Letter of Intent (Stock Acquisition)

[Letterhead of Buyer]

[Date]

[Address]

Re: Letter of Intent

Ladies and Gentlemen:

This letter of intent (this "**Letter**") reflects the mutual intention of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ("**Buyer**") and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [and any of its subsidiaries] ("**Seller**") concerning the possible acquisition of all of the issued and outstanding capital stock of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] corporation ("**Target**"), from [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ("**Seller**") on the general terms and conditions set forth below (the "**Proposed Transaction**"). In this Letter, Buyer and Seller are referred to individually as a "**Party**" and together as the "**Parties**."

Part One

Upon the mutual execution of this Letter the Parties will negotiate in good faith a definitive written stock purchase agreement providing for the Proposed Transaction (the "**Agreement**") and related agreements[, including, but not limited to an employment agreement with [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] to be negotiated among the Parties to this Letter] (together with the Agreement, the "**Definitive Agreements**"). The Agreement will contain the definitive provisions and conditions of the Proposed Transaction and representations, warranties, conditions, and covenants customary for an acquisition of this size and type. Based on the information currently known to the Parties, the Parties agree that the following terms reflect their mutual intent:

1. Basic Transaction. Seller will sell all of the issued and outstanding capital stock (the "**Shares**") of Target to Buyer at the price (the "**Purchase Price**") set forth in Section 4, below.
2. Closing. The consummation of the Proposed Transaction (the "**Closing**") will take place electronically or at a location that is mutually acceptable to the Parties on the first business day after the day the last of the conditions to Closing set forth in the Definitive Agreements is satisfied or waived, , or at such other place and date as is agreed between the Parties (the date on which the Closing occurs, the "**Closing Date**"), provided that the Closing shall occur no later than [\_\_\_\_\_], unless otherwise mutually agreed in writing. The Parties shall use [good faith]/[reasonable]/[commercially reasonable]/[best] efforts to negotiate a stock purchase agreement for the Transaction ("**Purchase Agreement**") and related ancillary documents and agreements (the "**Ancillary Documents**") that include and reflect the fundamental terms of the Transaction as set forth in this Letter before [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].
3. Due Diligence. Until the end of the Term (as hereinafter defined), subject to applicable law, Buyer will have the opportunity to conduct reasonable and customary due diligence with respect to Target. Buyer shall have the right to review the business, accounting, financial, and legal affairs and operations of Target, which review may include off-site due diligence through an electronic data room and onsite due diligence in accordance with this Section 3. Buyer agrees that it and its representatives will conduct its and their due diligence review in a manner that disrupts as minimally as reasonably possible the daily operations of Target, and that it will be responsible for its own expenses in connection with its due diligence review. Seller will cause Target to make its employees and representative available, during normal business hours and upon Buyer’s prior written request for such purposes as may be reasonably required for Buyer to conduct its due diligence review.
4. Purchase Price. [Subject to adjustment as provided in Section [\_\_\_\_\_],] Buyer shall pay Seller a purchase price of $[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] in cash (the “**Base Purchase Price**”) at the Closing by wire transfer of immediately available funds to the account or accounts specified by Seller.
5. **Representations and Warranties**. The Definitive Agreement will contain representations and warranties customary for a transaction such as the Proposed Transaction, including, but not limited to, in the case of the applicable Party, representations and warranties regarding:
	1. organization and structure, authorizations, non-contraventions, consents and approvals;
	2. material contracts;
	3. capitalization;
	4. financial condition, income and statements of cash flow contained in the financial statements;
	5. accuracy of public filings under the Exchange Act of 1934, legal proceedings, legal and regulatory compliance, employees;
	6. insurance;
	7. absence of changes;
	8. books and records;
	9. taxes; and
	10. other appropriate representations and warranties regarding the assets and operations of the Parties.
6. **Covenants of the Parties**. The Definitive Agreement will contain covenants customary for a transaction such as the Proposed Transaction, including, but not limited to, in the case of the applicable Party, covenants regarding:
	1. the operation of Target during the period between execution of the Definitive Agreement and Closing;
	2. seeking any necessary transfer restriction consents and waivers;
	3. seeking any Buyer or Seller approvals required in connection with the Proposed Transaction; and
	4. seeking any governmental approvals that must be obtained in connection with the Business Combination.
7. Conditions to Closing. The Closing of the Proposed Transaction will be subject to the satisfaction of various customary conditions, including, without limitation: [receipt of all consents and releases from third parties necessary for the indirect transfer of all right, title, and interest in the assets of Target], [receipt of approvals or consents from all applicable regulatory or governmental authorities], [other closing conditions].
8. Approval by Boards of Directors. The Proposed Transaction shall be submitted to the boards of directors of each of Buyer and Seller for such approval as may be required by and in accordance with applicable law and the [articles]/[certificate] of incorporation, bylaws, and/or other organizational documents of Buyer or Seller (as applicable).
9. **Employee Matters**. The Definitive Agreement will include terms relating to regular communication to employees of the Parties and with respect to the employment of the Parties' employees following Closing shall describe the process of evaluating the future needs of the Target Company post-Closing as well as the anticipated severance arrangement for any employee that is separated after the Effective Time due to overlapping responsibilities of personnel as a result of the Proposed Transaction. [In addition, at the Closing, employees and [shareholders/members of Target] will execute and deliver confidentiality and proprietary information agreements (each, a "**Confidentiality Agreement**") with Buyer [and Target]].
10. **Indemnification and Survival of Representations and Warranties.**
	1. The Definitive Agreement will provide for indemnification of Buyer by Seller for breaches of certain representation and warranties, and for such length of time, as may be mutually agreed by the Parties.
	2. All indemnification obligations of either Party in the Definitive Agreement will be subject to [[a [basket]/[deductible] of $[\_\_]] and will be capped at [\_\_]% of the Purchase Price]] [mutually acceptable baskets and caps] [and supported by a reasonable holdback or escrow mechanism], and such indemnities would be expected to survive for a mutually agreed period of time after the Closing.

