

## FINDER'S AGREEMENT

This Finder's Agreement, dated as of \_\_\_\_\_, 20\_\_, is between \_\_\_\_\_ ("Buyer"), having a place of business at \_\_\_\_\_, and \_\_\_\_\_ ("Broker"), having a place of business at \_\_\_\_\_.

### 1. Brokerage Services.

(a) Broker expects to identify to Buyer one or more companies for evaluation by Buyer as acquisition candidates. Each such company with respect to which Broker provides Buyer proprietary information and arranges an introduction to Buyer is referred to in this Agreement as a "Candidate."

(b) Broker reserves the right to present acquisition candidates to other parties in addition to Buyer. Buyer reserves the right to identify its own acquisition candidates and to appoint or retain additional agents, brokers, finders or other parties to provide brokerage services with respect to or to solicit or propose companies as acquisition candidates.

### 2. Broker's Fee and Basis of Fee.

(a) If Buyer acquires a Candidate, then except as otherwise provided in this Agreement, Buyer will cause Broker to be paid a fee (the "Fee") equal to a portion of the gross acquisition price of the Candidate determined in accordance with the schedule listed at the end of this paragraph. The gross acquisition price is the total consideration paid by Buyer to acquire the Candidate (and not subsequently returned) in any combination of cash, notes, stock or other property, including deferred payments.

5% of the first \$1 million

4% of the amount between \$1 million and \$2 million

3% of the amount between \$2 million and \$3 million

2% of the amount between \$3 million and \$4 million

1% of all amounts over \$4 million

(b) Any Fee due under this Agreement shall be payable in like kind as the consideration paid to acquire the Candidate, or at Buyer's election in cash in an amount calculated based on the fair market value of such consideration. If the entire gross sales price is not payable upon consummation of the acquisition, a pro rata amount of the Fee will be paid as and when the deferred portion of the gross acquisition price is paid.

(c) Any Fee due to Broker under this Agreement will be reduced by the amount of any other compensation paid or payable to Broker or its affiliates with respect to the Candidate, whether paid or payable by the Candidate or any other person or entity.

(d) Buyer is not obligated to accept any offer of any kind from any party, and may refuse to conclude any agreement or transaction with or without good cause. No Fee or other compensation of any kind will under any circumstances be payable under this Agreement or otherwise if acquisition of a Candidate is not consummated by Buyer for any reason whatsoever, including without limitation the fault or default of Buyer.

3. Previous Activities, Other Brokers, Etc. Broker agrees that if a Candidate has been identified to Buyer by a third party or if Buyer has been investigating or negotiating with a Candidate before the time it is introduced to Buyer by Broker, or if Buyer has become obligated before such time to pay another person or entity a fee if it acquires a Candidate, Buyer will have no obligation to pay any Fee to or otherwise compensate Broker with respect to such Candidate. Buyer will use its best efforts to notify Broker within 15 business days of receiving the name of any such Candidate submitted by Broker. Unless Buyer agrees otherwise in writing with respect to one or more specific Candidates, no Fee or other compensation of any kind will be payable under this Agreement or otherwise with respect to any Candidate that is publicly traded or as to which, whether before or after introduction of the Candidate by Broker to the Buyer, an investment banker is engaged to solicit buyers.

4. Term. This Agreement shall terminate one year from its date. However, termination of this Agreement shall not affect Broker's right to a Fee otherwise provided for in this Agreement if Buyer acquires a Candidate that had been introduced to Buyer by Broker before such termination, Buyer purchases such Candidate within two years from such termination, and such Fee would have been payable to Broker under this Agreement had such acquisition occurred before such termination.

5. Status of Broker. Broker is an independent contractor, and not an agent of Buyer for any purpose whatsoever. Broker has no authority to, and agrees not to, assume or create any obligation or liability, express or implied, on Buyer's behalf, or bind Buyer in any manner or to anything whatsoever. Broker agrees to be liable for and to pay its own expenses.

6. Miscellaneous. No provision of this Agreement may be amended, modified or waived orally, but only in a writing signed by a duly authorized officer of Buyer and Broker. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings, written or oral, between the parties or their affiliates or agents with respect to the subject matter hereof. The headings in this Agreement are for convenience of reference only, and shall not alter or affect the meaning of any provision. Each party acknowledges that it has not relied upon any representation of the other party, except for any representation made by such party under the express terms of this Agreement, in entering into and undertaking the obligations imposed by this Agreement. This Agreement shall be construed, interpreted and enforced in accordance with the substantive laws of the State of Texas. The parties agree that any action brought to resolve any controversy arising under or relating to this Agreement shall be subject to the exclusive jurisdiction of, and may only

be brought or maintained in, the state and federal courts of Travis County and that any right any party might have to a trial by jury in any such action is hereby irrevocably waived.

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

**BROKER:**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**BUYER:**

\_\_\_\_\_

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

Its: \_\_\_\_\_