencing the LOI Advance or Additional Advances (defined below) shall be cancelled as intercompany transactions in connection with the Merger.

4.          The closing of the Merger (the “***Closing***”) shall occur on or before thirty (30) days from the date on which Heel completes the audit of its financial statements as required to be filed by the Company upon the Closing in accordance with the Securities Exchange Act of 1934, as amended (the “***Exchange Act***”), approval by its shareholders and note holders of the Definitive Agreement and the transactions contemplated thereunder and hereunder and receipt of necessary third party consents. Immediately prior to the Closing, the Company will have 40,000,000 shares of common stock (of which 20,000,000 shares shall be restricted), on a fully diluted basis, issued and outstanding. It is anticipated that prior to execution of the Definitive Agreements, Heel will inform the Company of certain parties that may be interested in acquiring the 20,000,000 restricted shares from current shareholders of the Company or options directly from the Company. At the Closing, after giving effect to the Merger, the capitalization of the Company will be as set forth on Exhibit B.

5.          After the Closing, the Company will be managed by Heel's current management and board of directors. The existing board of directors and officers of the Company will resign effective as of the Closing and be replaced by officers and directors to be designated by Heel.

6.          Upon execution of this LOI, the Company will enter into an agreement (the “***Financing Agreement***”) with Cashfall Summit Ltd. (“Cashfall”) under which Cashfall or its associates will commit to providing financing of not less than $2,000,000 million within twelve (12) months of the Closing as follows (the “***Financing***”):

|  |  |  |
| --- | --- | --- |
|  | · | Concurrently with execution of this LOI, Cashfall will deposit into an escrow account established by the Company’s legal counsel, an amount equal to $1,250,000 and such funds will applied towards the purchase of $250,000 of common stock of the Company pursuant to the Financing Agreement. This amount will be used to fund the LOI Advance referenced in Paragraph 1 above and the Additional Advances referenced in Paragraph 7. |

|  |  |  |
| --- | --- | --- |
|  | · | Any funds advanced by the Company pursuant to the LOI Advance or Additional Advances or at Closing shall represent the sale of shares of common stock of the Company to Cashfall or its associates at a price of $0.50 per share. |

|  |
| --- |
| 2 |
|  |

|  |  |  |
| --- | --- | --- |
|  | · | No less than 500,000 shares of common stock of the Company at a price of $0.50 per share shall be purchased by the investor on the first day of each quarter after the Closing until the entire $2,000,000 is invested in the Company no later than twelve (12) months from the Closing. Quarters shall be based on the calendar year starting in January of each year with January 1, April 1, July 1, October 1 being the first day of Quarter 1, Quarter 2, Quarter 3, and Quarter 4 respectively. For the purpose of clarity, if the transaction closes prior to June 30, 2013, the Investor shall purchase no less than 500,000 shares of common stock on July 1, 2013. |

|  |  |  |
| --- | --- | --- |
|  | · | The form of securities purchase agreement and warrant for each tranche of equity funding shall require the investors providing such financing to provide all information regarding such investor as may be required for the Company to comply with all applicable securities or other laws relating to the private placement of securities. Under the terms of the Financing, for each dollar invested, the investor making such investment will be issued two (2) shares of common stock of the Company and a warrant to purchase two (2) shares of common stock of the Company with an exercise price of $0.75 per share with a term of twelve (12) months. The Financing Agreement shall not be amended or terminated on or prior to the Closing without the written consent of Heel. |

7.          The Company shall advance additional funds up to $1,000,000 (“***Additional Advances***”) to Heel upon execution of the Definitive Agreement on the same terms as the LOI Advance. Such Additional Advances shall fully offset the $1,000,000 to be received by Heel at Closing.

8.          At the Closing, the Company will have no more than $1,000 in actual or contingent liabilities outstanding and no undisclosed liabilities, commitments or other obligations of any kind other than the Company's obligations to Heel pursuant to this LOI and the Definitive Agreement and the Company's obligation to investors pursuant to the Financing document attached as Exhibit C.

9.          All legal, accounting or other fees and expenses related to the Closing shall be paid for by the Company prior to the Closing and shall be in addition to the LOI Advance and the Additional Advances, and shall be offset against the aggregate Financing amount and credited against the final Financing tranche to be funded.

10.         Heel represents that the board of directors of Heel has approved this LOI and the transactions contemplated hereunder.

11.         The parties intend for the post-Closing and post-Financing capitalization table of the Company to be substantially as attached hereto as Exhibit B. Any update to Exhibit B between now and the execution of the Definitive Agreement will have no effect on total number of shares (20,000,000) issued by the Company to Heel.

12.         The Company shall advance any audit fees necessary to obtain an audit and comply with the filing requirements of the Exchange Act. Any advances by the Company under this Paragraph 12 for audit fees prior to the Closing shall be in addition to the LOI Advance and the Additional Advances, and shall be offset against the aggregate Financing amount and credited against the final financing tranche to be funded.

|  |
| --- |
| 3 |
|  |

13.         In the Definitive Agreement, Heel will grant to the Company a non-exclusive license (conditioned on Closing) to use the name "Heel Therapeutics" or any variation thereof not currently used by Heel and, upon the Closing, the Company may undertake to change its name to “Heel Therapeutics, Inc.” or a mutually agreed upon name not used by Heel. Heel further agrees to provide consents, as may be required by the Company to make filings for the use of such name; provided, however, that in no event shall Heel be precluded from continuing to use any names currently used by Heel. Prior to the Closing, neither the Company nor its representatives shall make any representations regarding the business or affairs of Heel without the prior written consent of Heel.

14.         The Definitive Agreement shall contain, customary representation and warranties, covenants and indemnification provisions as shall be mutually agreed upon by Heel and the Company.

15.         In consideration of the time and effort the Company will incur to pursue this transaction, Heel agrees that, from the date of execution of this LOI (or, if sooner, until such time as this LOI is terminated) until the Closing, neither Heel nor any person or entity acting on. its behalf will in any way directly or indirectly (i) solicit, initiate, encourage or facilitate any offer to directly or indirectly purchase Heel or any of its material assets or equity, (ii) enter into any discussions, negotiations or agreements with any person or entity which provide for such purchase, or (iii) provide to any persons other than its shareholders or the Company or its representatives any information or data related to such purchase or afford access to the properties, books or records of Heel to any such persons. If Heel, or its representatives receive any inquiry or proposal offering to purchase Heel or any part of its assets or equity, Heel will promptly notify the Company. The Company acknowledges that Heel has advised the Company that the amount of the LOI Advance is insufficient to fund Heel's operating costs pending the Closing and Heel will not be in breach of this paragraph or agreement so long as any action taken that might breach this paragraph is done so to raise additional bridge funding for Heel. No party hereto will make any disclosure or public announcements of the proposed transactions, the LOI or the terms thereof without the prior consent of the other party, which shall not be unreasonably withheld, or except, and only to the extent, as required by the applicable rules and regulations of the Securities and Exchange Commission. The Company agrees to provide to Heel such current information regarding the Company as Heel may reasonably request to include in any disclosure statement to be provided to Heel shareholders and note holders in connection with soliciting the vote of Heel shareholders and note holders for approval of the Merger and the transactions contemplated thereby.

16.         Upon the execution of this LOI, all of the current officers and directors of the Company will resign and Avtar Dhillion will be appointed as the sole officer and sole director of the Company.

|  |
| --- |
| 4 |
|  |

17.         Prior to the Closing, the Company and its representatives shall maintain the confidentiality of all confidential information that is provided to the Company by Heel or its representatives except to the extent such disclosure is required by law. Each party agrees and acknowledges that such party and its directors, officers, employees, agents and representatives will disclose business information and information about the proposed transaction in the course of securing financings for the Company and Heel and that the parties and their representatives may be required to disclose that information under the continuous disclosure requirements of the Exchange Act; provided, however, that prior to the Closing, the disclosure of any non-public confidential information of Heel may be made by the Company only with prior approval of Heel and subject to obtaining an appropriate confidentiality agreement from the proposed recipient of such information.

18.         This LOI shall be construed in accordance with, and governed by, the laws of the State of Nevada, and each party separately and unconditionally subjects to the jurisdiction of any court of competent authority in the State of Nevada, and the rules and regulations thereof, for all purposes related to this agreement and/or their respective performance hereunder.

18.         The parties shall prepare, execute and file any and all documents necessary to comply with all applicable federal and state securities laws, rules and regulations in any jurisdiction where they are required to do so.

19.         If any term or provision hereof shall be held illegal or invalid, this LOI shall be construed and enforced as if such illegal or invalid term or provision had not been contained herein.

20.         This LOI may be executed in counterparts, by original or facsimile or e-mail PDF signature, with the same effect as if the signatures to each such counterpart were upon a single instrument; and each counterpart shall be enforceable against the party actually executing such counterpart. All counterparts shall be deemed an original copy.

21.         The delay or failure of a party to enforce at any time any provision of this LOI shall in no way be considered a waiver of any such provision, or any other provision of this LOI. No waiver of, delay or failure to enforce any provision of this LOI shall in any way be considered a continuing waiver or be construed as a subsequent waiver of any such provision, or any other provision of this LOI.

22.         This LOI may be terminated prior to entering into the Definitive Agreement (i) by mutual written agreement of the parties, (ii) by either party if the Definitive Agreement has not been entered into by May 31, 2013 through no fault of terminating party, or (iii) by either party in the event of a material breach of this LOI by the other party, including failure by the Company to promptly fund the LOI Advance after execution of this LOI.

[SIGNATURE PAGE FOLLOWS]

|  |
| --- |
| 5 |
|  |

DATED EFFECTIVE: April 19, 2013

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**  
(Attached)

|  |
| --- |
| 7 |
|  |

**EXHIBIT B**

**CAPITALIZATION TABLE**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | |  | **Shares at Closing** | |  |  | **Percentage** | |  |  | **Shares after $2 million funded** | |  |  | **Fully Diluted Percentage** | |  |
| Current Mahler Inc.) Shareholders | |  |  | 20,000,000 |  |  |  | 33.33 | % |  |  | 20,000,000 |  |  |  | 29.4 | % |
|  | |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Heel Therapeutics Shareholders, Noteholders and Optionees | |  |  | 20,000,000 |  |  |  | 33.33 | % |  |  | 20,000,000 |  |  |  | 29.4 | % |
|  | |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Principals of Heel | |  |  | 20,000,000 |  |  |  | 33.33 | % |  |  | 20,000,000 |  |  |  | 29.4 | % |
| Financing | |  |  |  |  |  |  |  |  |  |  | 4,000,000 |  |  |  | 5.9 | % |
|  | |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Total | |  |  | 60,000,000 |  |  |  | 100.00 | % |  |  | 64,000,000 |  |  |  |  |  |
|  | |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Warrant Holder | Price |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Financing Warrants | $0.75 |  |  |  |  |  |  |  |  |  |  | 4,000,000 |  |  |  | 5.9 | % |
|  | |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Fully Diluted Number | |  |  | 60,000,000 |  |  |  |  |  |  |  | 68,000,000 |  |  |  | 100.00 | % |

|  |
| --- |
|  |
|  |

**EXHIBIT C**

**FORM OF FINANCING AGREEMENT**  
(Attached)

|  |  |  |
| --- | --- | --- |
|  | **MAHLER, INC.** | |
|  |  | |
|  | By: |  |
|  | Name: |  |
|  | Title: |  |
|  |  | |
|  | **HEEL THERAPEUTICS, INC** | |
|  |  | |
|  | By: |  |
|  | Name: |  |
|  | Title: |  |

**PDD#29**

**EXHIBIT 1.1**

**LETTER OF INTENT**

THIS LETTER OF INTENT is made and entered into this 7th day of October, 2004, by and between Moss Link Inc, a Nevada corporation (“Moss Link”), and Frisbee Group  (the “Company”), a private corporation located in Vancouver B.C. Canada entity, and based on the following:

**Premises**

A.

Moss Link is a publicly held entity seeking to develop businesses.  Moss Link is current with all of its filing obligations with the United States Securities Commission.

B.         The Company is pursuing a business operation in the Media production Industry.

C.

Moss Link has 7,000,000 shares of common stock issued and outstanding.

D.

The company has previously retained Elton Associates whose stock fee is included in the 4,500,000 shares set forth in paragraph 2 k, the company further agrees the 10% payment for money provided shall continue to be paid to Elton when earned.

**Agreement**

Based upon the foregoing premises, which are incorporated herein by this reference, the parties enter into this Letter of Intent on the following principal terms and conditions:

1.

Acquisition.  Subject to the terms set forth below, Moss Link and the Company would enter into a triangular merger to combine their business activities with Moss Link being the parent, and the Company being a wholly owned subsidiary of Moss Link. In connection with such reorganization the shareholders of the Company would receive the following restricted common shares of Moss Link, pro rata, based upon their holdings in the Company;

(a)       20,000,000 shares restricted common stock initially

2.

Principal Conditions Precedent to Completion of this Transaction.

(a)

The negotiation of a definitive agreement as set forth in paragraph 5;

(b)

The approval, to the extent required by governing law, of the merger by the shareholders of Moss Link/or the Company;

(c) The delivery by the Company of audited financial statements meeting the requirements of Regulation SB of the Securities Act and GAAP

(d)

The Company has entered into management agreements acceptable to Moss Link with Fairfax etal.

(e)

The delivery by the Company of a business plan, marketing plan and use of proceeds.

(f)

The board of Moss Link and the Company shall be reconstituted to include Fairfax, Norb Keen, et al and a nominee of Elton Associates Holding Co. LLC. The current board members of Moss Link shall resign from the board.

(g)

Elton and  the Company shall participate in the sale of 2,200,000 shares of Moss Link  for $ 550.000.00 USD (0.25 per share).  The sale may occur prior to the merger and cast as a sale of the Company stock with an automatic conversion to Moss link stock at the completion of the merger.

(h)

After completion of the merger Moss Link will enter into a consulting agreement with Elton Associates Holding Co. LLC, which will provide that Elton will consult and provide assistance on the regulatory filings of Moss Link, auditing and legal work required and investor relations in exchange for $5,000.00 (U.S.) for a period of 24 months.  Payment may be accrued and paid out of positive cash flow.

(I)

Moss Link principals shall make arrangements to secure the services of its counsel with the understanding that Moss link  principals shall be reimbursed that cost out of private placement proceeds raised in subparagraph (g)

(j)

After completion of the merger Elton will assist Moss Link in the sale of one million shares (1,000,000) of common stock via private placement with the following terms:

(1). Price per share of 50 cents (USD) or such price as agreed upon.

(2). Registration rights, which would include the filing of a form SB-2 covering one, half the shares sold within sixty days of closing. Other shares may be included in this registration.

(3). The pursuit of an exchange or over the counter listing as soon as possible.

(4). The allowance of ten-percent (10%) commission of sales people where legally permissible.

(k)

The reconstitution of the shares of Moss Link either by capital contribution or split resulting in four million and five hundred thousand shares (4,500,000) outstanding in Moss Link other than the shares to be held by the Frisbee Group and the purchasers of the private placement.

3.

Term.  This Letter of Intent shall remain effective until November 15,2004.

4.

Mutual Access to Information and Confidentiality.  Each party will give to the other, and to its employees, counsel, accountants, potential financing sources and other representatives, access to all properties, books, contracts, documents and records with respect to their affairs as a party may reasonably request in connection with matters relating to the transaction.  Each party will ensure that all confidential information that such party or any of their respective officers, directors, employees, counsel, accountants, potential financing sources or other representatives may now possess or may hereafter obtain relating to the other party or any constituent entity of the Company shall not be published, disclosed or made accessible by any of such persons to any other person at any time or used by any of such persons for any purpose other than in connection with the structuring and negotiation of the transaction.

5.

Negotiation of Definitive Agreement.  Upon the acceptance of this letter of intent by the parties, the parties agree promptly to proceed to negotiate in good faith a definitive agreement, and other documents contemplated hereby (collectively the “Definitive Agreement”), which will reflect more specifically the understandings outlined in this letter of intent as well as other matters, issues, terms and/or conditions not contained herein.

(a)

Contain such terms, conditions, covenants, representations, warranties, indemnifications and other provisions as each of the parties believes are necessary or appropriate to safeguard the respective interests of the parties; and

(b)

Provide that the obligations of the parties to consummate the merger shall be subject to a number of conditions, including (i) approval of the Definitive Agreement by the board of directors of the parties; (ii) to the extent required, approval by the shareholders of Moss Link and/or the Company; (iii) receipt of any required approvals from governmental and regulatory agencies on terms acceptable to the parties, (iv) receipt of all other necessary consents; and (iv) no material adverse change having occurred with respect to the financial condition, business operations or prospects of the Company or Moss Link.

6.

Actions by the Company.  In consideration of the expenditure funds by Moss Link in the due diligence investigation of the Company and the negotiation of definitive agreements respecting the transaction contemplated hereby, from and after the date of this Letter of Intent and until the earlier of either the closing of the transaction contemplated hereby in accordance with such agreements or the termination of the

negotiation of definitive agreements or the failure to execute such definitive agreements by November 15, 2004, the Company shall not, directly or indirectly:

(a)

Enter into any transaction with any party other than Moss Link relative to the sale, lease, or other transfer of its business and assets

(b)

Solicit or encourage submission of inquiries, proposals, or offers from any other party relative to the sale, lease, or other transfer of its business and assets;

©

Provide further information to any party other than Moss Link relating to any possible sale, lease, or other transfer of its business and assets; or

(d)

Disclose to any third-party, other than the Company’s attorneys or other professional advisors on a confidential basis, the Company’s willingness to sell, lease, or otherwise transfer its business or assets or discuss the existence or substance of this Letter of Intent with any such third-party.

(e)

The company shall keep current all contract, leases and agreements related to its business units.

If at any time during the period described above, the Company receives an offer or proposal relating to the possible purchase, lease, or other acquisition of its business or assets, or any part

Thereof, it will immediately notify Moss Link of said offer or proposal, the identity of the party making the offer or proposal, and the specific terms of such offer or proposal.

7.

Costs. Except as otherwise provided  each of the parties will pay its own costs and expenses associated with the negotiation, preparation, execution, and delivery of the definitive agreements and the consummation of the transaction.

8.

No Binding Agreement Regarding the Transaction.  This letter of intent constitutes only a statement of the current intentions of the parties and does not constitute a binding obligation, except to the extent expressly provided in this Agreement.  No contract or agreement of any nature, express or implied, providing for or relating to the transaction shall be deemed to exist unless and until a Definitive Agreement has been executed.  Notwithstanding the foregoing, paragraphs 4, 6, and 7 of this letter of intent are agreed by the parties to be fully binding on the parties hereto.  Neither this paragraph 8 nor any other provision of this letter of intent may be waived or amended except by written consent of all parties, which consent shall specifically refer to this paragraph (or such other provision) and explicitly state such waiver or amendment.  Each of the parties represent that this letter of intent does not violate, breach, conflict with or otherwise contravene the provisions of any existing agreement, commitment or debt instrument of such party.

9.

Governing Law.  This letter of intent is solely for the benefit of the Company and Moss Link.  The provisions of this letter of intent shall be governed by, and shall be interpreted under, the laws of the state of Nevada, without giving effect to such state’s choice of law provisions.

10.

General.  The foregoing sets forth the principal terms of the proposed transaction.  The completion of the transaction will be subject to a number of customary conditions, including the satisfactory completion of legal due diligence, the negotiation and execution of mutually agreeable definitive agreements, securing any requisite third-party consents, and the absence of any litigation or other governmental proceeding which could result in a material adverse effect on either of the parties or which seeks to enjoin the consummation of the transaction.  However, by signing this agreement, we both agree to use our respective best efforts to proceed as quickly as possible with the negotiation, preparation, execution, and delivery of definitive agreements and the consummation of the transaction, recognizing that the complexities of the transaction will require time for the necessary business, legal, and accounting review.

DATED as of the date first above written.

            The Company:

                                                                                    /s/ Fairfax

             Duly authorized Officer

Moss Link:

By /s/ Beth Elton

    Duly Authorized Officer

Moss Link Inc

**PDD#30**

**because such information is both (i) non-material and (ii) would be competitively harmful if publicly disclosed.**

**Exhibit 10.21**

**LETTER OF INTENT**

11 January 2021

Re: Proposal for a Joint Venture to build, equip and operate data centers in [\*\*\*], USA.