Part Two

The following paragraphs (collectively, the “Binding Provisions”) are the legally binding and enforceable agreements of the Parties.

1. Term. This Letter shall have a term commencing on the date of execution by both Parties and ending [\_\_\_\_\_] days later (the "**Term**"). Either Party may terminate this Letter upon written notice to the other Party prior to the execution of the Definitive Agreements and, upon such notice, the Parties shall be relieved of their obligations pursuant to this Letter, except the provisions of [Section 12, which shall survive in accordance with its terms, and the provisions of] Section 13, which shall survive the termination of this Letter.
2. Exclusivity. Upon execution of this Letter, and in consideration of the good faith effort to be made by Buyer, for a period not to exceed [number] calendar days from the date thereof, Seller will, and will cause its affiliates and its affiliates’ officers, directors, employees, agents, and other representatives to, immediately cease any and all discussions and negotiations concerning the contemplation, consideration, or making of any Alternate Proposal, [and cease to provide access to any confidential or proprietary information available to third parties in connection with any Alternate Proposal,] and to refrain from directly or indirectly: (a) soliciting, initiating, or [knowingly] encouraging the submission of proposals or offers relating to, (b) participating in any discussions or negotiations with any person relating to, (c) furnishing to any person any information with respect to, or (d) taking any other action to facilitate or cooperate in any way with the making of any proposal that constitutes, or may reasonably be expected to lead to, a direct or indirect acquisition, recapitalization, purchase of any capital stock or other equity interest in, or any of the businesses of, Seller, or a merger, consolidation, or other business combination involving Seller, or any similar transaction involving all or any substantial portion of Seller's business, securities or assets (an "**Alternate Proposal**"). Seller shall promptly (within 24 hours) communicate to Buyer the terms of any Alternate Proposal (including the structure, purchase price and identity of the potential acquirer) which it or any such other Person may receive during such period.
3. Confidential Information. Buyer agrees to treat all information concerning Seller and Target furnished by or on behalf of Seller or Target (collectively, the "**Proprietary Information**") in accordance with the provisions of this Section 13. and to take, or abstain from taking, the other actions set forth herein. Buyer agrees that the Proprietary Information will be used solely to allow Buyer to evaluate the feasibility and desirability of, and to negotiate and plan for any integration activities necessitated by, the Proposed Transaction (the "**Permitted Use**"). Buyer agrees (i) to use the Proprietary Information solely in connection with the Permitted Use, and (ii) to hold the Proprietary Information in strict confidence and to take reasonable precautions to protect such Proprietary Information; provided, however, that Buyer may disclose Proprietary Information (A) to those officers, directors, employees, financial advisors, accountants, legal counsel, [lending institutions] [, representations and warranty insurance underwriters,] [or other potential debt and equity finance sources] (collectively, "**Buyer's Representatives**") on a need to know basis in connection with the Permitted Use and subject to the restrictions contained herein, (B) to the extent that Seller consents in writing, and (C) to the extent necessary to comply with any federal securities law [except to the extent such requirement for disclosure under the federal securities laws results from any attempt by Buyer to acquire Seller or any of its Affiliates] or in connection with any judicial or administrative proceeding. If the Proposed Transaction is not consummated, Buyer will return to Seller or destroy (at Buyer's option), and certify to such destruction, all Proprietary Information of Seller, all documents or media containing any such Proprietary Information, and any and all copies or extracts thereof, including, to the extent practicable, expunging all such Proprietary Information from any computer, server, cloud storage facility, or other device, platform, or electronic storage medium containing such information. If Buyer or Buyer's Representatives are requested in any proceeding to disclose any of the Proprietary Information, Buyer shall (a) give prompt notice to Seller of the disclosure requirements, and to the extent legally permissible, the scope of the information that Buyer intends to disclose, (b) provide Seller a reasonable opportunity to interpose an objection or obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which the order was issued, (c) cooperate fully with the efforts of Seller under (b) above, as requested by Seller, and (d) minimize the extent of any such disclosure. Buyer understands and acknowledges that neither Seller nor any of its Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness, of the Proprietary Information.
4. Public Disclosure. Without the prior written consent of the other Party, and unless required by law, rule or regulation or policy of any national securities exchange or similar regulatory body, the Parties shall not make any public disclosure (orally or in writing) prior to the Closing regarding (i) the existence of, or identity of the Parties to, this Letter (ii) the fact that Seller and Buyer are engaged in discussions or negotiations with respect to the Proposed Transaction and the fact that Seller has provided information to Buyer for its review, or (iii) the subject matter or terms of this Letter. If a Party is required by law to make such a disclosure, it will provide the other Party with prompt written notice prior to making such disclosure.
5. Effect of Letter. Except with respect to the Binding Provisions, which shall be legally binding on the Parties upon their execution and delivery hereof, this Letter is an expression of intent only. The statements of intent or understanding contained herein shall not be deemed to constitute any offer, acceptance or legally binding agreement, and such statements do not create any rights or obligations for or on the part of any Party to this Letter. Each Party understands and agrees that no contract or agreement providing for any transaction between them shall be deemed to exist between them unless and until the Definitive Agreements have been executed and delivered, and each Party hereby waives, in advance, any claims (including, without limitation, breach of contract and tortious interference claims) in connection with the Proposed Transaction unless and until the Parties have entered into the Definitive Agreements. Each of Buyer and Seller agrees that neither will be under any legal obligation of any kind with respect to the Proposed Transaction by virtue of this Letter, except for the Binding Provisions, unless and until the Parties have entered into the Definitive Agreements. Each Party reserves the right, in its sole discretion, for any reason or no reason, to reject any and all proposals made to it or its representatives with regard to the Proposed Transaction and to terminate discussions and negotiations with the other Party at any time.
6. Miscellaneous Provisions.
	1. Amendments; Waivers. This Letter of Intent may not be modified, amended or supplemented except by a written instrument signed by each of the Parties. In addition, no waiver of any provision of this Letter shall be binding unless set forth in a writing signed by the Party affecting the waiver. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Letter or of the same circumstance or event upon any recurrence thereof.
	2. Payment of Expenses. Except as otherwise set forth in this Letter of Intent, each Party shall bear its own legal, accounting and other fees and expenses incurred in connection with the Proposed Transaction, whether or not the Definitive Agreement is executed or the Closing occurs.
	3. Notices. All notices and communications required or permitted under this Letter of Intent shall be in writing and addressed as set forth below. Any communication or delivery hereunder shall be deemed to have been made and the receiving Party charged with notice (a) if personally delivered, when received, (b) if sent by electronic mail, upon acknowledgment of receipt, which does not include delivery or view notifications, it being understood that acknowledgment of receipt may occur pursuant to a confirmatory email or telephone conversation or other reasonable proof, and each Party agrees to promptly acknowledge receipt of any such email, (c) if mailed, three business days after mailing, certified mail, return receipt requested, or (d) if sent by overnight courier, one business day after sending. All notices shall be addressed as follows:

If to Seller:

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

If to Buyer:

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* 1. Governing Law. This Letter shall be deemed to be made in and shall be interpreted, construed, and governed by and in accordance with the laws of the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], without regard to the conflicts of law provisions thereof to the extent that such principles would permit or require the application of the laws of another jurisdiction.
	2. Enforcement. Each Party agrees that it shall bring any legal action or proceeding to enforce or interpret the terms and conditions of this Letter of Intent or to collect any monies under it, exclusively in the courts of the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] and the federal courts of the United States of America located in the State of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the "**Chosen Courts**"). Each Party (i) irrevocably consents to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Court, and (iii) waives to the fullest extent possible, any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party hereto. Each Party agrees that a final, non-appealable judgment in any action brought in the Chosen Courts shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
	3. Waiver of Jury Trial. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR WITH RESPECT TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR RELATING OR INCIDENTAL HERETO.
	4. Severability. Each provision of this Letter is intended to be severable. If any term or provision hereof is held illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the legality, validity or enforceability of the remainder of the Letter in that or any other jurisdiction.
	5. Headings. The headings in this Letter of Intent are for reference only and shall not affect the interpretation of this Letter of Intent.
	6. Entire Agreement. This Letter contains the entire understanding among the Parties and supersedes any prior written or oral agreements between them respecting the subject matter of this Letter. There are no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Letter that are not fully set forth herein, and unless and until such time as the Definitive Agreements are executed and delivered pursuant to their terms, this Letter constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to the subject matter hereof.
	7. Counterparts. This Letter of Intent may be signed in one or more counterparts, each of which may be an original or electronic copy or signature (including copies or signatures in .pdf, .png, .jpg, or other electronic file format), and all of which taken together shall constitute one and the same instrument.

[The remainder of this page is intentionally left blank; signature page follows.]

If the foregoing evidences our mutual intent, please so indicate by signing and returning the enclosed copy of this Letter.

Very truly yours,

BUYER, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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