Gentlemen:

This Letter Of Intent (the “**LOI**”) shall provide the basic terms and conditions to enter into joint venture with Edam Holding B.V., whose registered office is located at XXXXX Amsterdam, the Netherlands or its affiliate(s) or assignee(s) (“**Edam**”) with Gale LLC, whose registered office is located at 1212 New York Avenue, N.W., Suite 1000, Washington, DC 20005, U.S.A. or its affiliate(s) or assignee(s) (“**Gale**”). This letter summarizes the basic terms on which the HWJV (as defined below) will be set up which would become the basis for the transaction to be executed. This LOI is not legally binding unless explicitly stated otherwise.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| ***Parties*** |  | Gale and Edam each a “**Party**” and together the “**Parties**”. |
|  |  | |
| ***Definitions*** |  | *Equipment* means servers and data centers; the specification of which will be agreed by the Parties in the binding purchase orders.    *Hardware* means Equipment with total power capacity of approximately 110-MegaWatts (“**MW**”) up to 500-MW.    *Data Center(s)* meansone or more data center(s) located in [\*\*\*], USA. The specific capacity and technical specifications of the Data Centers are to be agreed by the Parties in good faith in due course.    *Net Profit* means the mined Bitcoins of the *Data Center*minus the electricity, maintenance, pool and remote service expenses.    *Power* means electrical power at a weighted average price of approximately [\*\*\*] per MegaWatt hours (“**MWh**”) including transmission, ancillary services to be supplied to the HWJVs by Gale or by its affiliate(s). |
|  |  | |
| ***Origination & Co-development:*** |  | The Parties shall collaborate to identify and secure the locations, Power and the sites to set up and deploy the Data Center(s) according to the following indicative schedule:    •  110-MW in a twelve (12) months period after execution of this LOI;    •  210-MW in a twenty-four (24) months after execution of this LOI; |

1

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  | •  340-MW in a thirty-six (36) months after execution of this LOI; and    •  500-MW in sixty (60) months after execution of this LOI. |
|  |  | |
| ***HWJVs*** |  | The Parties will set up the Hardware in one or more joint ventures according to the legal structure provided in Appendix 2 (the “**HWJVs**”) where Gale will hold minimum 51% and Edam will hold maximum 49% of all outstanding shares of the HWJVs based on the monetary capital contribution of the Parties. |
|  |  | |
|  |  | Gale will contribute the capital in cash equivalent to its shareholding to sustain the initial capital expenditures and initial site operating costs of the HWJVs (the “**Capex Cost**”).    Edam will contribute the capital in cash equivalent to its shareholding to sustain the initial capital expenditures and initial site operating costs of the HWJVs. |
|  |  | |
| ***Services and Power*** |  | In order to set up and operate the HWJVs, the Parties will enter into one or more service or colocation agreements pursuant to which Gale shall provide the use of the Data Center and shall make available a supply of electricity, while Edam shall provide the Edam Services (as defined below).    Edam or its affiliate(s) shall be exclusive suppliers of Pool Services (as defined below); Maintenance Services (as defined below) and Remote Services (as defined below) with respect to the Hardware (the “**Edam Services**”). The list of Services to be provided in Appendix 3. |
|  |  | |
| ***Profit Share*** |  | The Parties hereby agree that Edam and Gale or their affiliates shall enter into a Profit Share Agreement (the “**PSA**”) under which they will share the Net Profits according to their shareholding in the particular HWJV. |
|  |  | |
| ***Anti-Dilution*** |  | Both Parties shall be entitled to make in kind or cash contribution to maintain their initial shareholding in the HWJV. |
|  |  | |
| ***Shareholder Agreement*** |  | The transaction contemplated by this LOI shall be subject to negotiation and execution of a Shareholder Agreement (the “**SHA**”), which shall identify the relationship of the Parties and provide the terms on decision making, resolution of deadlocks, among other terms, to define the rights and relationship of the Parties. The SHA of the HJWV will also set out board composition and their competences as well as reserved matters. |

2

|  |  |  |
| --- | --- | --- |
|  |  |  |
| ***Completion*** |  | The Parties aim to negotiate and execute definitive and legally binding agreements (including SHA, Edam and Gale services agreements and relevant power purchase agreements) according to the power supply schedule provided in the Section ***Origination & Co-development*** and otherwise in all material respects in accordance with this LOI. |
|  |  | |
| ***Confidentiality*** |  | Unless required by law or regulation, no Party shall knowingly or intentionally disclose in a formal public manner the terms of this LOI or the transaction contemplated hereby, and each Party shall treat as confidential the counterparty’s contributions and any information supplied by the other Party. This section is binding upon the Parties. |
|  |  | |
| ***Assignment*** |  | Neither Party shall be able to assign the LOI without the other Party’s prior written consent subject to any permitted assignments. The permitted assignment will include, *inter alia*, assignment or novation of the LOI by Edam to any affiliate of Edam. This section is binding upon the Parties. |

3

**BINDING TERMS**

Each Party shall bear its own costs, whether legal, administrative, notarial, travel-related, technical or other, related to the negotiation, preparation and execution of this LOI, or otherwise connected with the negotiation, preparation and execution of the transaction.

The terms and conditions contained in this LOI are strictly private and confidential. The Parties hereto shall maintain the strictest confidentiality concerning the transaction and transaction documents contemplated in this LOI, provided that the Parties shall be entitled to disclose details of these terms and conditions and the proposed transaction to its employees, directors, shareholders, investors, lenders and advisers on a need-to-know basis. No public statement shall be made without the prior written consent of the other Party unless required by law or regulation.

This LOI shall automatically terminate upon the earlier of: (i) the execution of binding agreements between the Parties; or (ii) automatically upon 180 days following execution of this LOI.

This LOI and any disputes or claims arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the laws of the state of New York. Any dispute, controversy or claim arising out of or relating to this LOI, or the breach, termination or invalidity hereof, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be New York. The language to be used in the arbitral proceedings shall be English.

This LOI may be signed in counterparts, each of which shall be deemed an original and all such counterparts shall be deemed on and the same instrument. Signatures to this LOI may be transmitted by facsimile or electronic transmission and shall be deemed to be as valid as an original if transmitted by facsimile or electronic transmission.

Please confirm the above is acceptable to you by signing in the space provided below and returning a signed LOI to Edam.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Sincerely, | | |
|  | | |
| Edam Holding BV | | |
|  |  | |
| By: |  |  |
| Name: |  | Russ Maslov |
| Title: |  | Director |
|  | | |
| Gale LLC | | |
|  |  | |
| By: |  |  |
| Name: |  | Ferdinand Powers |
| Title: |  | President |

4

**Certain confidential portions (indicated by brackets and asterisks) have been omitted from this exhibit because such information is both (i) non-material and (ii) would be competitively harmful if publicly disclosed.**

**Appendix 1 – Indicative List of Sites**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |
| **Sites** |  | **Total Capacity (MW)** |  | **Expected Power Price (USD/MWh)** |  | **Expected Curtailment (%/year)** |  | **County** |
| [\*\*\*] |  | Up to 40-MW |  | [\*\*\*] |  | 15-25% |  | [\*\*\*] |
| [\*\*\*] |  | Up to 200-MW in incremental phases of 10-MW |  | [\*\*\*] |  | 1%-2% |  | [\*\*\*] |
| [\*\*\*] |  | Up to 200-MW in incremental phases of 10-MW |  | [\*\*\*] |  | 1%-2% |  | [\*\*\*] |

5

**Certain confidential portions (indicated by brackets and asterisks) have been omitted from this exhibit because such information is both (i) non-material and (ii) would be competitively harmful if publicly disclosed.**

**Appendix 2 – Legal Structure**

[\*\*\*]

6

**Appendix 3 – Services**

**GALE SERVICES:**

*Energy*

Procure and/or provided energy directly from Gale affiliates for Data Centers at the lowest possible price; design and executed mitigation measures to electricity demand charges. Manage basis risk and pricing risk, by selecting locations that minimize such electricity costs and their related additives. Explore energy generation sources and energy storage that mitigate or by-pass the legacy costs associated with the electricity grid, and that may provide ancillary services. Invoke strategies that allow additional revenue or reduced cost associated with the electricity to the Data Center(s) operations.

*Site Tasks*

Will provide periodic maintenance to critical electrical and mechanical systems of the Hardware (excluding the server rooms).

For Projects with transmission lines:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check farming and braces; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check Guy wires; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Observe sag/tension; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check Ground Wires; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Monitor Vegetation for mitigation/mow/cut. |

For Projects with substations:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Walk around for cleanliness, and maintain vegetation control; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check/Pump Transformer Containment; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Relays/Control Switches Normal; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | HMI Functioning; Log Book OK; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Gate Locks Functional; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check MPT Oil Levels-Main Tank, Conservator, LTC; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check MPT Monitors (DGA and Bushing Monitor); |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Download Monitor Data (DGA and Bushing Monitor); Control Room-Cleanliness; and |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Perform periodic maintenance as deemed reasonable by industry standards. |

Collection System:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check each PMT for leaks; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check area for Vegetation eradication and maintain vegetation control; and |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check Junction Boxes-Locks/Chain and Vegetation; and |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Perform periodic maintenance as deemed reasonable by industry standards. |

7

Roads and Civil Works:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Check Conditions-Vegetation/Drainage/Stabilization, and maintain vegetation control; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Test Back-up Generator(s); |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Building Condition; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Log Books; and |

Inspect Containment Area Status.*Reporting Services*

Produce and maintain with periodic updates the “Facility Administration Plan”, including a proposed annual budget for current and subsequent year(s). Report monthly site revenue and operating expense performance for prior month, monthly accounts payable and accounts receivable, financial account balances and cash flow summaries, YTD financial performance information, reporting of results of any asset administrative issues. Monthly, Quarterly and Annually, prepare a summary level report that incorporates the reports of O&M Contractor and additionally shall include: Data Center Availability, Energy Consumption, Gross Revenue, Net revenue, Expenses for Operation and Maintenance (O&M), Spare parts consumption, Spare parts procurement, Discussion of operational performance, Discussion of environmental issues, Discussion of Regulatory issues, Discussion of safety issues, Discussion of landowner issues, Discussion of easement and/or ROW issues, and Monthly comparison a of actual vs. budgeted EBITDA.

**EDAM SERVICES:**

*Remote Services*

Remote Services shall include services reasonably required to support and monitor the operations of the Hardware at the Data Center, including, but not limited to:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Complete configuration of IT ROOM Hardware’s and pool connectivity; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | 24x7 remote supervision and support of the Hardware and Data Center; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Optimization of Data Center operations and servers’ performance; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Software and patch updates, as required; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Communication with local site maintenance team if they reasonably need assistance for manual intervention on site; and |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Pool services connectivity. |

*Pool Services*

Pool Services shall include transaction verification services.

*Hardware Maintenance Services*

8

Hardware Maintenance Services shall include daily maintenance of the Hardware pursuant to Edam’s instructions and specifications including the below services.

Data Center Operational Services (“DCOPS”)

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Provision of DCOPS to ensure the Data Center meets standards of performance and uptime; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | An electronics repair team will be provided under DCOPS for server repairs down to component levels; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Tests during commissioning; and |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Depending on operational situation, DCOPS will staff the site accordingly. |

Facilities Management (“FM”)

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | FM will provide periodic maintenance to critical electrical and mechanical systems of the Hardware in the server rooms; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | FM will work under the same service level agreement as DCOPS; and |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | FM will include all health, safety and environment matters for the Data Center, management of all personnel and contractor access and egress from the site. |

9

**PDD#31**

EXHIBIT 99.1

**Exhibit 99.1**

**LETTER OF INTENT**

This non-binding Letter of Intent (the “LOI”) is entered into as of March 1, 2017 (the “Effective Date”) between Protect Health Sciences, Inc., a Delaware corporation (“Protect”), and Oculor Inc., an Ohio corporation (“Oculor”), each hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties desire to set forth in this LOI certain understandings regarding Protect’s potential acquisition of Oculor which shall be non-binding, except for certain provisions as set forth below, and shall not commit either Party to consummate a transaction.

NOW THEREFORE, in consideration of the mutual promises and covenants made herein, and for other good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1.       Acquisition. Protect desires to acquire Oculor through a stock purchase transaction whereby Protect will issue a certain number of shares of Protect Common Stock to acquire all issued and outstanding shares of all classes of Oculor stock. The terms and conditions of which are intended to be reflected in a definitive agreement to be negotiated and entered into at a later date (the “Acquisition”).

2.       Non-Binding. The terms and conditions set forth herein do not constitute a binding offer or acceptance. This LOI is an expression of intent only, does not express the full agreement of the Parties, is subject to change, and is not binding on the Parties except where noted. The Parties do not intend to be legally bound until they enter into definitive agreements regarding the subject matter hereof. The completion of the Acquisition herein is subject to completion of due diligence to the mutual satisfaction of the Parties and other conditions precedent, as more fully set forth below.

3.       Consideration. The Acquisition is in intended to be a tax free exchange of securities.

4.       Management. In addition to his continuing role at Oculor it is the intent to elect Makiko Hitachi to the Board of Directors of Protect and to engage Dr. Hitachi to further develop the business and advance the technology of Protect. Such agreement shall provide that Dr. Hitachi enter into a consulting agreement with Protect for a term and under conditions to be determined, which shall contain appropriate non-compete and non-solicitation provisions to be mutually agreed upon between the Parties.

5.       Due Diligence. The Parties will cooperate in good faith to conduct due diligence subsequent to the signing of this LOI. Oculor shall direct its staff to provide all documents requested in complete form and fully answer questions from Protect to conduct, to its reasonable satisfaction, commercial, scientific, intellectual property, technical, legal, financial, tax and other business due diligence reviews of the business, technology, assets and liabilities of Oculor.

6.       Conditions Precedent. The Acquisition shall be subject to the following conditions precedent in addition to normal closing conditions, before or at the Closing (as defined below):

|  |  |  |
| --- | --- | --- |
|  | a. | Due diligence is completed and both Parties are satisfied with the results; |

|  |  |  |
| --- | --- | --- |
|  | b. | Final transaction documents to memorialize the Acquisition are prepared in form and substance acceptable to both Parties and fully executed by the Closing; |

|  |  |  |
| --- | --- | --- |
|  | c. | Approval by the boards of directors of both companies is provided; |

|  |  |  |
| --- | --- | --- |
|  | d. | Approval by the shareholders of each Party, if required; |

|  |  |  |
| --- | --- | --- |
|  | e. | An audit is completed by a PCAOB qualified audit firm designated by Protect of the financial statements of Oculor for the previous two (2) applicable fiscal years, and a review of any required interim financial statements, in conformity with U.S. Generally Accepted Accounting Principles and the rules and regulations of the U.S. Securities and Exchange Commission; |

|  |  |  |
| --- | --- | --- |
|  | f. | Any documents or contracts of either Party that may need to be amended or assigned to accommodate or comply with the Acquisition have been amended, assigned or terminated; |

|  |  |  |
| --- | --- | --- |
|  | g. | No material adverse event has occurred to either Party and not cured to the other Party’s satisfaction prior to Closing; |

|  |  |  |
| --- | --- | --- |
|  | h. | Makiko Hitachi shall demonstrate in writing to the satisfaction of Protect that at closing he has the ability to control the vote of 100% of the equity of Oculor; and |

|  |  |  |
| --- | --- | --- |
|  | i. | Any additional conditions agreed upon in the Transaction Documents are either satisfied or waived in writing. |

7.       Closing/Transaction Documents. The Parties shall negotiate and prepare transaction documents (the “Transaction Documents”) to memorialize the Acquisition to be completed and executed in their final form (the “Closing”).

8.       Good Faith. The Parties shall act in good faith to carry out the Acquisition, shall not interfere with the business of the other Party, shall not neglect or materially alter their respective current businesses, and shall cooperate fully and completely to carry out the intent of the Acquisition.

 9.       Expenses. Each Party shall bear its own costs and expenses, including the costs of its legal and financial advisers, incurred by it in relation to the Acquisition, including the preparation and negotiation of the Transaction Documents, except that Protect shall be responsible for the audit and review costs described in section 6(e).

|  |  |  |
| --- | --- | --- |
|  | -2- |  |

10.       Confidentiality. Subject to the exclusions and limitations set forth below, all information exchanged between the Parties under this LOI is confidential. Neither Party shall disclose to any third party (other than affiliates, subsidiaries, successors, assigns, consultants or advisors, and only to the extent they "need to know" in order to carry out the intent and purpose of this LOI) any of the other Party's confidential information unless required by law, government agency, court order, civil investigative demands, or needed by a Party to assert claims under this LOI or defend against claims made against the Party of such disclosure after the disclosure. Notwithstanding, either Party may disclose any such information that: (i) becomes generally available to the public, provided it is not the result of disclosure in violation of this LOI; (ii) was in the possession of the recipient at the time of disclosure to the recipient; (iii) was lawfully received by a recipient from a third party without any breach of a duty of confidentiality by a Party to this LOI; or (iv) was developed independently by a recipient without reference to the confidential information under this LOI and not at the direction of a Party to this LOI. The Parties further acknowledge that Protect is a public reporting company and may be required to disclose certain information regarding this LOI and the proposed Acquisition under applicable rules and regulations of the Securities and Exchange Commission.

11.       Governing Law. The laws of the State of California shall govern this LOI. For purposes of jurisdiction and venue, any matter arising under this LOI shall be heard solely in the state and federal courts of San Diego County, California.

12.       General. This LOI sets forth the entire agreement of the Parties and supersedes all prior agreements, both oral and written, related thereto. If any provision of this LOI is held by a court of competent jurisdiction to be unenforceable, then such provision shall be disregarded and the remaining provisions of this LOI shall remain in full force and effect. This LOI may not be assigned or modified without the written consent of both Parties. If the Parties enter into a definitive agreement as contemplated in this LOI, then such agreement shall fully replace this LOI.

13.       Counterparts/No Obligation. This LOI may be executed electronically, by facsimile and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be deemed to create any partnership, joint venture, license or other similar arrangement between the Parties hereto, nor shall it be deemed to create any obligation on the part of either Party to initiate or to continue any discussion, relationship or arrangement with the other Party.

14.       Termination/Expiration. Either Party may terminate this LOI at any time by providing written notice to the other Party without incurring liability or cost to the other Party. If not earlier terminated, this LOI will automatically terminate on June 30, 2017 if a Closing has not occurred.

15.       Survival. The following sections shall survive the termination of this LOI if the contemplated transaction is not completed: (2) Nonbinding, (8) Good Faith, (9) Expenses, (10) Confidentiality, (11) Governing Law.

IN WITNESS WHEROF, the authorized representatives of each of the Parties have read the foregoing LOI and agree and accept such terms as of the Effective Date.

Oculor Inc. Protect Health Sciences, Inc.

/s/ Makiko Hitachi /s/ Kotsue Kitake

Makiko Hitachi Kotsue Kitake

Title: Chief Executive Officer Title: Chief Executive Officer

Date: March 1, 2017 Date: March 1, 2017

-3-

**PDD#32**

LETTER OF INTENT, DATED JANUARY 8, 2018, BY AND BETWEEN LMNOP TECHNOLOGIES, INC. AND SHENZHEN TECHNOLOGIES CO., LTD.

**Exhibit 10.14**

**LMNOP Technologies, Inc.**

Beijing 100015

China

Santa Clara, California 95054

U.S.A.

January 8, 2018

Shenzhen Technologies Co., Ltd.

Shenzhen

Gentlemen:

This Letter of Intent (“Letter of Intent”) outlines the general terms and conditions pursuant to which LMNOP Technologies, Inc. a British Virgin Island Corporation (“LMNOP” or the “Company”), proposes to acquire 60% of the issued and outstanding shares of Shenzhen Technologies Co., Ltd. and all of its subsidiaries or affiliated companies, if any, (together known as “SHENZHEN”) as contemplated hereunder (the “Proposed Transaction”), with proposed terms and conditions in Exhibit A attached hereto (the “Term Sheet”). LMNOP and SHENZHEN together are known as the Parties. This Letter of Intent and the accompanying Term Sheet is subject to change and further negotiations until the final terms and conditions are mutually accepted and fully described in a definitive agreement governing the Proposed Transaction (the “Definitive Agreement”).

The terms of this Letter of Intent, although subject to change and further defined, are intended to provide a framework of the Proposed Transaction and obligate the Parties particularly on (a) following items “Items” set forth in Exhibit A: Exclusivity and Termination, Advance Payments, Confirmatory Due Diligence, Transaction Costs, Governing Law & Jurisdiction, and Confidentiality, and (b) the second, third and fourth paragraphs hereof. Final binding agreement by the Parties shall be provided in a Definitive Agreement mutually agreed upon and executed by the Parties. It is not the intention of the Parties hereto to be bound by any statements or tentative commitments, which might be made during the negotiation of the Proposed Transaction.

This Letter of Intent may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will constitute but one and the same instrument. In the event that any signature is delivered by facsimile transmission or other electronic transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or other electronic signature page were an original thereof.

This Letter of Intent, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto, will be governed by and construed under and in accordance with the laws of Hong Kong SAR, without regard to conflicts of law principles that would result in the application of any law other than the laws of Hong Kong SAR. Each party to this Letter of Intent hereby irrevocably and unconditionally submits, for itself and its property, in any action or proceeding arising out of or relating to this Letter of Intent or for recognition or enforcement of any judgment relating thereto, and each of the Parties hereby irrevocably and unconditionally (a) agrees not to commence any such action or proceeding except in the court of the said jurisdiction, (b) agrees that any claim in respect of any such action or proceeding may be heard and determined in such court, (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court, and (d) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the Parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

This Letter of Intent is executed by the Parties on the condition that SHENZHEN has provided evidence satisfactory to LMNOP that previously signed financing agreements SHENZHEN had made with other parties, particularly two such agreements with investment funds from Nanchang, Jiangxi Province, have been validly cancelled.

Please acknowledge your acceptance of and agreement to the foregoing by signing and returning to the undersigned as soon as possible a counterpart of this Letter of Intent.

[ Signature page to follow. ]

|  |  |  |
| --- | --- | --- |
| Very Truly Yours, | |  |
| LMNOP TECHNOLOGIES, INC. | |  |
|  | |  |
| By: |  |  |
| Name: | Yuyen Bo |  |
| Title: | Chairman of the Board and Chief Executive Officer | |
|  | |  |
| Accepted and Agreed to as of | |  |
|  | |  |
| Date: |  |  |
|  | |  |
| SHENZHEN TECHNOLOGIES CO., LTD. | |  |
|  | |  |
| By: |  |  |
| Name: | Xiaoheng Wang |  |
| Title: | Chairman of the Board and General Manager | |

|  |  |  |
| --- | --- | --- |
|  | 2 |  |

EXHIBIT A - TERM SHEET (all figures in US$)

Acquiring Entity: LMNOP Technologies, Inc. (the “Company” or “LMNOP”)

Place of Incorporation: British Virgin Islands

Trading Symbol: LMNOP

Stock Exchange: Nasdaq Capital Market (“Nasdaq”)

Ordinary Shares Outstanding: 30,804,637 common shares as of December 15, 2017

Acquisition Target Company: Shenzhen Technologies Co., Ltd. (“SHENZHEN”)

Resulting Company Structure: LMNOP Technologies, Inc. directly or indirectly owning 60% of Shenzhen Technologies Co., Ltd., with an exclusive option, valid until 12/31/2021 to purchase the remainder 40% with a 9% premium to the consideration paid for the first 60%.

Total Consideration to be Paid by LMNOP to SHENZHEN Owners: For owning 60% of SHENZHEN, LMNOP shall pay an amount of $15.0 million in total, consisting of:

$11.7 million in cash; and

$3.3 million in LMNOP ordinary shares.

Additional Financial Support by LMNOP All hardware components shall be subcontracted from SHENZHEN to LMNOP, with LMNOP responsible for the delivery of hardware components, inclusive of all materials and supply chain management, to SHENZHEN for final assembly.

Schedule of Payments and Conditions: Closing of the Proposed Transaction shall be subject to the completion of fundraising solely to be determined by LMNOP. The payment of the consideration shall be paid according to of the following schedule:

a. At Closing, which is anticipated but not guaranteed to be within the 1st quarter of 2018, $5m in cash will be paid to SHENZHEN which includes $1.0m for operational purposes and $4.0m for set up of manufacturing facilities in Nanchang, Jiangxi Province;

b. In the 2nd half of 2018, $2.7m in cash will be paid to SHENZHEN for operational purposes;

c. At Closing, $0.2m in ordinary shares of LMNOP shall be issued to the owners of SHENZHEN. After the completion of accounting audit of SHENZHEN’s financial results for the year ending 12/31/2018, $1m in ordinary shares of LMNOP shall be issued to the owners of SHENZHEN based on (i) achieving at least 70% of the forecasted revenue target of $7.7m, and (ii) in direct proportion to the 2018 after-tax net income target of $1.0m on pro-rata basis, with a maximum ceiling at 120%;

3

d. In the 1st half of 2019, $2.0m in cash will be paid to SHENZHEN for operational purposes; and in the 2nd half of 2019, $2.0m in cash will be paid to SHENZHEN for operational purposes;

e. After the completion of accounting audit of SHENZHEN’s financial results for the year ending 12/31/2019, $1.1m in ordinary shares of LMNOP shall be issued to the owners of SHENZHEN based on (i) achieving at least 70% of the forecasted revenue target of $20.4m, and (ii) in direct proportion to the 2019 after-tax net income target of $3.0m on pro-rata basis, with a maximum ceiling at 120%;

f. After the completion of accounting audit of SHENZHEN’s financial results for the year ending 12/31/2020, $1.0m in ordinary shares of LMNOP shall be issued to the owners of SHENZHEN based on (i) achieving at least 70% of the forecasted revenue target of $20.4m, and (ii) in direct proportion to the 2020 after-tax net income target of $3.0m on pro-rata basis, with a maximum ceiling at 120%;

g. The amount of ordinary shares of LMNOP issued to the owner of SHENZHEN shall be calculated based on the volume weighted average closing price of the shares as traded on NASDAQ for the 20 preceding trading days immediately prior to the date of issuance; and

h. All ordinary shares of LMNOP issued to the owner of SHENZHEN shall be subject to lock-up from sale until after 06/30/2021.

4

Covenants of SHENZHEN: Prior to the execution of the Definitive Agreement, SHENZHEN shall submit to LMNOP, a legal opinion from a top tier law firm in China acceptable to LMNOP, regarding SHENZHEN that:

a. It is duly organized under the laws of the People’s Republic of China;

b. It is free from any outstanding debt from private individuals or financial institutions;

c. It is free from any final or pending court judgement;

d. It is free from any unpaid taxes of any type or from any jurisdiction;

e. There is no final or pending, commercial or criminal, court judgement against any of SHENZHEN’s owners;

f. SHENZHEN’s intellectual properties are not known to be encumbered by any potential claims;

g. SHENZHEN’s current technologies are not known to have infringed on any domestic or international rights, and that the owners of SHENZHEN personally guarantees that to the best of their knowledge there is no known infringement on intellectual property rights of any party in the world;

h. A complete list of unpaid outstanding invoices, and unpaid salaries if any, as of the date of this Letter of Intend to be provided to include name of the beneficiary, the amount, and a short description of each item;

i. Includes copies of all product liability and/or quality inspection reports on SHENZHEN’s technology or sample products;

j. Any derogatory matter that in the opinion of the law firm providing the legal opinion should be made known to LMNOP for the purpose of LMNOP making the final decision in the acquisition of ownership of SHENZHEN; and

k. An official statement from ESPIRIT that the commercial contracts signed with SHENZHEN shall remain in effect upon the investment from LMNOP into SHENZHEN as contemplated hereof.

5

Exclusivity and Termination: Until the earlier of (i) 9 months after the execution of this Letter of Intent, (ii) the time LMNOP has indicated in writing that it no longer desires to pursue the Proposed Transaction, or (iii) execution of a Definitive Agreement (the “Exclusivity Period”), SHENZHEN shall not be engaged in discussion with any other party except LMNOP regarding a merger, acquisition, equity financing, business combination or any transaction that would cause the ownership and/or outstanding shares of SHENZHEN to change.

Advance Payments: Upon the execution of this Letter of Intent, LMNOP shall pay to SHENZHEN, US$150,000 as working capital for SHENZHEN and shall continue to pay the same amount each month thereafter for up to a maximum of 3 additional months, or until the Closing of the Proposed Transaction if so happens sooner than 4 months from signing of this Letter of Intent. The first payment shall be made within 3 business days from the signing of this Letter of Intent. It shall be entirely in the discretion of LMNOP to discontinue making such monthly Advance Payment in the event that LMNOP discovers derogatory matters previously unknown to LMNOP.

Advance Payments made shall be deducted from the first payment to SHENZHEN for working capital as described in the above section of “Schedule of Payments”.

In the event that the Proposed Transaction cannot be closed after 9 months from this Letter of Intent, the total of Advanced Payments made shall become converted into 5% ownership of SHENZHEN.

Additional Closing Conditions: The Proposed Transaction is subject to customary conditions appropriate for a similar share exchange transaction or merger, including:

a. No material adverse change in the business, subsidiaries, operations, prospects or financial condition of the Parties, unless waived by the non-offending party;

b. The representations and warranties of both Parties being true and correct at signing of the Definitive Documents and closing of the Proposed Transaction;

c. Receipt of all equity holder, governmental, regulatory and third-party requisite approvals and consents, including the completion of the SEC process and the required fundraising as contemplated by LMNOP;

d. The terms and conditions of the Proposed Transaction must be acceptable to both Parties and approved by each of their respective Board of Directors;

e. There is no relationship of partnership, agency, employment, or joint venture between the Parties. No party has the authority to bind the other or incur any obligation on its behalf;

6

f. SHENZHEN shall accept and cooperate with an accountant assigned by LMNOP within SHENZHEN’s operation;

g. SHENZHEN agrees to provide LMNOP with any information relating to the any government filings contemplated by the Proposed Transaction, and consents to the disclosure of such if and when required under US securities law; and

h. Subject to such customary additional terms not inconsistent with the above as agreed between the Parties.

Confirmatory Due Diligence: Upon acceptance of the Letter of Intent, SHENZHEN will cause its current legal counsel, accountants, agents and representatives to cooperate with LMNOP in order for LMNOP to conduct due diligence, including getting access to SHENZHEN’s legal and accounting records, visiting and inspecting the location(s) of SHENZHEN and meeting with SHENZHEN’s management, suppliers and customers.

Transaction Costs: Each Party shall be responsible for its own costs and expenses in negotiating the transaction, preparing and negotiating the Definitive Documents and preparing all required disclosure relating to documents required to be filed with the Securities and Exchange Commission and other regulatory authorities in connection with the Proposed transaction.

Governing Law & Jurisdiction: Hong Kong SAR

Confidentiality: The Parties to this Letter of Intent acknowledge and agree that the existence and terms of this Letter of Intent and the Term Sheet are strictly confidential and further agree that they and their respective representatives, including without limitation, shareholders, directors, officers, employees or advisors, shall not disclose to the public or to any third party the existence or terms of this Letter of Intent or the Proposed Transaction other than with the express prior written consent of the other party, except as may be required by applicable law, rule or regulation, or at the request of any governmental, judicial, regulatory or supervisory authority having jurisdiction over a party or any of its representatives, control persons or affiliates (including, without limitation, the rules or regulations of the SEC or FINRA), or as may be required to defend any action brought against such party in connection with the transaction. If a party is so required to make such a disclosure, it must first provide to the other party the content of the proposed disclosure, the reasons that the disclosure is required, and the time and place that the disclosure will be made. In such event, the Parties will work together to draft a disclosure which is acceptable to both Parties.

**PDD#33**

**Exhibit 99.2**

**LETTER OF INTENT**

This letter of intent (“***Letter of Intent***”), dated as of March 15, 2022, is entered into by and among Quartz Innovations, Inc., a Nevada corporation (“***Quartz***”) and the holders of all of the issued and outstanding shares of common stock of Bushfever, Inc., a West Virginia corporation (“***Bushfever***”) as set forth on the signature page hereto (each a “***Selling Shareholder***” and collectively “***Selling Shareholders***”), whereby Quartz would enter into a transaction with the Selling Shareholders pursuant to the terms and subject to the conditions set forth herein. Quartz and the Selling Shareholders each may be referred to herein as a “***Party***” and together as the “***Parties***”. This Letter of Intent contains certain binding agreements and nonbinding understandings with respect to the transaction summarized below.

**Part I – Nonbinding Provisions.**The following Paragraphs 1 to 5 of this Letter of Intent (collectively, the “***Nonbinding Provisions***”) reflect our mutual understanding of the matters described in them, but each Party acknowledges that the Nonbinding Provisions are not intended to create or constitute any legally binding obligation on the Parties, and no Party shall have any liability to any other Party with respect to the Nonbinding Provisions until a fully integrated definitive agreement (the “***Definitive Agreement***”), and other related documents, are prepared, authorized, executed and delivered by and between all Parties. The Nonbinding Provisions represent the Parties’ general understanding and summary of the key points of the Transaction (as defined below). The Definitive Agreement, if prepared, will contain other terms and conditions of the Transaction including customary representations, warranties and covenants. If the Definitive Agreement is not prepared, authorized, executed or delivered for any reason, no Party to this Letter of Intent shall have any liability to any other Party to this Letter of Intent based upon, arising from, or relating to the Nonbinding Provisions.

1. Transaction: Quartz, through its wholly-owned subsidiary Outback, Inc., would acquire 80% of the issued and outstanding shares of common stock of Bushfever (the “Purchased Shares”) from the Selling Shareholders (the “Transaction”). The remaining 20% of the common equity of Bushfever would be retained by the Selling Shareholders. The Transaction is expected to close no later than April 30, 2022 (the “Closing Date”).

2. Consideration: In connection with the Transaction, Quartz would provide the Selling Shareholders with the following consideration: (i) cash consideration in an amount equal to $1,000,000 (“Cash Consideration”) and (ii) equity consideration in an amount equal to 10,000,000 shares of newly-issued unregistered shares of common stock of Quartz (“Stock Consideration”).

3. Holdback: On the date on which the Definitive Agreement is executed, Quartz would hold back from the Cash Consideration an amount equal to $250,000 for a six-month period (“Holdback Period”) following the Closing Date to cover any qualifying indemnification claims by Quartz (“Holdback Amount”). Upon the expiration of the Holdback Period, the Holdback Amount would be promptly paid to the Selling Shareholders less any amounts subject to qualifying indemnification claims.

4. Employment Agreement: On the Closing Date, Quartz would offer each Selling Shareholder an employment agreement to serve as “Co-President” of Bushfever for compensation equal to $250,000 per annum plus standard benefits (each an “Employment Agreement”). Quartz would agree to work in good faith with each Selling Shareholder to execute a mutually acceptable Employment Agreement on the Closing Date.

5. Closing Conditions: The Parties’ obligation to close the Transaction consistent with the terms set forth in this Letter of Intent are subject in all respects to: (a) Quartz’s satisfactory completion of its due diligence and (b) final approval of the Transaction and the Definitive Agreement by Quartz’s Board of Directors.

Part II - Binding Provisions. The following Paragraphs 6-18 of this Letter of Intent (collectively, the “Binding Provisions”) will constitute the legally binding and enforceable agreements of the Parties in recognition of the costs to be borne by such Parties in pursuing this proposed Transaction and further, in consideration of their mutual undertakings as to the matters described herein.

6. Nonbinding Provisions Not Enforceable: The Nonbinding Provisions do not create or constitute any legally binding obligations among the Parties, and no Party shall have any liability to the other Party with respect to the Nonbinding Provisions until the Definitive Agreement, if one is successfully negotiated, is executed and delivered by and between all Parties. If the Definitive Agreement is not prepared, authorized, executed or delivered for any reason, no Party to this Letter of Intent shall have any liability to any other Party to this Letter of Intent based upon, arising from, or relating to the Nonbinding Provisions.

7. Due Diligence: Upon execution of this Letter of Intent, Quartz will immediately begin its confirmatory due diligence of Bushfever. In connection with such due diligence, the Selling Shareholders and Bushfever will give Quartz and its representatives reasonable access to management, books, records, financial statements and properties of Bushfever to enable Quartz to complete its confirmatory due diligence investigation.

8. Legal Documentation: Concurrent with Quartz’s due diligence review of Bushfever, the Parties will begin drafting the Definitive Agreement with the goal of executing the Definitive Agreement within the time frame set forth below in Paragraph 10. The Parties agree to act in good faith in the negotiation of the Definitive Agreement. In addition to the terms set forth in this Letter of Intent, the Definitive Agreement will contain other terms, conditions and covenants customary for transactions of this type. The Parties agree that Quartz will prepare and deliver the initial drafts of the Definitive Agreement and the Employment Agreements.

9. Consents: The Parties shall cooperate with each other and proceed, as promptly as is reasonably practicable, to seek to obtain all necessary consents and approvals and to endeavor to comply with all other legal or contractual requirements for or preconditions to the execution and consummation of the Definitive Agreement.

10. Time Frame; Termination: Quartz intends to complete its due diligence and the Parties intend to complete the legal documentation and execute the Definitive Agreement by the Closing Date. The Binding Provisions and this Letter of Intent may be terminated: (a) at any time, by mutual written agreement of the Parties; (b) at any time, by written notice by Quartz to the Selling Shareholders and Bushfever; or (c) at any time, by written notice by the Selling Shareholders to Quartz, provided that the termination of this Letter of Intent will not affect the liability of a Party for breach of any of the Surviving Binding Provisions and Non-Surviving Binding Provisions (as each of those terms are defined in Paragraph 18 below) prior to termination, nor of the Surviving Binding Provisions thereafter. Upon termination of this Letter of Intent, the Parties will have no further obligations under this Letter of Intent, except with respect to the Surviving Binding Provisions which will survive in full force and effect, unamended.

11. Confidentiality; Disclosure: This Letter of Intent, and the existence or status of negotiations, are private and confidential and shall not be disclosed by any Party without the prior written consent of the other Parties; provided, however, the Parties may share such confidential information with their respective directors, officers, employees, consultants, stockholders, affiliates, subsidiaries, agents, representatives, attorneys, accountants, advisors and potential financing sources (“Representatives”) who are directly involved in the negotiation and closing of the Transaction. Notwithstanding anything to the contrary in this Paragraph 11, the Parties acknowledge that following the execution of this Letter of Intent, Quartz shall file a Form 8-K with the SEC and issue a related press release regarding the Letter of Intent and the proposed Transaction. With the exception of the Form 8-K and press release described in this Paragraph 11, the Parties agree not to issue any further press releases or make any further public announcement regarding the Transaction prior to the Closing without prior written mutual consent of all Parties, except where a public announcement is otherwise required by law.

12. Exclusivity: The Parties agree that unless negotiations between the Parties are earlier terminated pursuant to Paragraph 10, Bushfever and the Selling Shareholders shall not, and shall not permit any of their respective Representatives to, entertain, solicit, discuss, facilitate, enable or pursue a possible merger, acquisition (whether of all or substantially all of Bushfever’s stock or assets), recapitalization, joint venture or other material transaction involving Bushfever or the shares of Bushfever (an “Alternative Transaction”) from the date hereof until June 30, 2022 (the “Exclusivity Period”).

13. Fees and Expenses; No Broker: Quartz and the Selling Shareholders shall each be responsible for their respective fees and expenses incurred in connection with the Transaction and the negotiation and closing of the Definitive Agreement, including, without limitation, fees and expenses of attorneys, accountants, consultants, valuation consultants, advisors and other professionals, regardless of whether the Transaction is consummated or terminated. Not in limitation of the foregoing, the Selling Shareholders agree that they shall be responsible for the fees and expenses incurred by Bushfever. The Parties represent to one another that they have not engaged an investment banker in connection with the Transaction nor are liable for any brokerage or similar fee as a result of the proposed Transaction.

14. Entire Agreement: This Letter of Intent represents the entire understanding and agreement among the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Letter of Intent can be amended, supplemented or changed only by a written instrument executed by all the Parties.

15. Severability: If any Binding Provision of this Letter of Intent is invalid, illegal or incapable of being enforced by any law or public policy, then all other Binding Provisions of this Letter of Intent shall remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to Quartz or the Selling Shareholders. Upon such determination that any Binding Provision is invalid, illegal or incapable of being enforced, the Parties will work in good faith to modify this Letter of Intent to accomplish the original intent of the Parties.

16. Governing Law: This Letter of Intent shall be governed by and construed in accordance with the laws of Ohio without giving effect to conflicts of laws principles thereof. The Parties irrevocably consent to the jurisdiction and venue of the state and federal courts located in Cuyahoga County, Ohio in connection with any action relating to this Letter of Intent.

17. Counterparts: This Letter of Intent may be executed in multiple counterparts, each of which will be deemed to be an original copy of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement.

18. Survival: Notwithstanding the termination of this Letter of Intent as set forth in Paragraph 10 above, the provisions set out in Paragraphs 6, 11, 13, 16 and 18 will survive in the event that this Letter of Intent is terminated (the “Surviving Binding Provisions”). The remaining Paragraphs of this Part II shall be the “Non-Surviving Binding Provisions.”

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Letter of Intent to be duly executed as of the date hereof.

QUARTZ INNOVATIONS, INC.

By: Fritz Blitz

Its: Chief Executive Officer

BUSHFEVER, INC.

By: Ben Butler

Its: Co-President

SELLING SHAREHOLDERS

Ben Butler

|  |
| --- |
|  |

**PDD#33**

LETTER OF INTENT, DATED MAY 6, 2020

**Exhibit 10.1**

**May 6, 2020**

**BFG Entertainment Associates, LLC**XXX Florida 32789

**Attn: Morton Tyler**

**RE: Binding Letter of Intent between Fitfix Entertainment Group, Inc. and BFG Entertainment, LLC**

This term sheet and binding letter of intent (the “Letter of Intent”) sets forth the general terms and conditions for a transaction between **BFG ENTERTAINMENT ASSOCIATES, LLC**, a limited liability company incorporated under the laws of Florida, USA, with registered address XXX Florida 36754 together with its wholly owned subsidiaries, the BFG Entities (as defined below), hereinafter referred to collectively as (the “**Seller**”) and **FITFIX ENTERTAINMENT GROUP, INC.**, a Utah corporation with registered address, Utah 89703-4934, USA (the “**Buyer**”) whereby, the Buyer will purchase, and the Seller will sell, 100% of the outstanding share capital (the “**Sale Shares**”) of MIF Enterprises Limited (“MIF”), a company incorporated under the laws of Gibralter, a wholly-owned subsidiary of the Seller, (the “**Transaction**”), pursuant to the terms of a definitive stock purchase agreement. The Transaction will result in Buyer’s purchase of 100% of the ownership of MIF, including the MIF Entities. “**MIF Entities**” means the following wholly-owned subsidiaries of MIF Enterprises Limited:(i) STERLING ENTERTAINMENT AG, a company incorporated under the laws of Switzerland (the “**Licensed Company**”); (ii) Sterling Productions Limited, a company incorporated under the laws of England and Whales (the “**Services Company”**); and (iii) Utah Holdings Limited, reg. no. C65659, a company incorporated under the laws of Malta (the **“Maltese Company”).**Each of the Buyer and Seller is hereinafter referred to individually as a “**Party**” and, jointly, as the “**Parties**”.

The proposed terms of the Transaction are as follows:

1. Definitive Agreement. Consummation of the Transaction as contemplated hereby will be subject to the negotiation and execution of a mutually satisfactory definitive stock purchase and/or merger agreement (the “**Definitive Agreement**”), setting forth the specific terms and conditions of the Transaction proposed hereby. The closing of the Definitive Agreement (the “**Closing**”) is subject to the completion by the Buyer of a satisfactory review of the legal, financial and business conditions of MIF and the MIF Entities and the approval of Buyer’s board of directors. The Parties will use their commercially reasonable best efforts to negotiate and execute in good faith the Definitive Agreement by not later than July 3, 2020. The Definitive Agreement will contain, among other standard terms and conditions, including the following provisions:

(a) Buyer will purchase all of the authorized and outstanding shares of MIF for (i) $1,250,000 in cash (the “**Cash Payment**”); (ii) 650,000 shares of Buyer’s restricted common stock (the “**Stock Payment**”) and (iii) warrants to purchase up to 1,000,000 shares of Buyer’s common stock (the “**Warrants**” and, together with the Cash Payment and Stock Payment, the “**Purchase Price**”).

(i) The Cash Payment shall be paid as follows: (a) $500,000 as a non-redundable advance of the Purchase Price payble upon the the execution of this Letter of Intent and (b) $750,000 due upon Closing of the Transaction.

(ii) The Stock Payment and the Warrants will be issued at closing of the Transaction. The Warants will be exercisable at price of $10.00 per share (the “**Exercise Price**”). If the price of the common stock of the Buyer remains greater than 125% of the Exercise Price for 20 consecutive business days (the “**Trigger Date**”), the Seller shall have 60 days from the day after the Trigger Date to exercise the Warrants, after which time they will expire (the “**Forced Exercise Provision**”), however, notwithstanding the foregoing, the Warrants will expire and shall no longer be exercisable if they have not been exercised by the third anniversary date of the Closing of the Transaction. The Buyer shall be responsible for registering the common stock underlying the Warrants.

(b) Customary representations and warranties.

(c) Customary indemnification provisions.

(d) Final satisfaction or waiver by each party of the following closing conditions (as applicable):

|  |  |  |
| --- | --- | --- |
|  | (i) | Due Diligence. Satisfaction by the Company of the results of their respective legal, financial, and operational due diligence of MIF and the MIF Entities. The Buyer will be given an opportunity to conduct a financial audit of MIF and the MIF Entities in accordance with US Generally Accepted Accounting Principles (“**US GAAP**”). As soon as possible after the signing of this Letter of Intent, the Seller shall provide Buyer and its advisors with reasonable access to all facilities, books, records and other business, financial and other relevant information in relation to MIF and the MIF Entities; all as reasonably requested by the Buyer in order to complete the US GAAP audit. |

|  |  |  |
| --- | --- | --- |
|  | (ii) | No Conflict. No court or governmental or regulatory authority would have enacted or issued any statute, rule, regulation, judgment, injunction or other order which prohibits the consummation of, or materially adversely affects the anticipated benefits from, the transactions contemplated by the Definitive Agreement and schedules, exhibits, schedules and acillary documents related thereto (collective the “Transaction Documents”). |

|  |  |  |
| --- | --- | --- |
|  | (iii) | Consents. Obtaining all consents to the transactions contemplated by the Transaction Documents which are required by law, all approvals required under all licenses, leases, loan documents and other material contracts pertaining to the business of MIF and satisfying any and all governmental and regulatory approval or permit or licensing requirements for consummation of the transactions contemplated by the Transaction Documents. |

|  |  |  |
| --- | --- | --- |
|  | (iv) | Authority. The Transaction and Definitive Agreement shall have been duly authorized and approved by the Company and Seller in accordance with their relevant governing agreements. |

2. Conduct of Business.

(a) Prior to the execution of a Definitive Agreement and the Closing of the Transaction, Seller will procure that MIF and the MIF Entities conduct their operations in the ordinary course consistent with past practice and will not issue any capital stock or grant any options or warrants with respect to its capital stock, nor will it make any distributions, dividends or other payments to any affiliate or shareholders.

|  |  |  |
| --- | --- | --- |
|  | (b) | Until such time as the Definitive Agreement has been executed and delivered, Buyer will not contact any potential financing sources regarding, or provide to such potential financing sources any information relating to the Seller, MIF or the MIF Entities, this Letter of Intent or the transactions contemplated hereby. |

2

3. Exclusivity. The Seller shall in good faith negotiate exclusively with the Buyer with respect to the Transaction. This exclusivity undertaking shall apply for a period up to and including July 3, 2020 or such later date which the Parties agree upon in writing (the “**Exclusivity Period**”). During the Exclusivity Period, the Seller shall not directly or indirectly, in relation to the Transaction: (i) solicit or entertain, (ii) negotiate with or in any manner encourage, or (iii) discuss or consider any proposal or offer of any entity or individual other than the Buyer or its affiliates.

4. Expenses and Legal Fees. The Buyer and the Sellers shall pay their own fees and expenses and those of its respective agents, advisors, attorneys and accountants with respect to carrying out due diligence, negotiating this Letter of Intent, the Transaction Documents, and closing the Transaction (“Transaction Fees”). Upon the execution of this Letter of Intent and pending the agreed upon due diligence period, Seller will direct its counsel to commence preparation of the Transaction Documents which Transaction Documents shall be delivered to Buyer in substantively complete format by no later than June 15, 2020.

5. Due Diligence; Confidentiality Agreement**.**Each Party and its representatives, officers, employees and advisors, including accountants and legal advisors, as applicable, will provide the other party and its representatives, officers, employees and advisors, including accountants and legal advisors, as applicable, with all information, books, records and property (collectively, “Transaction Information”) that such other party reasonably considers necessary or appropriate in connection with its due diligence inquiry. The previously agreed and executed non-disclosure agreement (labelled Mutual Confidentiality Agreement) as detailed in Exhibit A for reference shall remain in force through the termination date hereof and that the terms and conditions of this Letter of Intent shall not in any way result in the reduction or limitation of any damages arising out of any breach of such confidentiality obligations.

6. Public Announcements**.**Neither party will make any public disclosure concerning the matters set forth in this Letter of Intent or the negotiation of the proposed Transaction without the prior written consent of the other party, which consent shall not be unreasonably withheld. If and when either party desires to make such public disclosure, after receiving such prior written consent, the disclosing party will give the other party an opportunity to review and comment on any such disclosure in advance of public release. Notwithstanding the above, to the extent that either party is advised by counsel that disclosure of the matters set forth in this Letter of Intent is required by applicable securities laws or to the extent that such disclosure is ordered by a court of competent jurisdiction or is otherwise required by law, then such disclosing party will provide the other party, if reasonably possible under the circumstances, prior notice of such disclosure as well as an opportunity to review and comment on such disclosure in advance of the public release.

7. Governing Law. The Letter of Intent shall be governed by the laws of the State of New York without regard to its choice of law provisions.

8. Prior Agreements. This Letter of Intent supersedes any prior agreement regarding the subject matter of this Letter of Intent. Any such prior agreement (other than the Confidentiality Agreement) shall not be effective for any purpose.

9. Miscellaneous.

(a) Assignment. Neither party hereto may assign any of its rights or obligations under this Letter of Intent to any third party without the other party’s prior written consent, except a Party is permitted to assign its rights and obligations under this Letter of Intent to an affiliate of such Party.

(b) Section Headings. Section headings used in this Letter of Intent are for reference purposes only and shall not be construed in the interpretation or construction of this Letter of Intent.

3

(c) Counterparts. This Letter of Intent may be executed in two or more counterparts and each such counterpart executed shall for all purposes be deemed an original, and all counterparts together shall constitute but one and the same instrument.

10. Termination of Letter of Intent. Either Party may terminate this Letter of Intent for any reason or no reason, upon written notice, at any time on or before July 3, 2020. This Letter of Intent shall automatically terminate upon the earlier of the execution of the Definitive Agreement or July 3, 2020.

11. Closing. The parties will use their commercially reasonable best efforts to enter into the Definitive Agreement by no later than July 3, 2020 and for Transaction Closing to occur on or about November 3, 2020.

12. Representation on Authority of Signatories. The undersigned represent and warrant that they have the authority to execute this Letter of Intent on behalf of their respective party.

[-remainder of page intentionally left blank-]

4

**IN WITNESS WHEREOF**, this Letter of Intent has been signed digitally by all parties and each party has received a copy of the fully executed Letter of Intent.

|  |  |  |
| --- | --- | --- |
| **THE BUYER** |  | **THE SELLER** |
|  |  |  |
| **Fitfix Entertainment Group, Inc** |  | **BFG Entertainment Associates, LLC** |
|  |  |  |
|  |  |  |
| Name: |  | Name: |

5

Exhibit A

Non-Disclosure Agreement

As previously executed (Mutual Confidentiality Agreement)

MUTUAL CONFIDENTIALITY AGREEMENT

AGREEMENT dated 2020

PARTIES:

(1) STERLING ENTERTAINMENT AG a company incorporated under the laws of Switzerland whose registered office is at XXX, Switzerland (“Company”); and

(2) FITFIX ENTERTAINMENT GROUP, INC, reg. no. E987608-2, a limited liability company incorporated under the laws of Utah, USA, with registered address XXXXX Utah 89703-4934, USA (“Partner”).

WHEREAS each party is interested in receiving certain information relating to the business carried on by the other party for the purpose of discussing a potential investment opportunity (the “Purpose”).

1. In this Agreement:

1.1 “Confidential Information” shall mean:-

(a) all information of whatever nature relating to the Purpose disclosed or to be disclosed to the Recipient by the Disclosing Party or on its behalf or otherwise learnt by the Recipient from whatever source, whether within the Purpose or from its advisers, customers or suppliers or otherwise;

(b) all other information of whatever nature relating to the business of the Disclosing Party which might be disclosed to or otherwise learnt by the Recipient during the course of the Disclosing Party disclosing information relating to the Purpose;

(c) all notes, reports, analyses and reviews of such information made or compiled therefrom by the Recipient or on its behalf;

PROVIDED THAT the expression “Confidential Information” shall not include any such information which:-

(i) at the time of its disclosure to the Recipient is in the public domain;

(ii) after its disclosure to the Recipient, comes into the public domain for any reason except through breach by the Recipient of its obligations to the Disclosing Party under this Agreement;

(iii) the Recipient can demonstrate was lawfully in the Recipient’s possession prior to the disclosure to the Recipient by the Disclosing Party;

(iv) is hereafter received by the Recipient from a third party who (to the best of the Recipient’s knowledge upon reasonable enquiry in each circumstance) owes no obligation of confidence to the Disclosing Party in relation to the information in question;

6

(v) is trivial or obvious or otherwise clearly of a non-confidential nature; and/or

(vi) is required to be disclosed by an applicable law or order of a court of competent jurisdiction or stock exchange or government department or agency or other regulatory authority to which the Recipient is subject to, whether or not having the force to law provided that any such disclosure shall only be the minimum required to be so disclosed and provided further that prior to such disclosure the Recipient shall consult the Disclosing Party (which shall respond within such reasonable period) as to the proposed form, timing, nature and purpose of the disclosure.

1.2 “Recipient” and “Disclosing Party” shall mean either party in each capacity as appropriate.

2. NOW IN CONSIDERATION of each party disclosing Confidential Information to each other and agreeing to enter into discussions with each other, and in consideration of each Party giving the undertakings set out in this Agreement the parties hereto agree and undertake as follows that:-

2.1 the Recipient shall keep the Confidential Information strictly confidential and will keep in safe custody all documentation and other papers and all disks, tapes and other media recording or storing the Confidential Information and will not, without the Disclosing Party’s previous written consent, divulge the Confidential Information to any other person, firm or company (except as provided in clause 2.2 below);

2.2 the Recipient shall be entitled to disclose the Confidential Information to those of its directors, officers, senior employees and professional advisers actively and necessarily engaged in considering, evaluating and examining the same (the “Authorised Representatives”). The Recipient shall ensure that the Authorised Representatives are aware of and shall comply with the confidentiality, non-disclosure and other obligations of the Recipient under this Agreement as if they had personally entered into such obligations;

2.3 the Recipient will not, and it will procure that the Authorised Representatives will not, take or make copies of the Confidential Information or any of it, or authorise any other person so to do other than for the purpose of supplying the Confidential Information to the Authorised Representatives; and

2.4 in the event that the Recipient does not proceed with the negotiations with the Disclosing Party, or if the Disclosing Party by written notice to the Recipient requires the Recipient to do so at any time and for any reason, the Recipient will forthwith return to the Disclosing Party all Confidential Information in the possession or control of the Recipient or its Authorised Representatives in so far as the same shall be in tangible form, including all copies thereof. In the case of Confidential Information held on computer or computer media, the Recipient shall, as far as practicable, in either of such events aforesaid cause such Confidential Information to be erased therefrom and, on request by the Disclosing Party, shall certify in writing to the Disclosing Party that it has been so erased or that none of the Confidential Information has been so held.

3. The Recipient’s obligations of confidence under this Agreement shall continue not withstanding the expiry or termination of this Agreement.

4. Save as expressly agreed in writing between the parties, each of the parties to this Agreement understands that the Confidential Information does not purport to be all inclusive and that no representation or warranty is made by any person as to the accuracy, reliability or completeness of any of the Confidential Information. Accordingly each of the parties to this Agreement agrees with the other that neither party shall have any liability to the other or any other person resulting from the use of Confidential Information by any person.

7

5. Without prejudice to any other rights and remedies the Disclosing Party may have, the Recipient agrees that the Confidential Information is valuable and that damages may not be an adequate remedy for any breach by the Recipient of this Agreement. Accordingly, the Recipient agrees that the Disclosing Party shall be entitled without proof of special damage to the remedies of an injunction and other equitable relief for any actual or threatened breach by the Recipient of this Agreement.

6. In the event of either party becoming aware of or suspecting any disclosure of all or part of the Confidential Information in breach of this Agreement, the Recipient shall forthwith co-operate with the Disclosing Party in taking any action to limit and remedy the breach. Any such action taken by the Disclosing Party under this paragraph shall be without prejudice to the Disclosing Party’s other rights hereunder.

7. This Agreement shall be governed by the laws of the State of New York without regard to its choice of law provisions.

8. The provisions of this Agreement shall apply to Confidential Information supplied to the Recipient by the Disclosing Party in the course of correspondence and discussions occurring as a consequence of this Agreement, and all provisions of this Agreement shall take effect and be interpreted accordingly.

9. The Parties hereto may introduce each other to individuals, entities, and/or opportunities who/which may represent to the Parties potential gain or benefit, directly or indirectly, now and/or in the future. The Parties hereto intend to be legally bound, and hereby irrevocably agree and guarantee each other that they shall not, directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate each other’s interest, or the interest or relationship between the Parties or avoid directly or indirectly payment of established or to be established fees, commissions, success compensation of any kind, in connection with any on-going or future business.

10. If any provision of this Agreement shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not be affected.

11. This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns. Failure or delay to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

12. This document contains the entire Agreement between the parties with respect to the subject matter contained herein and supersedes any previous understandings or commitments, oral or written. This Agreement may not be varied except by written agreement of both parties to this Agreement.

13. This Agreement does not commit either party to enter any proposed venture arising out of the Purpose (or otherwise).

14. Neither party (without the prior written consent of the other party) can assign this Agreement.

15. This Agreement may be executed in two counterparts each of which when executed and delivered is an original, but the counterparts together constitute the same document.

16. Both Parties warrant that they are entitled to enter this Agreement and perform their obligations herein.

EXECUTED under hand the day and year first before written.

8

Signed by a duly authorised signatory

for and on behalf of

Sterling Entertainment AG by:

Name: Quinn Marvel Title: Director

Signed by a duly authorised signatory

for and on behalf of

Fitfix Entertainment Group, Inc by:

Name: Title:

**PDD#35**

LETTER OF INTENT

**Exhibit 10.1**

**DIRECTIONAL, INC.**

**XXX, CA 91789**

May 27, 2005

Outer Space, Inc.

XXX, CA 91867

Attention: Imre Gyorg, Chief Executive Officer

Re:     Proposed Acquisition of Outer Space, Inc.

Gentlemen:

This letter is intended to confirm our mutual intent to pursue the proposed purchase by Directional, Inc., a Nevada corporation, or one of its affiliates or subsidiaries, now existing or to be created (“***Infinite***”), of Outer Space, Inc., a California corporation (“***Outer Space***”), and to engage in certain related transactions, as more fully described in and subject to the terms and conditions set forth on Exhibit A (the “***Term Sheet***”) attached to and made a part of this letter, which we refer to as the “***Letter of Intent.***”

The parties acknowledge and understand that the Term Sheet does not constitute a legally binding obligation or commitment of the parties hereto and that no such legally binding obligation or commitment shall exist unless and until the execution and delivery of definitive and binding agreements by the parties (the “***Definitive Agreements***”). However, in consideration of the financial expense that has been and will continue to be devoted by the parties to pursuing the proposed transaction, this will confirm that the numbered provisions below, upon execution of this Letter of Intent, will constitute the legal and binding obligations of the parties.

1. The recipient of Confidential Information (as defined below) agrees that from the date of this Letter of Intent it will (i) keep the Confidential Information confidential, (ii) not use Confidential Information of the disclosing party except as is necessary to evaluate the transaction described herein and (iii) not disclose to third parties any of the Confidential Information, unless otherwise required by law or applicable SEC or Nasdaq reporting regulations. The parties acknowledge and agree that Infinite may publicly announce this Letter of Intent by way of press release and Current Report on Form 8-K filed with the Securities and Exchange Commission, including the filing of the Letter of Intent as an exhibit to such Form 8-K, subject to the approval of content by Outer Space which shall not be unreasonably withheld. The receiving party may make the Confidential Information available only to its officers, directors, employees, advisors and, in the case of Infinite, investment bankers and potential investors involved in the proposed Financing (as defined in the Term Sheet) who have a need for such access; provided that the

Outer Space, Inc.

May 27, 2005

Page 2

receiving party has informed all such persons of the provisions of this Letter of Intent and such persons have agreed in writing to be bound by these terms. The receiving party may make only the minimum number of copies of any Confidential Information required to evaluate the proposed transaction. All proprietary and copyright notices in the original must be affixed to copies or partial copies.

If a recipient of Confidential Information or any of its representatives is required by law (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or any part of the Confidential Information, the recipient shall and shall cause its representatives, as the case may be, to (i) immediately notify the disclosing party of the existence, terms and circumstances surrounding such request, (ii) consult with the disclosing party on the advisability of taking legally available steps to resist or narrow such request and (iii) assist the disclosing party in seeking a protective order or other appropriate remedy. If such protective order or other remedy is not obtained or the disclosing party waives compliance with the provisions hereof, (i) the recipient or its representatives, as the case may be, may disclose only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed, and shall exercise reasonable commercial efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, and (ii) the recipient shall not be liable for such disclosure unless disclosure was caused by or resulted from a previous disclosure by the recipient or its representatives that was prohibited by this Letter of Intent.

***“Confidential Informatio***n***”*** means (i) the existence and terms of this Letter of Intent, the facts and content of all discussions relating to the proposed transaction (including the proposed terms and conditions), the fact the parties have made information available to each other and/or that discussions or negotiations have taken place concerning a possible transaction, and (ii) any information that is furnished orally or in writing (whatever the form or storage medium) or gathered by inspection, and regardless of whether such information is specifically identified as “confidential”.

The receiving party shall not be obligated to maintain any information in confidence or refrain from use, if: (a) the information was in the receiving party’s possession or was known to it prior to its receipt from the disclosing party; (b) the information is or becomes public knowledge other than as a result of a disclosure by the receiving party or its representatives in violation of this Letter of Intent; or (c) the information is or becomes rightfully available on an unrestricted basis to the receiving party from a source other than the disclosing party; provided that such source, to the receiving party’s knowledge, is not prohibited from disclosing such information to the receiving party by a contractual, legal or fiduciary obligation to the disclosing party or its representatives.

Within three (3) days of the Termination Date (as defined below), the receiving party shall immediately return to the disclosing party all copies of Confidential Information received by it or its representatives or, if the disclosing party requests, shall immediately destroy all such Confidential Information, and shall certify such destruction to the disclosing party.

Outer Space, Inc.

May 27, 2005

Page 3

Outer Space understands that in the course of the discussions regarding the proposed transaction it may come into possession of material non-public information concerning Infinite under U.S. securities laws and regulations and will not, and will use reasonable commercial efforts to cause its affiliates and personnel to not, effect any purchase or sale of Infinite’s common stock or effect any transaction involving a derivative security relating to Infinite’s common stock (including, but not limited to, options, warrants, puts, calls, collars and the like) so long as such person is in possession of or has access to Infinite material non-public information.

Each party hereto will not, without the written consent of the other party, for a period of two years from the date of this Letter of Intent directly or indirectly solicit for employment any person who is now employed by the other party in an executive or management level position; provided, however, nothing contained herein shall prohibit a party from soliciting or hiring any person provided that such solicitation and hiring results from a general employment solicitation made to the public.

2. Outer Space agrees that from the date hereof until the earlier of (i) the date the parties mutually agree in writing to terminate this Letter of Intent, or (ii) June 30, 2005 (the earlier to occur of such dates is referred to as the “***Termination Date***”), Outer Space will not solicit, initiate discussions, engage in or encourage discussions with, or enter into any agreement with, any party relating to the possible acquisition of Outer Space (by way of merger, purchase of capital stock, purchase of assets, license, lease or otherwise) or any material portion of its capital stock or assets (collectively, a “***Restricted Transaction***”) or permit its employees, agents or shareholders to enter into such agreement. Further, in the event that during this period Outer Space is contacted by any third party expressing an interest in discussing a Restricted Transaction with Outer Space, Outer Space will promptly (within one day of receipt) provide Infinite with the name of the potential acquirer and the terms and conditions of such proposed Restricted Transaction. Each of the parties will use reasonable commercial efforts to complete the acquisition or to terminate it as provided for herein, as promptly as practicable.

3. From the date hereof until either (i) the Termination Date, or (ii) the date that the Definitive Agreements are executed and delivered, Outer Space will conduct its business in the normal and ordinary course, consistent with prior practices, and will also consult with Infinite on an on-going basis regarding any proposal to undertake business activities not in the ordinary course.

4. Each party represents and warrants to the other that neither it nor any of its affiliates is a party to and/or bound by any agreement which conflicts with this Letter of Intent or would prevent it from entering into Definitive Agreements upon the terms contemplated by the Term Sheet.

5. Each party acknowledges that a breach by it of its obligations under paragraphs 1 and 2 this Letter of Intent could cause irreparable harm to the other. Accordingly, each acknowledges that the remedy at law for breach of such obligations hereunder could be inadequate and agrees, in the event of a breach or threatened breach by a party of such provisions, that the other party shall be entitled, in addition to all other available remedies, to an injunction restraining any breach and requiring immediate performance hereunder, without the necessity of showing economic loss, and without any bond or other security being required.

Outer Space, Inc.

May 27, 2005

Page 4

6. Outer Space represents and warrants that this Letter of Intent, and specifically paragraph 2 herein, has been unanimously approved by the stockholders of Outer Space.

7. Each of the parties represents and warrants that this Letter of Intent has been approved by its board of directors.

8. This Letter of Intent shall be governed by the laws of the State of California, without giving effect to conflict of law principles. The parties agree that any claim or cause of action arising from or relating to this Letter of Intent and the transactions contemplated hereby shall be subject to the exclusive jurisdiction of the Federal or State courts located in Los Angeles County, California.

9. Upon the signing of this Letter of Intent, Infinite will provide a nonrefundable deposit to Outer Space of $500,000 and a bridge loan of $500,000 to Outer Space upon reasonable and customary terms. On or after June 1, 2005, Outer Space may request an additional $1,000,000 loan, on the same terms as the initial $500,000 loan, based on its working capital requirements, to be funded by Infinite within 30 days from its receipt of the request and subject to the execution of the Definitive Agreements; provided, however, if the Definitive Agreements have not been executed by the parties as of June 30, 2005 as the direct result of Infinite’s failure to use good faith efforts to negotiate and execute the Definitive Agreements, then Infinite shall be required to fund the $1,000,000 loan in accordance with this Section. On or after the execution of the Definitive Agreements, Outer Space may request an additional $4,000,000 loan, on the same terms as the initial $500,000 loan, based on its working capital requirements, to be funded by Infinite within 30 days from its receipt of the request

If you are in agreement with the terms and conditions set forth in this Letter of Intent and the attached Term Sheet and desire to proceed on that basis, please sign this Letter of Intent in the space provided below and return an executed copy to the undersigned no later than 5:00 p.m. (PST) May 31, 2005 or the proposal shall terminate. Upon receiving your signed reply, we will begin the remainder of our due diligence procedures.

Outer Space, Inc.

May 27, 2005

Page 5

We look forward to concluding a mutually beneficial transaction.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Very truly yours, | | |
| DIRECTIONAL, INC. | | |
|  |  | |
| By: |  | */s/ Rami Fatoush* |
|  |  | Rami Fatoush, Chairman of the Special Committee of the Board of Directors |

Agreed to and accepted this

27th day of May 2005

|  |  |  |
| --- | --- | --- |
|  |  |  |
| OUTER SPACE, INC. | | |
|  |  | |
| By: |  | */s/ Imre Gyorg* |
|  |  |  |
|  |  | Imre Gyorg, Chief Executive Officer |
|  |  | |
| cc: |  | Infinite Board of Directors |

**EXHIBIT A TO LETTER OF INTENT**

**NON-BINDING CONFIDENTIAL TERM SHEET – FOR DISCUSSION PURPOSES ONLY**

*This term sheet summarizes the principal terms and conditions of the proposed transaction between Directional, Inc. and Outer Space, Inc. This term sheet is for discussion purposes only and is not intended to create legal rights or obligations. This term sheet does not constitute a binding agreement or commitment of either party and does not address all of the material terms of the proposed transactions, which will only be addressed after all due diligence has been completed and definitive agreements have been executed and delivered by the parties. Capitalized Terms used in this Term Sheet not otherwise defined have the meanings given in the Letter of Intent between Directional, Inc. and Outer Space, Inc. to which this Term Sheet is an Exhibit.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| **Transaction Structure** |  | It is presently contemplated that the transaction will be structured as the acquisition by a subsidiary of Infinite (“Infinite Sub”) of all of the assets of Outer Space and the assumption by Infinite Sub of all of Outer Space’ liabilities, other than any liabilities specifically excluded by Outer Space (the “Acquisition”). The parties will discuss the tax implications of this structure and will seek to achieve a tax-free transaction (other than with respect to the $10 million cash “boot” described below). Although the transaction is structured as an asset acquisition, the parties reserve the right to consider alternative structures, including a stock purchase or a merger, based on tax and legal due diligence or other reasons. | | | | |
|  |  | | | | | |
| **Consideration** |  | In consideration for the Acquisition, at the closing of the Acquisition (the “Closing”), Infinite will deliver the cash and shares of its common stock set forth below: | | | | |
|  |  | |  | |  | |
|  |  |  |  | • |  | Cash – Infinite will deliver $10 million of cash to Outer Space. |
|  |  | |  | |  | |
|  |  |  |  | • |  | Stock – Infinite will issue to Outer Space a number of shares of Infinite common stock that will provide Outer Space with 50.1% of the outstanding shares of Infinite common stock after the consummation of the Acquisition and the Financing. |
|  |  | |  | |  | |
|  |  |  |  | • |  | Rights – Infinite will issue to Outer Space the right to receive, for no additional consideration, the number of shares of Infinite common stock equal to the number of additional shares of common stock that would have been issued to Outer Space if the outstanding Infinite common stock at the Closing included the number of shares of common stock that are issued at any time in the future upon exercise or conversion of (i) any warrants, stock options, preferred stock or other securities that are convertible into or exercisable for shares of Infinite common stock that are outstanding at the Closing (including any warrants or other securities that are convertible into or exercisable for Infinite common stock issued in the Financing); (ii) Infinite stock options issued in replacement of Outer Space options at the Closing; and (iii) 200,000 additional Infinite stock options. |
|  |  | | | | | |
|  |  | The Acquisition would be valued based on a 20-day moving average stock price. | | | | |
|  |  | | | | | |
| **Outer Space Working Capital** |  | At the Closing, Infinite will invest in Infinite Sub $10 million (less the amount of any bridge loans made to Outer Space in excess of the initial $500,000 loan funded upon execution of the Letter of Intent) for working capital purposes. | | | | |
|  |  | | | | | |
| **Financing** |  | In order to finance the cash consideration for the Acquisition and to provide Infinite and Outer Space with additional working capital, Infinite shall issue not less than $30 million of its equity securities prior to the Closing (the | | | | |

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  | “Financing”), inclusive of any equity financings consummated at or about the time of the execution of the Letter of Intent. The $30 million Financing proceeds shall be used as follows: (i) $10 million shall be paid as the cash consideration for the Acquisition as provided above; (2) $10 million shall be provided to Outer Space for working capital as provided above; and (iii) $10 million shall be retained by Infinite for working capital purposes. The terms and conditions of the Financing and the purchasers of the Infinite equity securities shall be acceptable to Outer Space in its reasonable discretion. |
|  |  | |
| **Shareholder Approval** |  | The stockholders of Outer Space shall approve the Acquisition and Definitive Agreements prior to their execution and delivery by Outer Space. The Acquisition and Definitive Agreements shall be subject to the approval of the stockholders of Infinite and Infinite shall hold a special meeting of stockholders as soon as practicable following the execution of a Definitive Agreement. Outer Space shall cooperate with Infinite in Infinite’s preparation of an appropriate proxy statement (“***Proxy Statement***”) to be filed with the Securities and Exchange Commission and delivered to Infinite’s stockholders. |
|  |  | |
| **Stock Options;**  **Other Stock Rights** |  | Any outstanding options, warrants or rights to purchase capital stock or other securities of Outer Space will terminate as of the Closing to the extent that such warrants or other rights have not been exercised prior to the Closing; provided that employee stock options shall be converted into similar options to purchase Infinite common stock upon terms determined by the parties. |
|  |  | |
| **Representations and**  **Warranties; Closing**  **Conditions** |  | Prior to entering into the Definitive Agreements, Infinite shall have received a fairness opinion from an independent valuation firm that the Acquisition, including the Financing, is fair from a financial point of view to the stockholders of Infinite.    The Definitive Agreements shall include customary representations, warranties and covenants for an acquisition transaction of this nature.    Infinite’s obligation to effect the Closing will be conditioned upon the following: (i) delivery to Infinite prior to the execution of the Definitive Agreements of two years of audited financial statements for the years ending December 31, 2004, 2003 and 2002 with unqualified audit opinions and the appropriate consents from Outer Space’ auditors for inclusion of their audit opinions in Infinite’s SEC filings, (ii) interim unaudited financial statements for the quarter ended March 31, 2005, (iii) the representations and warranties of Outer Space being true and correct in all material respects, (v) all covenants of Outer Space having been complied with in all material respects, (vi) applicable regulatory clearance, no injunctions or restraints applicable to the Closing, and no litigation seeking such a result, (vii) requisite stockholder by Infinite, (viii) no material adverse change with respect to Outer Space, (ix) the effectiveness of employment agreements, and the continued employment of the Specified Employees and the Retained Employees to be identified by Infinite and (x) receipt of all material third party consents.    Outer Space’ obligation to effect the Closing will be conditioned upon the following: (i) the terms and conditions of the New Financing shall be acceptable to Outer Space in its reasonable discretion, (ii) the representations and warranties of Infinite being true and correct in all material respects, (iii) all covenants of Infinite having been complied with in all material respects, (iv) applicable regulatory clearance, no injunctions or restraints applicable to the Closing, and no litigation seeking such a result, (v) no material adverse change with respect to Infinite, (vi) receipt of all material third party consents. |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Indemnity** |  | Outer Space and its stockholders will indemnify Infinite for claims, damages, costs and expenses related to breaches of representations, warranties and covenants, any litigation claims against Outer Space, and for other matters agreed to by the parties. Such claims for indemnification arising out of representations and warranties will be subject to a deductible of $700,000 and a cap of $10 million. Claims under $10,000 shall not be reimbursable and shall not count against the deductible or the cap. This indemnity obligation will survive for a period of 15 months after the closing, except that indemnity for breach of Outer Space’ representations regarding tax matters shall survive for the applicable statute of limitations plus 30 days. If any specific matter is identified in diligence, there may be an adjustment to the indemnity and escrow terms. The indemnity obligations under this paragraph shall terminate if the Outer Space business generates revenue of $15 million or more on a trailing twelve months basis at any time after the closing of the Acquisition.    Infinite will indemnify Outer Space for claims, damages, costs and expenses related to breaches of representations, warranties and covenants, any litigation claims against Infinite, and for other matters agreed to by the parties. Claims for indemnification arising out of representations and warranties will be subject to a deductible of $700,000 and a cap of $10 million. Such claims under $10,000 shall not be reimbursable and shall not count against the deductible or the cap. This indemnity obligation will survive for a period of 15 months after the closing, except that indemnity for breach of Infinite’s representations regarding tax matters shall survive for the applicable statute of limitations plus 30 days. If any specific matter is identified in diligence, there may be an adjustment to the indemnity and escrow terms. |
|  |  | |
| **Operation of the Business** |  | The Definitive Agreements will contain a covenant similar to that set forth in Paragraph 3 of the Letter of Intent, providing that until (i) cessation of discussions between Outer Space and Infinite, or (ii) the date of the closing, each of the parties will conduct their respective businesses in the normal and ordinary course, consistent with prior practices, and will also consult with each other on an on-going basis regarding any business activities not undertaken in the ordinary course, including without limitation, any license agreements (other than standard end user license agreements), OEM agreements, “bundling” agreements, or other material contracts into which either party proposes to enter. |
|  |  | |
| **Termination Events** |  | (i) By mutual agreement; (ii) by either party if the closing does not occur by August 30, 2005; (iii) by Infinite if it fails to obtain requisite Infinite stockholder approval; (iv) by Outer Space if Infinite is unable to consummate the Financing on terms and conditions that are acceptable to Outer Space in its sole discretion; (v) if the Acquisition is enjoined or becomes illegal; (vi) by either party if the other party is in material breach of the Definitive Agreements that is non-curable or is not cured following notice and a reasonable cure period; or (vii) by either party if a material adverse change occurs with respect to the other party. |
|  |  | |
| **Exclusivity** |  | The Definitive Agreements will contain an exclusivity covenant similar to that set forth in Paragraph 2 of the Letter of Intent, subject to a standard fiduciary out in the case of Infinite. Each party will promptly inform the other of any alternative proposals or requests for information, including the identity of the party making such proposal or request, unless such disclosure would violate a currently existing confidentiality agreement. |
|  |  | |
| **Timing** |  | Negotiation of final Definitive Agreements, completion of due diligence and receipt of all required Board and Outer Space, stockholder approvals by June 25, 2005. Signing of Definitive Agreements by June 30, 2005 with closing on such date or as soon thereafter as all conditions to closing are either satisfied or waived. Definitive agreements for the Financing would be negotiated and executed concurrently with the Definitive Agreements for the Acquisition. The Financing will be closed concurrently with the Acquisition. |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Fees and Expenses** |  | Infinite and Outer Space will each pay their own fees and expenses (including legal, accounting, investment banking and financial advisory fees and expenses) with respect to the proposed transactions. |
|  |  | |
| **Infinite Board of Directors** |  | All members of Infinite’s board of directors will resign upon the closing and the former Outer Space stockholders will elect new directors. |

**PDD#36**

LETTER AGREEMENT BY AND BETWEEN THE COMPANY, THE INITIAL SECURITY HOLDERS AND THE OFFICERS AND DIRECTORS OF THE COMPANY

**Exhibit 10.3**

November 16, 2017

Onward Acquisition Corp.

Cincinnati, OH 45202

Re: Initial Public Offering

Gentlemen:

This letter (this “***Letter Agreement***”) is being delivered to you in accordance with the Underwriting Agreement (the “***Underwriting Agreement***”) proposed to be entered into by and among Onward Acquisition Corp., a Delaware corporation (the “***Company***”), and Pony Securities, LLC, Gatsby & Co. and Santa & Company, Incorporated, as representatives (the “***Representatives***”) of the several underwriters named therein (each, an “***Underwriter***” and collectively, the “***Underwriters***”), relating to an underwritten initial public offering (the “***Public Offering***”), of 34,500,000 of the Company’s units (including up to 4,500,000 units that may be purchased to cover over-allotments, if any) (the “***Units***”), each comprised of one share of the Company’s Class A common stock, par value $0.0001 per share (the “***Common Stock***”), and one warrant to purchase one-half of one share of Class A Common Stock (each, a “***Warrant***”). Each whole Warrant entitles the holder thereof to purchase one-half of one share of Common Stock at a price of $5.75 per half-share, subject to adjustment. The Units shall be sold in the Public Offering pursuant to a registration statement on Form S-1 and prospectus (the “***Prospectus***”) filed by the Company with the Securities and Exchange Commission (the “***Commission***”) and the Company shall apply to have the Units listed on The New York Stock Exchange. Certain capitalized terms used herein are defined in Section 11 hereof.

In order to induce the Company and the Underwriters to enter into the Underwriting Agreement and to proceed with the Public Offering and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Onward Acquisition Sponsor I LLC (the “***Sponsor***”) and the undersigned individuals, each of whom is a director or officer of the Company (each, an “***Insider***” and collectively, the “***Insiders***”), hereby agrees with the Company as follows:

1. The Sponsor and each Insider agrees that (A) if the Company seeks stockholder approval of a proposed Business Combination, then in connection with such proposed Business Combination, it or he shall (i) vote any shares of Common Stock owned by it or him in favor of such proposed Business Combination and (ii) not redeem any shares of Common Stock owned by it or him in connection with such stockholder approval and (B) if the Company engages in a tender offer in connection with any proposed Business Combination, it or he shall not sell any shares of Common Stock to the Company in connection therewith.

2. The Sponsor and each Insider hereby agrees that in the event that the Company fails to consummate a Business Combination within 24 months from the date of the closing of the Public Offering, or such later period approved by the Company’s stockholders in accordance with the Company’s amended and restated certificate of incorporation, the Sponsor and each Insider shall take all reasonable steps to cause the Company to (i) cease all operations except for the purpose of winding up, (ii) as promptly as reasonably possible but not more than 10 business days thereafter, subject to lawfully available funds therefor, redeem 100% of the Common Stock sold as part of the Units in the Public Offering (the “***Offering Shares***”), at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (less up to $50,000 of interest to pay dissolution expenses and which interest shall be net of amounts released for payment of taxes and up to $750,000 per annum for working capital purposes), divided by the number of then outstanding Offering Shares, which redemption will completely extinguish all Public Stockholders’ rights as stockholders (including the right to receive further liquidation distributions, if any), subject to applicable law, and (iii) as promptly as reasonably possible following such redemption, subject to the approval of the Company’s remaining stockholders and the Company’s board of directors, dissolve and liquidate, subject in each case to the Company’s obligations under Delaware law to provide for claims of creditors and other requirements of applicable law. The Sponsor and each Insider agree not to propose any amendment to Article IX of the Company’s amended and restated certificate of incorporation prior to the completion of a Business Combination, unless the Company provides its public stockholders with the opportunity to redeem their shares of Common Stock upon approval of any such amendment at a per-share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest (which interest shall be net of amounts released for payment of taxes and up to $750,000 per annum for working capital released to the Company), divided by the number of then outstanding Offering Shares.

|  |  |  |
| --- | --- | --- |
|  | 1 |  |

The Sponsor and each Insider acknowledges that it or he has no right, title, interest or claim of any kind in or to any monies held in the Trust Account or any other asset of the Company as a result of any liquidation of the Company with respect to the Founder Shares held by it. The Sponsor and each Insider hereby further waives any claim such Sponsor or Insider may have in the future as a result of, or arising out of, any contracts or agreements with the Company and will not seek recourse against the Trust Fund for any reason whatsoever except in each case with respect to the Insider’s right to a pro rata interest in the proceeds held in the Trust Fund for any Offering Shares such Sponsor or Insider may hold.

3. During the period commencing on the effective date of the Underwriting Agreement and ending 180 days after such date, the Sponsor and each Insider shall not, without the prior written consent of the Representatives, sell, contract to sell, pledge or otherwise dispose (or enter into any transaction that is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise)) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, with respect to, any Units, shares of Capital Stock, Warrants or any securities convertible into, or exercisable, or exchangeable for, shares of Capital Stock or publicly announce an intention to effect any such transaction, except as set forth in the Underwriting Agreement. Each of the Insiders and the Sponsor acknowledges and agrees that, prior to the effective date of any release or waiver, of the restrictions set forth in this paragraph 3 or paragraph 7 below, the Company shall announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (i) the release or waiver is effected solely to permit a transfer of securities that is not for consideration and (ii) the transferee has agreed in writing to be bound by the same terms described in this Letter Agreement to the extent and for the duration that such terms remain in effect at the time of the transfer.

4. In the event of the liquidation of the Trust Account, the Sponsor (which for purposes of clarification shall not extend to any other shareholders, members or managers of the Sponsor) agrees to indemnify and hold harmless the Company against any and all loss, liability, claim, damage and expense whatsoever (including, but not limited to, any and all legal or other expenses reasonably incurred in investigating, preparing or defending against any litigation, whether pending or threatened, or any claim whatsoever) to which the Company may become subject as a result of any claim by (i) any third party for services rendered or products sold to the Company or (ii) a prospective target business with which the Company has entered into a letter of intent, confidentiality or other similar agreement or a Business Combination agreement (a “***Target***”); provided, however, that such indemnification of the Company by the Sponsor shall apply only to the extent necessary to ensure that such claims by a third party for services rendered (other than the Company’s independent public accountants) or products sold to the Company or a Target do not reduce the amount of funds in the Trust Account to below (i) $10.00 per share of the Offering Shares or (ii) such lesser amount per share of the Offering Shares held in the Trust Account due to reductions in the value of the trust assets as of the date of the liquidation of the Trust Account, in each case, net of the amount of interest earned on the property in the Trust Account which may be withdrawn to pay taxes and up to $750,000 per annum for working capital purposes, except as to any claims by a third party (including a Target) who executed a waiver of any and all rights to seek access to the Trust Account and except as to any claims under the Company’s indemnity of the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended. In the event that any such executed waiver is deemed to be unenforceable against such third party, the Sponsor shall not be responsible to the extent of any liability for such third party claims. The Sponsor shall have the right to defend against any such claim with counsel of its choice reasonably satisfactory to the Company if, within 15 days following written receipt of notice of the claim to the Sponsor, the Sponsor notifies the Company in writing that it shall undertake such defense.

5. To the extent that the Underwriters do not exercise their over-allotment option to purchase up to an additional 4,500,000 Units within 45 days from the date of the Prospectus (and as further described in the Prospectus), the Sponsor agrees to forfeit, at no cost, a number of Founder Shares in the aggregate equal to 1,125,000 multiplied by a fraction, (i) the numerator of which is 4,500,000 minus the number of Units purchased by the Underwriters upon the exercise of their over-allotment option, and (ii) the denominator of which is 4,500,000. The forfeiture will be adjusted to the extent that the over-allotment option is not exercised in full by the Underwriters so that the Initial Stockholders will own an aggregate of 20.0% of the Company’s issued and outstanding shares of Capital Stock after the Public Offering.

|  |  |  |
| --- | --- | --- |
|  | 2 |  |

6. (a) The Sponsor and each officer hereby agrees not to participate in the formation of, or become an officer or director of, any other any other special purpose acquisition company with a class of securities registered under the Securities Exchange Act of 1934, as amended, until the Company has entered into a definitive agreement regarding an initial Business Combination or unless the Company has failed to complete a Business Combination within 24 months after the closing of the Public Offering or such later period approved by the Company’s stockholders in accordance with the Company’s amended and restated certificate of incorporation.

(b) The Sponsor and each Insider hereby agrees and acknowledges that: (i) the Underwriters and the Company would be irreparably injured in the event of a breach by such Sponsor or an Insider of its, his or her obligations under paragraphs 1, 2, 3, 4, 5, 6(a), 7(a), 7(b), and 9, as applicable, of this Letter Agreement (ii) monetary damages may not be an adequate remedy for such breach and (iii) the non-breaching party shall be entitled to injunctive relief, in addition to any other remedy that such party may have in law or in equity, in the event of such breach.

7. (a) The Sponsor and each Insider agrees that it, he or she shall not Transfer any Founder Shares (or shares of Common Stock issuable upon conversion thereof) until the earlier of (A) one year after the completion of the Company’s initial Business Combination or (B) subsequent to the Business Combination, (x) if the last sale price of the Common Stock equals or exceeds $12.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the Company’s initial Business Combination or (y) the date on which the Company completes a liquidation, merger, capital stock exchange, reorganization or other similar transaction that results in all of the Company’s stockholders having the right to exchange their shares of Common Stock for cash, securities or other property (the “***Founder Shares Lock-up Period***”).

(b) The Sponsor and each Insider agrees that it, he or she shall not Transfer any Private Placement Warrants (or shares of Common Stock issued or issuable upon the exercise of the Private Placement Warrants), until 30 days after the completion of a Business Combination (the “***Private Placement Warrants Lock-up Period,***” together with the Founder Shares Lock-up Period, the “***Lock-up Periods***”).

(c) Notwithstanding the provisions set forth in paragraphs 7(a) and (b), Transfers of the Founder Shares, Private Placement Warrants and shares of Common Stock issued or issuable upon the exercise or conversion of the Private Placement Warrants or the Founder Shares and that are held by the Sponsor, any Insider or any of their permitted transferees (that have complied with this paragraph 7(c)), are permitted (a) to the Company’s officers or directors, any affiliates or family members of any of the Company’s officers or directors, any members of the Sponsor, or any affiliates of the Sponsor; or any third parties that have an option to acquire shares from the Sponsor; (b) in the case of an individual, transfers by gift to a member of the individual’s immediate family, to a trust, the beneficiary of which is a member of the individual’s immediate family or an affiliate of such person, or to a charitable organization; (c) in the case of an individual, transfers by virtue of laws of descent and distribution upon death of the individual; (d) in the case of an individual, transfers pursuant to a qualified domestic relations order; (e) transfers by private sales or transfers made in connection with the consummation of a Business Combination at prices no greater than the price at which the securities were originally purchased; (f) transfers in the event of the Company’s liquidation prior to the completion of an initial Business Combination; or (g) transfers by virtue of the laws of the State of Delaware or the Sponsor’s limited liability company agreement upon dissolution of the Sponsor; provided, however, that in any case, these permitted transferees must enter into a written agreement agreeing to be bound by these transfer restrictions and the other terms described in this Letter Agreement (and other agreements entered into by the Sponsor with respect to such securities) to the extent and for the duration that such terms remain in effect at the time of the transfer.

|  |  |  |
| --- | --- | --- |
|  | 3 |  |

8. The Sponsor and each Insider represents and warrants that it or he has never been suspended or expelled from membership in any securities or commodities exchange or association or had a securities or commodities license or registration denied, suspended or revoked. Each Insider’s biographical information furnished to the Company (including any such information included in the Prospectus) is true and accurate in all respects and does not omit any material information with respect to the Insider’s background. Each Insider’s questionnaire furnished to the Company is true and accurate in all respects. Each Insider represents and warrants that: it, he or she is not subject to or a respondent in any legal action for, any injunction, cease-and-desist order or order or stipulation to desist or refrain from any act or practice relating to the offering of securities in any jurisdiction; it or he has never been convicted of, or pleaded guilty to, any crime (i) involving fraud, (ii) relating to any financial transaction or handling of funds of another person, or (iii) pertaining to any dealings in any securities and it or he is not currently a defendant in any such criminal proceeding.

9. Except as disclosed in the Prospectus, neither the Sponsor nor any Insider nor any affiliate of the Sponsor or any Insider, nor any director or officer of the Company, shall receive from the Company any finder’s fee, reimbursement, consulting fee, monies in respect of any repayment of a loan or other compensation prior to, or in connection with any services rendered in order to effectuate the consummation of the Company’s initial Business Combination (regardless of the type of transaction that it is), other than the amounts described in the Prospectus under the heading “Summary – The Offering – Limited Payments to Insiders.”

10. The Sponsor and each Insider has full right and power, without violating any agreement to which it is bound (including, without limitation, any non-competition or non-solicitation agreement with any employer or former employer), to enter into this Letter Agreement and, as applicable, to serve as an officer and/or director on the board of directors of the Company and hereby consents to being named in the Prospectus as an officer and/or director of the Company.

11. As used herein, (i) “***Business Combination***” shall mean a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses; (ii) “***Capital Stock***” shall mean, collectively, the Common Stock and the Founder Shares; (iii) “***Founder Shares***” shall mean (a) the 8,625,000 shares of the Company’s Class F common stock, par value $0.0001 per share, initially issued to the Sponsor (up to 1,125,000 Shares of which are subject to complete or partial forfeiture by the Sponsor if the over-allotment option is not exercised by the Underwriters) for an aggregate purchase price of $25,000, or $0.003 per share, prior to the consummation of the Public Offering; (iv) “***Initial Stockholders***” shall mean the Sponsor and any Insider that holds Founder Shares; (v) “***Private Placement Warrants***” shall mean the Warrants to purchase up to 8,750,000 shares of Common Stock of the Company (or 9,650,000 shares of Common Stock if the over-allotment option is exercised in full) proposed to be acquired by the Sponsor, for an aggregate purchase price of $8,750,000 in the aggregate (or $9,650,000 if the over-allotment option is exercised in full), or $0.50 per whole Private Placement Warrant, in a private placement that shall occur simultaneously with the consummation of the Public Offering; (vi) “***Public Stockholders***” shall mean the holders of securities issued in the Public Offering; (vii) “***Trust Account***” shall mean the trust fund into which a portion of the net proceeds of the Public Offering shall be deposited; and (viii) “***Transfer***” shall mean the (a) sale of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

12. This Letter Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and supersedes all prior understandings, agreements, or representations by or among the parties hereto, written or oral, to the extent they relate in any way to the subject matter hereof or the transactions contemplated hereby. This Letter Agreement may not be changed, amended, modified or waived (other than to correct a typographical error) as to any particular provision, except by a written instrument executed by all parties hereto.

13. No party hereto may assign either this Letter Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other party. Any purported assignment in violation of this paragraph shall be void and ineffectual and shall not operate to transfer or assign any interest or title to the purported assignee. This Letter Agreement shall be binding on the Sponsor and each Insider and their respective successors, heirs and assigns and permitted transferees.

|  |  |  |
| --- | --- | --- |
|  | 4 |  |

14. Nothing in this Letter Agreement shall be construed to confer upon, or give to, any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Letter Agreement or of any covenant, condition, stipulation, promise or agreement hereof. All covenants, conditions, stipulations, promises and agreements contained in this Letter Agreement shall be for the sole and exclusive benefit of the parties hereto and their successors, heirs, personal representatives and assigns and permitted transferees.

15. This Letter Agreement may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

16. This Letter Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Letter Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Letter Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

17. This Letter Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. The parties hereto (i) all agree that any action, proceeding, claim or dispute arising out of, or relating in any way to, this Letter Agreement shall be brought and enforced in the courts of New York City, in the State of New York, and irrevocably submit to such jurisdiction and venue, which jurisdiction and venue shall be exclusive and (ii) waive any objection to such exclusive jurisdiction and venue or that such courts represent an inconvenient forum.

18. Any notice, consent or request to be given in connection with any of the terms or provisions of this Letter Agreement shall be in writing and shall be sent by express mail or similar private courier service, by certified mail (return receipt requested), by hand delivery or facsimile transmission.

19. This Letter Agreement shall terminate on the earlier of (i) the expiration of the Lock-up Periods or (ii) the liquidation of the Company; provided, however, that this Letter Agreement shall earlier terminate in the event that the Public Offering is not consummated and closed by December 31, 2017; provided further that paragraph 4 of this Letter Agreement shall survive such liquidation.

[Signature Page Follows]

|  |  |  |
| --- | --- | --- |
|  | 5 |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | Sincerely, | | |
|  |  |  | |
|  | **ONWARD ACQUISITION SPONSOR I LLC** | | |
|  |  |  | |
|  | By: | /s/ Sheryl Craft | |
|  |  | Name: | Sheryl Craft |
|  |  | Title: | Managing Member |
|  |  |  | |
|  | By: | /s/ Sheryl Craft | |
|  |  | Name: | Sheryl Craft |
|  |  |  | |
|  | By: | /s/ Darryl T.F. McCall | |
|  |  | Name: | Darryl T.F. McCall |
|  |  |  | |
|  | By: | /s/ William C. Finn | |
|  |  | Name: | William C. Finn |
|  |  |  | |
|  | By: | /s/ Steven A. Davis | |
|  |  | Name: | Steven A. Davis |
|  |  |  | |
|  | By: | /s/ Richard White | |
|  |  | Name: | Richard White |
|  |  |  | |
|  | By: | /s/ Andrew W. Code | |
|  |  | Name: | Andrew W. Code |
|  |  |  | |
|  | By: | /s/ Sengal Selassie | |
|  |  | Name: | Sengal Selassie |

|  |  |  |
| --- | --- | --- |
| Acknowledged and Agreed: | |  |
|  | |  |
| **ONWARD ACQUISITION CORP.** | |  |
|  | |  |
| /s/ Sheryl Craft | |  |
| Name: | Sheryl Craft |  |
| Title: | Chief Financial Officer |  |

[Signature Page to Letter Agreement]

6

**PDD#37**

BINDING LETTER OF INTENT FOR THE ACQUISITION OF MATSUMOTO HOLDINGS LLC

**EXHIBIT 10.1**

**INCA ENERGY, CORP.**

Atlanta GA

June 21, 2021

XXXXX

Salt Lake City, UT 86555

|  |  |
| --- | --- |
| Attention: | Mr. Fred Anderson |
|  | Chief Executive Officer |

Re:Binding Letter of Intent for the Acquisition of Matsumoto Holdings LLC

Dear Mr. Anderson:

We are writing to set forth certain of the principal terms and conditions on and subject to which Inca Energy, Corp., or its affiliates (the “Company”) proposes to enter into a transaction with Matsumoto Holdings, LLC (“Holdings”) and the members of Holdings (collectively, the “Members”), pursuant to which the Company and/or its affiliate will acquire majority ownership of Holdings from the Members as set forth herein.

The basic terms and conditions proposed by the Company and to be incorporated into definitive agreements will include, but not be limited to, the following:

1. Description of Acquisition Agreement. The Company (or its affiliate) will acquire all of the issued and outstanding equity of Holdings from the Members (the “Acquisition”).  In consideration for the Acquisition, the Members shall receive shares of a new series of Preferred Stock of the Company which rights and preferences, collectively, shall include: (i) conversion rights into that number of shares of common stock of the Company which shall equal Ninety Percent (90%) of the total issued and outstanding common stock of the Company as determined at the consummation of the Acquisition (“Underlying Common Stock”) on a fully diluted basis for a period of one year; and (ii) voting rights, in all matters, together with the Members of common stock of the Company with the numbers of votes equal to the number of shares of Underlying Common Stock.

Pursuant to the terms of the Acquisition, the current officers and directors of the Company shall, at the closing of the Acquisition, resign and appoint the officers and directors as directed by Holdings. The current CEO, Renzo Mazetti, will be retained for a period of three (3) months to assist in the transition at a monthly salary rate of $5,000 (USD) per month. This retention can be extended upon mutual agreement between Renzo Mazetti and the Company.

All of the terms of the Acquisition including the Initial Financing (as defined forth herein) shall be set forth in a definitive acquisition agreement (the “Acquisition Agreement”) which shall be negotiated between the Company and the Members.

2. Financing Transaction.  At the consummation of the Acquisition (the “Closing”), the Company will consummate a bridge financing for the benefit of Holdings in an amount of (US$500,000.) and such funds shall be utilized, in part, to pay for the expenses incurred in connection with the Acquisition and the Audit.  Following the Closing, the Company will raise up to Ten Million dollars (US$10,000,000) by the sale of shares of equity (common stock or preferred stock) or debt of the Company (the “Initial Financing”). It is anticipated that the Initial Financing will be consummated in tranches over the twelve (12) months following the Closing.

3.  Southridge. At the Closing, Southridge (or its affiliates as directed by Southridge) shall receive shares of a new series of Preferred Stock of the Company which, collectively, shall be convertible into that number of shares of common stock of the Company which shall equal Five Percent (5%) of the total issued and outstanding common

stock of the Company as determined at the consummation of the Acquisition (on a fully diluted basis for a period of one year) and carry ratchet and anti-dilution rights.

4.  Control Block. At the closing, Renzo Mazetti, will assign 100% of  the Preferred A Shares that he currently owns in exchange for shares of Series B Preferred Stock to be issued to Renzo Mazetti  (or his affiliates and/or designees as directed by Renzo Mazetti) of the Company which, collectively, shall be convertible into that number of shares of common stock of the Company which shall equal Three Percent (3%) of the total issued and outstanding common stock of the Company as determined at the consummation of the Acquisition (on a fully diluted basis for a period of two (2) years) and carry ratchet and anti-dilution rights.

5.  Accuracy of financial statements.  The terms set forth in this letter are based on the parties' assumption that Holdings’ balance sheets, income statements and statements of cash flows for the fiscal years ending December 31, 2018 and December 31, 2019 (and December 31, 2020 when available), have been (will be) prepared in accordance with generally accepted accounting principles consistently applied and that such financial statements fairly represent Holdings’ financial condition at that time and the results of its operations for that period; and prior to the closing of the Acquisition, any necessary audit(s) of Holdings (the “Holdings Audits”) shall be performed and completed by an auditing firm as selected by the Company.

6.  Customary terms and conditions.  All terms and conditions concerning the Acquisition (collectively, the “Transaction”) will be stated in one or more definitive agreements, including but not limited to the Acquisition Agreement, subject to the approval of the parties, acting on advice of counsel. The terms and conditions will be usual and customary in a transaction of this nature and mutually acceptable to the parties.

7.  Closing Conditions.

a.  the Members’ closing of the Transaction is conditioned upon:

(i)  The Members’ satisfaction with the results of the legal, accounting and business due diligence investigation of the Company to be performed by Holdings’ attorneys, accountants and representatives;

(ii)  negotiation and execution of a definitive agreements (including but not limited to the Acquisition Agreement) and any ancillary documents carrying out the terms of the Transaction as set forth therein, respectively;

(iii)  obtaining of all necessary and material governmental and third-party consents and approvals; and

(iv)  absence of any material adverse change in the Company’s or any of its subsidiaries or affiliates condition, assets operation or business prospects.

(v)  confirmation by the Company that at the time of the merger the amount of debt held by the Company will be less than US $3,000,000 .

b.  the Company’s closing of the transaction is conditioned upon:

(i)  the Company’s satisfaction with the results of the legal, accounting and business due diligence investigation of Holdings and the Members to be performed by their attorneys, accountants and representatives;

(ii)  negotiation and execution of a definitive agreements (including but not limited to the Acquisition Agreement) and any ancillary documents carrying out the terms of the Transaction as set forth therein, respectively;

(iii)  obtaining of all necessary and material governmental and third-party consents and approvals;

2

(iv)  delivery of the Holdings Audits; and

(v)  absence of any material adverse change in Holdings’ condition, assets operation or business prospects.

7.  Confidentiality.  Each party hereto will permit each other party and their attorney, accountants and representatives to conduct an investigation and evaluation of such other party, will provide such assistance as is reasonably requested and will give access at reasonable times to all things related to the business, personnel and assets of such other party.  If the contemplated transaction is not consummated, each party hereto will not, nor will it permit any of its employees, agents or representatives to, use or disclose to any third party (except to the extent required by law or judicial process or publicly available or obtainable, from independent sources not subject to a confidentiality agreement or required by law) any information obtained in their investigation of the other party.

8.  Conduct of Business.  During the period from the date hereof to the closing of the transactions contemplated herein: (a) Holdings’ business will be carried on in accordance with all applicable laws, rules and regulations (the violation of which would have a material adverse effect on a party or any significant portion of its business) and in a manner consistent with past customs and practices; (b) Holdings agrees to conduct its business in the ordinary course; (c) Holdings will not issue, redeem, purchase or otherwise acquire, directly or indirectly any of its outstanding equity (other than as contemplated by the terms as set forth herein); and (d) the parties will not take, or permit any of its subsidiaries, if any, to take, any action which would, or which might reasonably be expected to, hinder the Transaction or render it less desirable.

9.  Binding Nature/Exclusivity.  Due to the binding nature of this Letter of Intent, the Company, the Members and Holdings agrees that, until the earlier of the execution of the Acquisition Agreement or sixty (60) days from the date hereof, the Members, Holdings and its affiliates, directors, representatives, employees or agents will not directly or indirectly: (i) solicit, encourage or discuss a sale of all or any substantial part of Holdings  or its assets or a sale of any equity or debt security of Holdings or any subsidiary, or any merger, consolidation, liquidation, dissolution, recapitalization, reorganization, or similar transaction involving Holdings or any subsidiary with any other party (all of the foregoing are collectively referred to as “Acquisition Proposals”) (except as required in connection with its fiduciary duties), or (ii) provide any information regarding Holdings to any third party (other than information which is traditionally provided in the regular course of its business operations to third parties where they have no reason to believe that such information may be used to evaluate an Acquisition Proposal and information required to be delivered by legal process). The Members and Holdings (and its affiliates, directors, representatives, employees and agents) will immediately cease and cause to be terminated any and all contacts, discussions and negotiations with third parties regarding any Acquisition Proposal and will promptly notify the Company if any Acquisition Proposal, or any inquiry or contact with any person or any entity with respect thereto, is made.

10.  Transaction Expenses.  The Members, the Company and Holdings will each pay its own respective transaction expenses in connection with the transactions contemplated hereby, including, but not limited to, fees and expenses of legal counsel or other representatives and consultants and all other fees and expenses.

It is understood that this letter merely constitutes a non binding statement of our mutual intentions, does not contain all matters upon which agreement must be reached for the Transaction to be consummated and, therefore, does not constitute a binding and enforceable commitment with respect to matters covered by this letter (including the Transaction). A binding and enforceable commitment with respect to matters covered by this letter (including the Transaction) will result only from the execution of the definitive agreements, subject to the conditions expressed therein. Notwithstanding the two preceding sentences of this Section, upon acceptance hereof as described below, the provisions of Sections 7, 8, 9 and 10 shall be legally binding upon and enforceable against Holdings, the Members and the Company.

SIGNATURE PAGE FOLLOWS

3

If the foregoing Binding Letter of Intent accurately sets forth our mutual intentions with respect to the principal terms of the proposed Transaction, please sign below and return a copy of this letter to the undersigned.

Very truly yours,

**INCA ENERGY, CORP.**

By: */s/ Renzo Mazetti*

Renzo Mazetti

Chief Executive Officer

Agreed and Accepted

as of June 21, 2021:

**Matsumoto Holdings LLC**

By: */s/ Fred Anderson*

Fred Anderson

Chief Executive Officer

**THE MEMBERS:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

**PDD#38**

NONBINDING LETTER OF INTENT

EXHIBIT J

**NONBINDING LETTER OF INTENT**

January 19, 2001

TO CORTON MEDICAL TECHNOLOGIES, INC.:

        This nonbinding letter of intent (this “Letter”) will confirm our mutual views with respect to the proposed extension of credit by Pillbox, Inc, a Delaware corporation (“PILL”), or one of its affiliates to Corton Medical Technologies, Inc., a Delaware corporation (the “Company” and, collectively with PILL, the “Parties”). Unless and until definitive agreements between PILL and the Company with respect to the matters set forth in this Letter are executed and delivered, neither PILL nor the Company will be under any legal obligation of any kind whatsoever with respect to the matters set forth in this Letter, except to the extent set forth in paragraphs 6 through 12.

         1.    The Parties contemplate that PILL or one of its affiliates would permit the Company to borrow up to $20 million (consisting of two tranches of $10 million each) after January 1, 2002 pursuant to a credit agreement (the “New Credit Agreement”) and security agreement (the “New Security Agreement” and, collectively with the New Credit Agreement, the “New Agreements”) to be negotiated between the Parties. The Company’s ability to borrow funds under the second $10 million tranche would be conditioned upon the Products (as defined in the Amended and Restated Ophthalmology Development & License Agreement between Pillbox AB and the Company) meeting the primary endpoints in both of the two ongoing pivotal clinical trials with gloraxyll in age-related macular degeneration (as such endpoints are defined in the protocols as amended to the date hereof). The maximum quarterly loan amount under the New Credit Agreement would be $4 million. The interest rate and maturity date for loans extended pursuant to the New Credit Agreement and the financial covenants to be contained in the New Credit Agreement will be negotiated by the Parties. The Parties contemplate that (except to the extent set forth in paragraphs 2 through 4 of this Letter) other terms of the New Agreements will be substantially similar to or identical to the terms of the Credit Agreement, dated as of February 18, 1999, between the Company and Pillbox Treasury Services AB and the Security Agreement, dated as of February 18, 1999, between the Company and Pillbox Treasury Services AB (collectively, the “Old Agreements”), as the case may be. The Old Agreements would not be amended, modified or changed.

         2.    In view of our mutual desire to safeguard the development program in which we are engaged, the Parties contemplate that contemporaneously with, and as a condition to, the execution and delivery of the New Agreements, the Parties would enter into contractual arrangements providing PILL with additional protections, in form and substance satisfactory to PILL, to ensure PILL’s ability to (i) obtain sufficient quantities of gloraxyll having appropriate specifications on a timely and an ongoing

basis, and (ii) prepare on a timely basis the CMC section of the NDA for Products, in each case regardless of the operating status or financial condition of the Company. Such protections may include, without limitation, (i) transferring ownership or leasehold interest to PILL or one of its affiliates of the manufacturing facilities operated by the Company in connection with the manufacture of gloraxyll (the “Facility”), (ii) granting PILL and its affiliates the right to enter, take possession of and operate the Facility, and/or (iii) transferring to PILL knowhow and other items of intellectual property as are reasonably necessary to enable PILL to manufacture gloraxyll.

         3.    In view of our mutual desire to safeguard the development program, the Parties contemplate that contemporaneously with, and as a condition to, the execution and delivery of the New Agreements, the Parties would enter into contractual arrangements providing PILL with additional protections, in form and substance satisfactory to PILL, to ensure PILL’s ability to (i) obtain sufficient quantities of the Flash light delivery device having appropriate specifications regardless of the operating status or financial condition of the Company. Such protections may include, without limitation, provisions for the assignment to PILL or one of its affiliates of all of the Company’s rights and obligations under any of the existing agreements between the Company and Nermo Corporation regarding the manufacture and supply of the Flash light delivery device. In such a case the Company would agree to use its best efforts to secure from Nermo Corporation any required consents regarding such assignments. In addition, the Company would provide to PILL sufficient training regarding the handling and use of the Flash device.

         4.    The Parties contemplate that it would be a condition precedent to the execution and delivery of the New Agreements that the Company furnish to PILL an annual budget for calendar year 2001 (the “Revised Budget”), which shall be reasonably acceptable to PILL and shall provide for a 15% or greater reduction in the Company’s “burn rate” (excluding new borrowings and any reimbursement of research and development expenditures by PILL or its affiliates) in calendar year 2001, compared to calendar year 2000, and will otherwise be designed to ensure the Company’s viability as a going concern through the end of calendar year 2001. The Parties contemplate that it would be a condition precedent to both the effectiveness of the New Credit Agreement and the Company’s ability to borrow funds under the New Credit Agreement that the Company’s “burn rate” (excluding new borrowings and any reimbursement of research and development expenditures by PILL or its affiliates) in calendar year 2001 not have exceeded the level set forth in the Revised Budget.

         5.     The Parties contemplate that definitive agreements with respect to the matters set forth in this Letter will be negotiated, executed and delivered within thirty (30) calendar days following the date of this Letter.

         6.    Following the execution and delivery of this Letter, each Party will provide the other Party and its representatives with such information and access to its books, records, properties and personnel as shall be reasonably requested in connection with the matters set forth in this Letter.

         7.    Each Party shall pay its own legal, accounting, financial advisory and other expenses incident to the matters set forth in this Letter.

         8.    Neither Party shall make any public announcement or communication of the existence of this Letter or the status or content of negotiations between the Parties relating to the matters set forth in this Letter, except as may be required by law or the rules of any stock exchange or automated dealer quotation system on which the securities of any Party are listed or quoted, unless the form and content of such announcement or communication has been agreed by both Parties.

         9.    This Letter supersedes all prior communications, understandings and agreements between the Parties with respect to the matters set forth in this Letter.

         10.     **THIS NONBINDING LETTER OF INTENT CONSTITUTES A MERE STATEMENT OF THE PARTIES’ MUTUAL VIEWS WITH RESPECT TO THE MATTERS SET FORTH IN THIS LETTER AND, EXCEPT WITH RESPECT TO PARAGRAPHS 6 THROUGH 12, IS NOT AND SHALL NOT BE CONSTRUED AS ANY OF (I) A BINDING OR ENFORCEABLE AGREEMENT, CONTRACT OR EXTENSION OF CREDIT, OR (II) A BINDING OR ENFORCEABLE OFFER, OBLIGATION OR COMMITMENT TO ENTER INTO AN AGREEMENT OR CONTRACT OR TO EXTEND CREDIT, OR (III) AN AMENDMENT TO OR MODIFICATION OR WAIVER OF ANY PROVISION OF ANY AGREEMENT BETWEEN THE PARTIES OR THEIR AFFILIATES. EXCEPT AS PROVIDED IN PARAGRAPHS 6 THROUGH 12, THE PARTIES ARE NOT LEGALLY OBLIGATED OR BOUND BY ANY OF THE PROVISIONS OF THIS LETTER. THIS LETTER WILL TERMINATE ON THE 31ST CALENDAR DAY FOLLOWING THE DATE OF THIS LETTER.**

         11.    This Letter shall be governed by the laws of the State of New York, without reference to the conflicts of laws provisions thereof.

         12.    This Letter may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same nonbinding letter of intent.

Very truly yours,

PILLBOX, INC.

By: /s/ Francoise Carfour

------------------------

Title: Senior Vice President

Accepted and understood:

CORTON MEDICAL TECHNOLOGIES, INC.

By: /s/ Mati Tekennen

------------------

Title: Chief Executive Officer

**PDD#39**

ex10-1.htm

**BINDING LETTER OF INTENT**

**THIS BINDING LETTER OF INTENT** (this **“Letter”),**dated as of September 19, 2018 (the **“Effective Date”),**is entered into by and between ACFH, Inc. (the **“Buyer”)**and MM Patients Association, dba The Dooby Brothers (“DOOBY”), a retail cannabis dispensary business, located at XXXX Ca 96777 (the **“Company”**or the **“Seller”),**to set forth principal terms and conditions under which the parties hereto would consider relating to the purchase and sale of one hundred percent ( I 00%) of the assets of the Company, including certain assets of the retail cannabis dispensary business of the Company, by Seller to Buyer (the **“Proposed Transaction”)** as set forth below. The Seller and Buyer are sometimes referred to individually as a **“Party”**and collectively as the **“Parties”.**

**WHEREAS**the Parties hereto desire to enter into this Letter to establish the terms and conditions relating to the Proposed Transaction as more fully described below;

**WHEREAS,**Seller wishes to sell, transfer, and assign to Buyer, and Buyer wishes to purchase and assume from Seller, the assets of the retail cannabis dispensary business and real estate of the Company; and

**WHEREAS,**this Letter shall be binding upon the Seller as to the terms and conditions set forth herein:

**1. Proposed Transaction**

The Proposed Transaction involves the sale, transfer, and assignment of the assets, both tangible and intangible, of the Company, free and clear of all encumbrances at the purchase price for those assets set forth in Section 5, from the Seller to the Buyer. If during this transaction, assumption of the existing LLC is deemed preferable at the sole discretion of the Buyer, Buyer may so assume the LLC as desired instead of an asset purchase.

**2. Entry into Definitive Agreement**

Except as specifically provided herein, this is a binding letter of intent and is intended solely as an outline of the material terms of the Proposed Transaction and the basis for further discussion, it does not contain all maters upon which agreement must be reached in order for the Proposed Transaction to be consummated. For the avoidance of doubt, this Letter represents a binding commitment among the Parties with respect to the Proposed Transaction, subject to any terms and conditions herein. These terms set forth herein relating to the Proposed Transaction shall be subject to a satisfactory due diligence investigation by Buyer as set forth in Section 3 hereof, the negotiation, execution, and delivery of mutually satisfactory definitive documentation that contains representations, warranties, covenants, conditions, indemnities, and other terms customary for transactions of this type (the **“Definitive Agreement”).**

As soon as is reasonably practicable after the execution of this Letter, the Parties shall commence to negotiate the Definitive Agreement relating to the Proposed Transaction, to be drafted by Buyer’s counsel. The Definitive Agreement shall include the material terms summarized in this Letter and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind and are not inconsistent with this Letter. The Parties shall also commence to negotiate any ancillary agreements to be drafted by Buyer’s counsel necessary or desirable to affect the Proposed Transaction as soon as possible and to thereafter satisfy each of the conditions to closing specified thereunder.

|  |
| --- |
|  |
|  |

The Parties acknowledge and agree that the closing of the Proposed Transaction and the obligations of each Party under the Definitive Agreement will be subject to the satisfaction of the conditions precedent set forth in this Letter.

**3. Conditions**

Buyer’s obligation to close the Proposed Transaction will be subject to customary closing conditions, including Buyer’s satisfactory completion of a due diligence investigation, which shall include but is not limited to a complete review of the financial, legal and tax records and agreements of the Company, and any other matters as Buyer’s accountants, tax and legal counsel and other advisors deem relevant; Seller and Company’s substantial compliance with local and state regulations; any other documentation related to state and local compliance and Buyer’s ability to procure local approval for Buyer’s purposes, and any and all other due diligence deemed necessary or desirable by Buyer and Buyer’s counsel to confirm legal status and compliance with local and state laws and revenues (the **“Due Diligence”).**Buyer’s Purchase Price set forth in Section 4 is based on a reasonable belief in the presentation of certain details of the Proposed Transaction by the Sellers including but not limited to: regulatory/permit status, ability for Buyer to receive local approval under current local process, average daily revenues, lease status and building square footage. This is further subject to: Seller’s prompt delivery of any and all corporate and financial information reasonably requested by Buyer, in both verbal and written form; Buyer’s receipt of evidence from Seller providing appropriate notice to the relevant city and/or state of the Proposed Transaction; Buyer’s receipt of all necessary regulatory approvals from the relevant city and/or state authority of the Proposed Transaction; and Buyer’s verification of proper regulatory compliance of the Company. Buyer shall have thirty (30) days to conduct its Due Diligence, which shall be extended as required to enable Buyer and Seller to effectuate regulatory approvals at the local (OHS) state (CA) levels to authorize Buyers to operate a retail cannabis business.

|  |
| --- |
| Close date shall occur within three (3) business days after completion of Due Diligence, issuance/transfer of the Conditional Use Permit, issuance of Buyer’s OHS regulatory cannabis permit and a State Temporary License for a retail cannabis operation. Buyer agrees it shall:    a. promptly and diligently review Due Diligence materials received from Seller;  b. promptly engage with city of OHS to coordinate and obtain the CUP and regulatory approvals required for this Transaction;  c. promptly complete and submit requisite LiveScan forms to OHS;  d. Submit a complete state application promptly after Buyers receive local authorization by OHS to operate;  e. Communicate regularly with Sellers and/or Sellers representatives in expeditiously moving through process to ensure this Transaction closes as soon as possible by providing updates and status reports. |
|  |

**4. Purchase Price**

(a) Purchase Price. In consideration for the assets, tangible, real and intangible, of the retail cannabis dispensary business of the Company, Buyer shall pay the purchase price (the **“Purchase Price”)** as follows:

One Million Five Hundred Thousand Dollars ($ I ,500,000), payable to Seller at the time of close, less a reasonable amount and placed in escrow to last for a certain period of time after closing to pay for all known, and any unknown, liabilities of the Seller that may arise after closing. This amount and time period shall be agreed to by the Parties in the Definitive Agreements(s).

(b) The Parties acknowledge that the benefit of the bargain of the Proposed Transaction is dependent upon Buyer successfully receiving approval by the City XXXX and State Bureau of XXXXX 66777 Ca 92240. As such, Seller shall cooperate with Buyer and materially assist Buyer in facilitating the issuance of all requisite cannabis permits and licenses and underlying approvals and documents as required by local and state regulators. Seller further agrees to time the closing of the Proposed Transaction and effective dates of the Definitive Agreement in a manner designed to effectuate same.

**5. Security Deposit.**

Within three (3) days of Buyer’s execution of this Letter, Buyer shall provide a refundable (within 30day due diligence period only, upon written cancelation) deposit in an amount equal Three Hundred Thousand ($100,000) to Sellers, (the **“Deposit”),**which shall secure Buyer’s exclusivity over the Proposed Transaction during the Due Diligence Period described in Section 3 of this LOI.

The Deposit shall also be applied to the Purchase Price (as defined below) at Closing (as defined below). Security Senses LLP will be designated as the third-party escrow agent and shall hold the Buyer’s deposit without interest, at the expense of the Buyer. The Deposit will be subtracted from the Purchase Price as set forth in Section 4 hereof. In the event that the Buyer elects not to proceed with the Proposed Transaction contemplated herein, the Deposit shall be returned to Buyer as soon as reasonably practicable.

The deposit will be subtracted from the purchase price. The deposit of $100,000 shall be fully refundable in the event that the Buyer elects not to proceed with the transaction contemplated herein within the 30-day Due Diligence period as set forth in accordance with Section 3. After Due Diligence is completed, should Buyer be unable to procure the requisite permits at DHS or Iicensure with the State of California solely because Buyers were unable to pass the requisite LiveScans, Buyers shall agree to forfeit $30,000 of the Deposit. Buyers represent that they have passed the Live Scan in California at the local and state level in 2018.

|  |
| --- |
|  |
|  |

**6. Disclosure and Other Communications**

No Party will make any public disclosure pertaining to the existence of this Letter or to the Proposed Transaction between the parties without having first obtained the consent of the other Party, except for communications with lenders, governmental agencies, and other third parties as may be legally required or necessary or appropriate to complete the Prospective Transaction.

**7. Confidentiality**

During the term of this Letter, either Party (as the **“Disclosing Party”)** may disclose or make available to the other Party (as the **“Receiving Party”)** information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, **“Confidential Information”).**

Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 6 by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by, or in the possession of, the Receiving Party or its representatives before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party’s Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.

The Receiving Party shall: protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Letter; and not disclose any such Confidential Information to any person or entity, except to the Receiving Party’s representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Letter. The Receiving Party shall be responsible for any breach of this Section 6 caused by any of its representatives.

By their signature below, each Party agrees to keep in strict confidence all Confidential Information, except to the extent either Party must disclose such information to governmental agencies, its legal counsel, advisors, lenders and equity partners to obtain necessary or desirable approvals, opinions and/or debt and equity financing. If discussions and negotiations are terminated, each Party upon written request will promptly return to the other Party all documents, contracts, records, or other information received by it. In any event, each Party agrees not to use the Confidential Information provided by the other Party for any purpose other than in respect to its bona fide Due Diligence needs relating to this Proposed Transaction and to promptly return the same to each other upon written request after termination of discussions and negotiations (which termination may be effected unilaterally by delivery of notice of sale by one Party to the other).

|  |
| --- |
|  |
|  |

**7. Authority to Enter Binding Letter of Intent**

The undersigned Parties each affirm they are an authorized representative of Buyer, Seller or the Company and have authority to enter into this Letter.

**8. Closing, Termination of Letter**

Closing of the Proposed Transaction is subject to a satisfactory Due Diligence investigation by the Buyer as more fully described in Sections 2 and 3 hereof. The anticipated closing date for the Proposed Transaction shall be on or before October 20. 2018, with remaining balance of $1,400,000 brought in at that time on/ or before to close transaction.

In the event that Buyer and/or Buyer’s representatives in their sole and absolute discretion determines any potential non-compliance of the Company with respect to any and all city and/or state laws and/or regulations, or of Seller’s failure to satisfy the terms and conditions, or inaccurate facts were provided about the transaction, Buyer shall not be obligated to proceed with the Proposed Transaction and the upon notice to Seller, this Letter and Proposed Transaction shall terminate and be of no further force or effective. Subject to Buyer’s satisfaction of its Due Diligence investigation, Buyer in its sole discretion may exercise its option to proceed with the Proposed Transaction at the Purchase Price or offer an adjusted price based on its Due Diligence; *provided, however,* the contingencies set forth in Section 2 and 3 hereof are satisfied by Seller and/or waived by Buyer.

**9. Expenses Associated with this Letter of lntent and Due Diligence**

The Parties agree to bear their own expenses, including attorney and professional fees associated with any Due Diligence or any other matter associated with this Proposed Transaction.

**10. Non-compete and Non-solicitation**

As of the Effective Date, the Seller hereby agrees to enter into a non-compete agreement to which Seller shall be prohibited from competing in retail sales in the cannabis industry for a period of twelve (12) months, the specific terms and conditions of which shall be set forth in a formal written agreement satisfactory to the Parties.

**11. Press Release**

Upon execution of this Letter, both Parties agree the Buyer may prepare and release a press release announcing the material terms of the Proposed Transaction reached among the Parties. Buyer and Seller shall have the ability to review and comment on the content of the press release before dissemination to the public.

**12. Governing Law**

This Letter shall be governed by the laws of the State of California, without regard to conflict of laws principles.

**13. Counterparts.**

This Letter may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

|  |
| --- |
|  |
|  |

**IN WITNESS WHEREOF,** the Parties hereto have executed this Letter as of the last date set forth below.

|  |  |  |  |
| --- | --- | --- | --- |
| By: |  |  | Date: |
| Nora Willis | |  |  |
| Chief Financial Officer | |  |  |
| XYX Inc. | |  |  |

**SELLER**

|  |  |  |  |
| --- | --- | --- | --- |
| By: |  |  | Date: |
| Name: |  |  |  |
| Title: |  |  |  |

MM Patients Association, dba Dooby Brothers

|  |
| --- |
|  |
|  |

**PDD#40**

EXHIBIT 10.2

Exhibit 10.2

[Form of Letter of Intent]

[●], 2020

**Omnibus Group Inc.**

XY, AR 73222

Attention: [●]

**Re: Letter of Intent**

Dear [●]:

We are pleased that you have decided to enter into a transaction whereby one or more controlled affiliates of and/or funds managed by [●] (the “Investor,” “us” or “our”) would provide capital to Omnibus Group Inc. (“Omnibus,” the “Company” or “you”) as further described in this binding letter of intent (“LOI”). Each of the Investor and the Company shall be referred to herein from time to time individually as a “Party” or, collectively, as the “Parties.”

Concurrently herewith, the Investor, various other interested parties and you are executing a support agreement (the “Plan Support Agreement”) in respect of a proposed plan of reorganization and settlement (the “Settlement”) of claims and disputes between the Company and the Riverfalls Debtors (as defined below), including, without limitation, the claims alleged in the adversary proceeding captioned Riverfalls Holdings, Inc. v. Omnibus Group Inc., Case No-19-98065 (RDD) on terms set forth in the termsheet attached to the Plan Support Agreement (the “Termsheet”). For the avoidance of doubt, the obligation of the Parties to consummate the Transaction (as defined below) shall be conditioned on the consummation and effectiveness of the Settlement.

For purposes of this LOI, the term “Riverfalls Debtors” means Riverfalls Holdings, Inc., Riverfalls Services, LLC (“Services”) and the subsidiaries of Services that are debtors and debtors-in-possession in the chapter 11 cases pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) and jointly administered under Case No. 19-22312 (RDD), and the term “Plan of Reorganization” means the plan of reorganization of the Riverfalls Debtors confirmed by the Bankruptcy Court.

|  |  |  |
| --- | --- | --- |
|  | **A.** | **Transaction** |

The Investor agrees, pursuant to the definitive documentation described below (and, if applicable, pursuant to the second paragraph of Section H below), to purchase from the Company, and the Company agrees to sell and issue to the Investor, upon the terms and subject to the conditions stated in this LOI and the Definitive Documents (as defined below), an aggregate of [●] shares (the “Shares”) of the Company’s common stock, par value $0.0001 per share (the “Common Stock”) at a price per share of $6.33 in cash (the “Purchase Price”) through

1

a private placement in reliance upon the exemption from securities registration afforded by the provisions of Section 4(a)(2) of the Securities Act of 1933 (the “1933 Act”), and Rule 506 of Regulation D (“Regulation D”) as promulgated by the U.S. Securities and Exchange Commission under the 1933 Act (such transaction, the “Transaction”). The Company covenants and agrees that it shall not pay any Special Dividends (as defined below) in the period following the date hereof and prior to the Closing Date (as defined below). As used herein, “Special Dividend” shall mean any dividend in excess of the amounts permitted to be distributed to the Company by Omnibus Group LP and further distributed by the Company, in each case, pursuant to the portion of the penultimate paragraph of Section 7.05 of the Credit Agreement, dated as of April 24, 2015, among the Company, Omnibus Group, LP, Omnibus Group Finance Inc., LMP Capital LLC, Bank of America, N.A. (as Administrative Agent) and the lenders and other parties thereto, as amended through the date hereof and as in effect prior to the Reversion Date (as defined therein), beginning with the words “(B) any dividend or distribution (including any cash dividend or distribution) on or in respect of (x) Parent’s Capital Stock” and ending with the words “or (y) in or after the last fiscal quarter of such taxable year.” The number of Shares of Common Stock to be issued to the Investor and the per Share price therefor shall be adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction for which the record date occurs on or prior to the Closing Date (as defined below).

|  |  |  |
| --- | --- | --- |
|  | **B.** | **Timing** |

Upon the satisfaction of the conditions set forth in the Definitive Documents, or if applicable, this LOI, the Transaction will be consummated immediately before, and concurrent with, the effective date of the Settlement (the “Closing Date”).

|  |  |  |
| --- | --- | --- |
|  | **C.** | **Definitive Documents** |

The Parties agree to negotiate in good faith to memorialize the Transaction in a securities purchase agreement and other definitive documentation consistent with the terms and conditions set forth herein (“Definitive Documents”). The Definitive Documents shall contain limited representations and warranties covenants, and conditions precedent consistent with Section F below. Promptly after the date hereof, the Parties shall make all filings required or necessary and take all actions reasonably necessary under applicable law, including the HSR Act (as defined below), to consummate the Transaction. The Investor represents and warrants as of the date hereof and as of the Closing Date, and will represent and warrant in any Definitive Documents, that the Investor: (1) understands that the Shares have not been registered under 1933 Act and, therefore, cannot be transferred or resold unless they are registered under the 1933 Act or unless an exemption from registration is available; (2) is an “accredited investor” as such term is defined in Regulation D under the 1933 Act; (3) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Shares; (4) is capable of bearing the economic risks of such investment, including a complete loss of its investment in the Shares; and (5) is buying with investment intent and not with a view to distribution in a manner that would violate the 1933 Act.

2

|  |  |  |
| --- | --- | --- |
|  | **D.** | **REIT Limitations; Other Investors** |

Notwithstanding anything to the contrary herein, (i) the Investor will not be permitted to acquire any Shares of Common Stock pursuant to the Definitive Documents or otherwise that would result in any person owning (or being treated as owning) more than 9.8% of the Company’s Common Stock in violation of the stock ownership limitations in the Company’s charter, and (ii) for the avoidance of doubt, to the extent that the Investor is prohibited from acquiring any Shares of Common Stock pursuant to clause (i), the Investor shall procure another purchaser for such Shares of Common Stock that is not so prohibited from acquiring such Shares of Common Stock. If the Investor is prohibited from acquiring Shares pursuant to clause (i) above, it may as set forth in the following paragraph designate one or more other purchasers of Shares acceptable to the Investor to acquire such number of Shares as necessary so that the Investor and each such designated purchaser will be in compliance with the stock ownership limitations in the Company’s charter.

The Company (a) will use its reasonable best efforts to provide the Investor with such information as is within its possession or control regarding the ownership of the Company’s stock for the purpose of ensuring compliance with the stock ownership limitations in the Company’s charter and (b) shall give the Investor no less than 7 business days’ written notice of the Closing Date. The Investor, after undertaking commercially reasonable diligence and consulting with knowledgeable tax counsel, shall provide the Company, 3 business days before the Closing Date, with a written representation, dated 3 business days before the Closing Date, that, immediately following the Closing Date, as a consequence of the Investor’s acquisition of Shares pursuant to the Transaction, no person shall own (or be treated as owning) more than 9.8% of the Company’s Common Stock in violation of the stock ownership limitations in the Company’s charter (the “Ownership Representation”). If the Investor is unable to deliver the Ownership Representation with respect to the full number of Shares contemplated by clause (A) above, the Investor shall notify the Company, no later than 3 business days before the Closing Date, of (x) the number of Shares in respect of which the Investor is unable to deliver an Ownership Representation and (y) the other purchaser(s) designated by the Investor to acquire the number of Shares identified pursuant to the preceding clause (x) (each, a “Designated Purchaser”), and the provisions of this paragraph shall apply to each Designated Purchaser *mutatis mutandis*. No later than two business days after the receipt by the Company of an Ownership Representation from the Investor, if the Company believes that the Ownership Representation received from the Investor is incorrect, the Company shall provide written notice (the “Company Disagreement Notice”) to the Investor specifying in reasonable detail (i) the reasons for such belief and (ii) the number of Shares of Common Stock as to which the Company believes cannot be issued to the Investor without resulting in a violation of clause (i) of the preceding paragraph (such Shares, “Excess Shares”). If the Company has not delivered a Company Disagreement Notice with respect to the Investor, (A) the Company and the Investor shall promptly notify the other party if the Company or the Investor, as the case may be, becomes aware prior to the Closing Date of any facts or circumstances which could result in the Ownership Representation being or becoming incorrect on the Closing Date, (B) the Investor shall bring down its Ownership Representation on the Closing Date, and (C) clause (i) of the preceding paragraph shall not apply with respect to the Investor unless the Company notifies the Investor, prior to the Closing, that the Company has actual knowledge that such Ownership Representation, as brought down to the Closing Date, is or will be incorrect, in which case (1)

3

the Closing may be postponed for up to 10 business days, and (2) the Company and the Investor shall either (x) use their commercially reasonable efforts to take such actions as will permit the Investor to give, on the Closing Date, an Ownership Representation as to which the Company does not have actual knowledge that such Ownership Representation is incorrect or (y) negotiate in good faith to reach agreement acceptable to each party on a waiver of the ownership limitations in the Company’s charter (a “Disagreement Notice Resolution”); provided that, for the avoidance of doubt, nothing herein or in the Definitive Documents shall be deemed to constitute a waiver of the stock ownership limitations in the Company’s charter with respect to any Shares of Common Stock issued to or thereafter owned by the Investor, or any other shares of Common Stock (or other equity securities) owned (or treated as owned) by the Investor at any time, which limitations shall remain in full force and effect with respect to the Investor (subject to any waiver agreed in accordance with the preceding clause (y)). If the Company has delivered a Company Disagreement Notice to the Investor and has not reached a Disagreement Notice Resolution with the Investor, (i) the Company shall not issue the Excess Shares to the Investor, and (ii) the Investor shall designate another investor (a “Substitute Investor”) to acquire the Investor’s Excess Shares on the Closing Date. If a Designated Purchaser designated by an Investor fails to provide the Ownership Representation at the time specified above or is otherwise prohibited from purchasing Shares on the Closing Date (“Non-Compliant Purchaser”), the Investor shall designate a Substitute Investor to acquire the Non-Compliant Purchaser’s Shares. Any Substitute Investor designated to acquire a Non-Compliant Purchaser’s Shares or an Investor’s Excess Shares must provide the Ownership Representation to the Company immediately prior to consummation of the Transaction.

To the extent that any Designated Purchaser or Substitute Investor does not pay the purchase price for the Shares allocated to such person on the Closing Date, (the “Defaulting Investor Shares” and any such investor, a “Defaulting Investor”), the Closing may be postponed for up to 10 business days and the Investor shall be required to fund, or cause to be funded, such purchase price on behalf of such Defaulting Investor, and, the Investor shall be entitled to exercise all remedies available to it and to the Company against such Defaulting Investor for such breach (other than any remedy which would permit the Investor to acquire any Shares of Common Stock issued to such Defaulting Investor if such Shares could not have been issued to such Investor in compliance with clause (i) in the first paragraph of this Section D). In addition to any other rights or remedies the Investor may have against the Defaulting Investor, but subject to compliance with clause (i) of the first paragraph of this Section D, the Investor shall be entitled to direct the Company to issue on the Closing Date the Defaulting Investor’s Shares to another Substitute Investor. Any Substitute Investor designated to acquire the Defaulting Investor Shares must provide the Ownership Representation to the Company immediately prior to the consummation of the Transaction.

For the avoidance of doubt, except as otherwise expressly provided in this Section D, the Company expressly agrees that nothing in its charter limits the rights of the Investor to purchase the Shares pursuant to this LOI; provided that, for the avoidance of doubt, nothing herein or in the Definitive Documents shall be deemed to constitute a waiver of the stock ownership limitations in the Company’s charter with respect to any Shares of Common Stock issued to or thereafter owned by the Investor (or if applicable, any Designated Purchaser or Substitute Investor), or any other shares of Company stock owned (or treated as owned) by the Investor (or if applicable, any Designated Purchaser or Substitute Investor) at any time, which limitations

4

shall remain in full force and effect with respect to the Investor (or if applicable, any Designated Purchaser or Substitute Investor) (subject to any waiver agreed in accordance with the clause (y) in the second preceding paragraph).

|  |  |  |
| --- | --- | --- |
|  | **E.** | **Transfer Restriction; Standstill; Registration Rights** |

(a) [From the Closing Date until the date that is one year from the Closing Date (the “Restricted Transfer Termination Date”), the Investor (or if applicable, Designated Purchaser or Substitute Investor) shall not be entitled to offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Shares of Common Stock owned by the Investor (or if applicable, Designated Purchaser or Substitute Investor) without the prior written consent of the Company, but excluding any transfer after the Closing Date to an Affiliate that enters into a similar lock-up agreement. In addition,] [a]t any time beginning on the date hereof and until one year after the Closing Date, if the Company notifies the Investor (or if applicable, Designated Purchaser or Substitute Investor) that it is commencing a capital raising transaction and the underwriters have advised that a lock-up agreement from the Investor (or if applicable, Designated Purchaser or Substitute Investor) is necessary or advisable to consummate such offering, the Investor (or if applicable, Designated Purchaser or Substitute Investor) will execute a lock up agreement [with respect to the Shares containing customary terms] [containing the restrictions set out in the first sentence of this Section E]; provided that (i) such lock up shall not restrict or limit the Investor (or if applicable, Designated Purchaser or Substitute Investor) in identifying, negotiating with and designating Designated Purchaser and Substitute Investors pursuant to Section D above, (ii) such lock up shall not exceed 90 days in total duration and (iii) the Company shall have the right to cause the Investor (or if applicable, Designated Purchaser or Substitute Investor) to execute such lock up in relation to only one such capital raising transaction.

(b) The Definitive Documents will require that the Company (x) shall file and keep effective a shelf registration statement (containing customary terms) with the U.S. Securities Exchange Commission to permit the free trading of the Shares following the [Closing] [Restricted Transfer Termination Date] pursuant to a customary shelf registration rights agreement and (y) shall ensure that any restrictive legends relating to transfer restrictions applicable to the Shares arising pursuant to the 1933 Act be removed as promptly as practicable upon the request of the Investor who is eligible to rely on the exemption from the registration requirements of the 1933 Act provided by Rule 144 thereunder upon provision by the Investor (or if applicable, Designated Purchaser or Substitute Investor) of customary certificates and opinions.

(c) From the Closing Date until the date that is one year after the Closing Date (the “Standstill Period”), the Investor agrees (and each Designated Purchaser or Substitute Investor that acquires Shares will agree in the Definitive Documents, and if no Definitive Documents are entered into but the Shares are issued to a Designated Purchaser or a Substitute Investor, then each Designated Purchaser or Substitute Investor will, as a condition to acquiring the Shares, agree, severally and not jointly) that, without the prior written consent of the Company, it will not, and will not permit any of its Affiliates, directly or indirectly to:

5

(a)       acquire, agree to acquire, propose, seek or offer to acquire, or facilitate the acquisition or ownership of, any equity securities of the Company or any of its subsidiaries, or any warrant, option or other direct or indirect right to acquire any such securities;

(b)       make, initiate, solicit or submit a proposal (public or otherwise) for, or offer of (with or without conditions), any merger, consolidation, business combination, tender or exchange offer, recapitalization, reorganization, purchase or license or other similar transaction involving (i) a material portion of the assets or (ii) securities of the Company or any of its subsidiaries;

(c)       make or in any way participate in any “solicitation” of “proxies” to vote or become a participant in any “election contest” (as such terms are used in the proxy rules of the 1934 Act), or agree or announce an intention to vote with any Person undertaking a “solicitation”, or seek to advise or influence any person or group with respect to the voting of any securities of the Company or any subsidiary thereof;

(d)       propose any matter for submission to a vote of shareholders of the Company or call or seek to call a meeting of the shareholders of the Company;

(e)       grant any proxies with respect to any securities of the Company to any Person or deposit any securities of the Company in a voting trust or enter into any other agreement or other arrangement with respect to thereof;

(f)       with any other person (except affiliates), to form, join, encourage the formation of or in any way engage in discussions relating to the formation of, or in any way participate in any “group” within the meaning of Section 13(d)(3) of the 1934 Act  with respect to any securities of the Company or any subsidiary thereof or otherwise in connection with any of the actions prohibited by this Section, including pursuant to any voting agreement or trust;

(g)       take any action, alone or in concert with other Persons, to nominate, remove or oppose the election of any director of the Company or to seek to change the size or composition of the Board of Directors;

(h)       enter into any discussions, negotiations, arrangements or understandings with, or advise, assist, finance or encourage any person with respect to any of the actions prohibited by this Section;

(i)       file with the SEC a proxy statement or any supplement thereof or any other soliciting material in respect of the Company or its shareholders that would be required to be filed with the SEC pursuant to Rule 14a-12 or other provisions of the Exchange Act; or

(j)       call, request the calling of, or otherwise seek or assist in the calling of a special meeting of the shareholders of the Company.

Notwithstanding the foregoing, this Section E(c) shall be inoperative and of no force and effect if any other person or group (as defined in Section 13(d)(3) of the 1934 Securities Exchange Act) shall enter into an agreement with respect to the acquisition of more than 50% of the outstanding voting securities of the Company or its subsidiaries or assets representing more than 50% of the

6

consolidated assets of the Company and its subsidiaries. Nothing in this Section E(c) shall be understood to prohibit or otherwise limit the Investor from negotiating, evaluating and, if applicable, consummating the Transaction or trading, directly or indirectly, in any index, exchange traded fund, benchmark or other similar basket of securities which may contain, or otherwise reflect the performance of, any securities of the Company.

|  |  |  |
| --- | --- | --- |
|  | **F.** | **Conditions** |

The Investor’s binding obligation to consummate the Transaction shall be further governed by the Definitive Documents and shall be subject to the satisfaction of the following conditions (which may be waived by the Investor): (i) the execution and delivery of a customary registration rights agreement in form and substance reasonably satisfactory to the Investor and the Company, (ii) the Company shall have filed with the NASDAQ Global Select Market a Notification Form: Listing of Additional Shares for the listing of the Shares, and Nasdaq shall have raised no objection to the consummation of the Transaction, (iii) the Bankruptcy Court order approving the Settlement with the Riverfalls Debtors shall not have been vacated, withdrawn, reversed, modified or stayed, (iv) the Settlement shall become fully effective and consummated according to its terms substantially simultaneously with the consummation of the Transaction, including, without limitation, the effectiveness of the release of all claims and causes of action against the Company and its affiliates contemplated by the Settlement, (v) no judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, enjoining or preventing the consummation of the Transaction contemplated hereby or in the Definitive Documents shall have been issued or instituted; provided, however, that the entry of a temporary restraining order preventing the consummation of the Transaction shall not be deemed or construed as a permanent failure of this condition and shall only delay the closing for so long as such temporary restraining order is in effect, and (vi) any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) with respect to the Transaction shall have expired or terminated.

The Company’s binding obligation under this LOI to consummate the Transaction with respect to the Investor shall be further governed by the Definitive Documents and shall be subject to satisfaction of the following conditions (which may be waived by the Company): (i) those specified under clauses (i) through (vi) above, (ii) the Investor (and, if applicable, each Designated Purchaser and Substitute Investor) shall have paid in full its purchase price to the Company, (iii) the delivery of the Shares at the Closing to the Investor (and, if applicable, each Designated Purchaser and Substitute Investor) shall not result in any person owning (or being treated as owning) more than 9.8% of the Company’s Common Stock in violation of the stock ownership limitations in the Company’s charter and (iv) no fewer than 38,633,470 shares of Common Stock will be sold at the Closing (adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction); provided that, in the event any other purchaser of shares of Common Stock contemplated by the Termsheet does not purchase its full allocation of shares of Common Stock, fails to designate a Designated Purchaser or Substitute Investor to purchase such shares of Common Stock as contemplated by Section D hereof or has its Letter of Intent terminated, the Company shall, at its option, either waive the condition in this clause (iv) or elect to have a period of 30 calendar days after such termination or the date on which the Company becomes aware that the condition set forth in this clause (iv) cannot be

7

satisfied to find another purchaser for such shares of Common Stock on terms acceptable to the Company (and the Closing Date shall be extended for up to 30 calendar days to allow the Company to find a replacement purchaser within such period) and if the Company is not able to find a purchaser for such shares of Common Stock within such 30 calendar day calendar period, then the other purchasers of shares of Common Stock (other than the defaulting purchaser) shall have the right (but not the obligation) to purchase on the Closing Date their pro rata portion of such shares of Common Stock (with the additional right to purchase any excess), pursuant to the terms of the their respective LOIs (it being understood, for the avoidance of doubt, that any such purchase made under any such LOI shall be subject to the terms of Section D hereof or thereof, as applicable, *mutatis mutandis*), allocated to such defaulting purchaser to allow the condition contemplated by this clause (iv) to be satisfied.

|  |  |  |
| --- | --- | --- |
|  | **G.** | **Exclusivity** |

In furtherance of the foregoing, the Company agrees that from the date hereof until the earlier of termination of this paragraph pursuant to the last sentence of this Section G and the Closing Date, (a) the Company will not, and will not permit any controlled affiliate to, directly or indirectly (including through any of the Company’s or its controlled affiliates’ respective advisors or representatives), initiate, solicit or deliberately encourage any other proposal or participate in any discussions relating to a Similar Transaction (defined below); (b) the Company shall notify the Investor if the Company or, to the Company’s knowledge, any of its controlled affiliates receives from any person other than the Investor any inquiry, proposal or offer relating to a Similar Transaction and shall provide to the Investor a description of the nature of such inquiry, proposal or offer and the material terms thereof (including any material updates thereto) from any other Party relating to a Similar Transaction; (c) the Company will not, and will not permit its controlled affiliates to, directly or indirectly (including through any of its or its controlled affiliates’ respective advisors or representatives) negotiate or execute a confidentiality agreement relating to a Similar Transaction, or otherwise engage in discussions or negotiations relating to a Similar Transaction, or furnish or disclose any non-public information relating to a Similar Transaction, in each case with or to any person other than the Investor; (d) the Company will not approve, endorse or recommend any Similar Transaction (other than the Transaction); and (e) the Company will not enter into any letter of intent, agreement in principle or other contract relating to any Similar Transaction (other than the Transaction).

For the purposes of this LOI, “Similar Transaction” means a capital-raising transaction to finance the “Purchase Amount” as defined in the Termsheet referenced herein and shall not include (1) any transactions entered into on the date hereof with other investors who are entering into letters of intent with the Company on substantially the same terms set forth herein and (2) the marketing and sale by the Company of the shares of Common Stock of a defaulting purchaser as contemplated by clause (iv) of the second paragraph of Section F hereof.

The foregoing exclusivity provision shall terminate and be of no further force or effect on the earliest to occur of (i) December 31, 2020 if definitive documentation related to the Settlement has not been executed by all parties thereto, (ii) the occurrence of the “Termination Date” under the Plan Support Agreement that could reasonably be expected to prevent the acceptance, consummation or implementation of the Omnibus Transactions (as defined in the Plan Support Agreement), (iii) upon written notice by the Company to the Investor if the closing

8

conditions with respect to the Investor or the Company set forth above are not capable of being satisfied as determined by the Company acting reasonably (provided that the Company shall provide notice to the Investor of such determination and the Investor shall have ten business days to seek to remedy such situation, including through waiver of any condition applicable to them, and exclusivity shall terminate after such ten business day period if such situation remains uncured), (iv) upon written notice by the Company to the Investor if the Investor is in material breach of this LOI (provided that the Company shall provide notice to the Investor of such alleged material breach and the Investor shall have ten business days to seek to remedy such situation, and exclusivity shall terminate after such ten business day period if such situation remains uncured), or (v) the date of the consummation of the Transaction; provided, that, any such termination of the exclusivity provision shall not relieve any party from any breach of the exclusivity provision prior to the termination thereof.

|  |  |  |
| --- | --- | --- |
|  | **H.** | **Binding Nature; Remedies** |

The Parties acknowledge and agree that their respective obligations under this LOI are binding and may be enforced in accordance with this Section H. Each of the Company and the Investor acknowledges that it would be impossible to determine the amount of damages that would result from any breach of this LOI by it and that the remedy at law for any breach, or threatened breach, of any of such provisions would likely be inadequate and, accordingly, agrees that the other Party shall, in addition to any other rights or remedies which it may have, be entitled to obtain equitable and injunctive relief as may be available from any court of competent jurisdiction to compel specific performance of, or restrain the breaching Party from violating, any of such provisions. In connection with any action, suit or proceeding for injunctive relief, each of the Company and the Investor hereby waives the claim or defense that a remedy at law alone is adequate and agrees, to the maximum extent permitted by law, to have each provision of this agreement specifically enforced against it, without the necessity of posting bond or other security against it, and consents to the entry of injunctive relief against it enjoining or restraining any breach or threatened breach of such provisions of this agreement.

If the Parties fail to enter into Definitive Documents by the date the Bankruptcy Court approves the Settlement, (i) the Investor may waive entry into Definitive Documents and any other conditions to its obligations to consummate the Transaction and compel the Company, subject to the satisfaction of the conditions to the Company’s obligations set forth in Section F, (a) to list the Shares on the NASDAQ Global Select Market and, subject to Section D, to issue and sell the Shares to the Investor (and, if applicable, each Designated Purchaser and Substitute Investor) at the Purchase Price as set forth in Sections A and B and (b) to comply with its covenants and agreements in Section E(b) and (ii) the Company may waive entry into Definitive Documents and any other conditions to its obligations to consummate the Transaction and compel the Investor, subject to the satisfaction of the conditions to the Investor’s obligations set forth in Section F, to purchase the Shares at the Purchase Price as set forth in Sections A and B and (b) to comply with its covenants and agreements in Sections D and E hereof.

9

|  |  |  |
| --- | --- | --- |
|  | **I.** | **No Fiduciary Duties etc.** |

Neither Party nor its respective affiliates or representatives shall have any legal, fiduciary or other duty to the other Party or its respective affiliates or representatives with respect to the negotiation, execution or the consummation of the Transaction.

|  |  |  |
| --- | --- | --- |
|  | **J.** | **Miscellaneous** |

This LOI constitutes the entire agreement between the Company and the Investor, and supersedes all prior communications, agreements and understandings, written or oral, with respect to the subject matter hereof (it being understood that the Definitive Documents shall supersede this LOI to the extent expressly set forth therein). Each of the Parties represents and warrants to the other party that the execution and delivery of this LOI and the performance of its obligations hereunder have been duly authorized by all necessary organizational action. This LOI shall be governed by the laws of the State of New York without regard to any conflict of laws principles thereof that would cause the laws of any other jurisdiction to be applied to this LOI. All actions, suits and proceedings arising out of or related to this LOI shall be heard and determined in a state or federal court located in New York County, New York and each Party hereto irrevocably submits to the exclusive jurisdiction and venue of such courts in any such action, suit or proceeding and irrevocably waives the defense of an inconvenient forum to the maintenance of any such action, suit or proceeding in any such court. This LOI may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Facsimile signatures or signatures delivered by email via a “PDF” shall constitute the effective execution and delivery of this LOI and have the same effect as an original signature. This LOI may not be amended or modified except by an instrument in writing signed by each of the Parties hereto. Any agreement on the part of a Party hereto to any waiver of any right granted to such Party hereunder shall be valid only if set forth in a written instrument signed by such Party. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The Investor may not assign any of its rights or obligations hereunder other than to an affiliate of the Investor or a Designated Purchaser or Substitute Investor as set forth in Section D above; provided that any such assignment will not relieve the Investor of its obligations hereunder and any affiliate of the Investor that becomes an assignee hereunder will expressly agree to be bound by the obligations binding on the Investor set forth herein, including Section G. The Company represents and warrants to the Investor that the number of shares of Common Stock outstanding as of the date hereof is 193,263,981.

|  |  |  |
| --- | --- | --- |
|  | **K.** | **Termination** |

This LOI shall terminate (i) by mutual agreement of the Parties upon execution and delivery of such termination in a writing signed by the Parties; (ii) by written notice of either Party to the other Party, if a court of competent jurisdiction has entered a final, non-appealable order prohibiting the consummation of the closing of the Transaction, (iii) on December 31, 2021, if the Parties have not entered into Definitive Documents, (iv) by written notice of either Party to the other Party following the occurrence of the “Termination Date” under the Plan Support Agreement that could reasonably be expected to prevent the acceptance, consummation

10

or implementation of the Omnibus Transactions (as defined in the Plan Support Agreement), or (v) by written notice of either Party to the other Party if the closing conditions with respect to the terminating Party’s obligation to consummate the Transaction are not capable of being satisfied (provided that the terminating Party shall provide notice to the other Party of such termination and the other Party shall have ten business days to satisfy such condition.).

[*remainder of page left blank intentionally*]

Very truly yours,

[●]

By:

Name:

Title:

ACKNOWLEDGED AND AGREED:

OMNIBUS GROUP INC.

By:

Name:

Title:

11