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LETTERS OF INTENT, CONFIDENTIALITY AND STANDSTILL AGREEMENTS

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I. What is a letter of intent?

A. A letter of intent, sometimes called a memorandum of understanding (and referred to as an "LOI" or "MOU") is a preliminary statement used to outline the general terms of a proposed corporate transaction. The parties almost always anticipate that the LOI will be superceded by a definitive agreement at a later date.

B. An LOI is usually signed by both parties. (In contrast, term sheets are usually not signed.)

C. Generally, a letter of intent takes one of two forms:

1. The parties set forth their understandings of the transaction but do not agree to be bound by those understandings, other than certain limited terms (such as confidentiality, exclusivity, conduct of diligence and costs and expenses) as set forth in the LOI and perhaps the obligation to continue negotiating in good faith to reach a definitive agreement; *or*

2. The parties agree to be bound by certain of the transactions terms (in addition to provisions of confidentiality, exclusivity, conduct of diligence and costs and expenses) and the obligation to continue negotiating in good faith to reach a definitive agreement.

In the latter case, if no definitive agreement is ever reached, the parties are bound to the terms actually agreed upon and a court or fact-finder may supply any missing terms. In the former, if no definitive agreement is ever reached, there is (or should be) no agreement, other than the limited binding terms (confidentiality, exclusivity, diligence and costs and expenses). However, in some circumstances, a court may find, based on the language of the LOI, the surrounding circumstances or both, that binding obligations were created beyond those the parties anticipated, as discussed further below.

D. When is a letter of intent used?

1. An LOI is being used more frequently now than it had been used in the past. It is primarily used in complex transactions and is seen in both the corporate context (for mergers and acquisitions of both private and public companies and for financings), as well as non-corporate context, such as commercial agreements, intellectual property and technology license agreements and commercial real estate transactions.

2. Reasons clients want to use an LOI:

a. To "seal the deal"

b. (They think that) a full-blown agreement is unnecessary and a waste of time and money

c. Something to show for their efforts

3. There is no general consensus regarding when an LOI is appropriate (as opposed to a non-binding term sheet, or deferring any written document until the definitive agreement is drafted), and a case-by-case determination should be made based on the facts of the particular transaction.

II. Issues to consider in deciding whether a letter of intent is appropriate for a particular transaction

A. Advantages to using an LOI

1. Use of an LOI may help reduce risk to the parties in that:

a. The parties are required to articulate (often to their attorneys) the results, or at least the status, of their discussions, thus helping to identify gaps in their discussions and to obtain preliminary legal advice;

b. It helps to expose any "deal breakers" early in the discussions; and

c. The LOI discussion process, as a precursor to the negotiations of the final agreement, gives the parties a better feel for the likelihood of their reaching a definitive agreement.

2. In certain transactions, the LOI can facilitate early compliance with regulatory requirements. (For instance, in a public company acquisition, a letter of intent may be sufficient to make a filing under the Hart-Scott-Rodino Act.)

3. Binding terms in the LOI control the rights and obligations of the parties during negotiations before a definitive agreement is reached (for example, the standstill and confidentiality provisions as discussed below in more detail, as well as provisions regarding the conduct of diligence).

4. Signing an LOI may enhance the parties' commitment to the deal and may create a sense of moral obligation in the parties to abide by the terms of the LOI and to negotiate toward a definitive agreement, whether are not they are legally bound to do so.

B. Disadvantages to using an LOI

1. It may impede negotiations of the deal by raising difficult issues early in the process, resulting in more lengthy and costly negotiations than merited by a preliminary document.

2. For a smaller deal, the costs of negotiating the letter of intent may outweigh the benefits.

3. For a public company, the LOI may create an obligation to disclose the proposed transaction before the parties would like.

4. If the LOI is poorly drafted,

   a. it may place the client in a weak bargaining position when negotiating the definitive agreement because of terms in the LOI (whether or not these LOI terms are legally binding), and/or

   b. it can result in expensive litigation and unintended consequences, which usually means that a party is held to obligations that it may not want.

III. Possible legal effects of a letter of intent

A. Basic rules enunciated by courts:

1. If the parties do *not* intend to be bound prior to execution of a definitive agreement and they manifest that intent clearly in the LOI, they will not be bound.

   See R.G. Group, Inc. v. Horn & Hardart Company, 751 F.2d 69 (2d Cir. 1984) (where there was a clear understanding between the parties that they intended to be bound only by a written agreement and no agreement was ever signed, there was no contract formed under New York law, even though the parties had reached a "handshake agreement" during a telephone conversation as part of the negotiations).

2. If the parties do not state expressly an intention to be bound or not, a court may impose a duty on the parties to negotiate in good faith.

   See Copeland v. Baskin Robbins, 96 Cal.App.4th 1251 (2002) (buyer of ice cream manufacturing factory had claim against seller for breach of written agreement to negotiate another agreement for seller to buy ice cream from buyer. The court found that the written agreement was not simply "an agreement to agree," but rather required the seller to act in good faith in negotiating the ice cream sales contract. Despite this, the court went on to hold that the buyer was not entitled to damages because the buyer claimed only lost profits as damages, which were too speculative to award.)

See Teachers Insurance and Annuity Association of America v. Tribune Company, 670 F. Supp 491 (S.D.N.Y. 1987) (under the circumstances, the express terms of commitment letter between institutional lender and borrower and the context of the parties' negotiations, the letter represented a binding preliminary commitment and obligated both parties to seek to conclude final loan agreement upon agreed terms by negotiating in good faith to resolve additional terms that were customary in agreements of that type. Borrower's reservation of right of approval to its board of directors did not leave it free to abandon the transaction).

Cf. Feldman v. Allegheny International Inc., 850 F.2d 1217 (7th Cir. 1988) (under Illinois law, a letter of intent executed by parties to a prospective corporate acquisition which stated that no step of negotiations would be interpreted as binding contract until definitive agreement had been reached and formally executed did *not* create a duty of good faith obligating selling party to *sign* draft agreement. By the letter's terms, the right to exclusive negotiation lasted only "while the proposed acquisition [was] being pursued." Based on this, the court stated, "[b]oth parties were free to end the arrangement and move on if they felt that discussions were progressing too slowly or they had reached a stalemate and believed they had better prospects elsewhere.").

3. Language in the LOI may also be used to find an agreement to negotiate in good faith to resolution.

   See Itek Corp. v. ChicagoAerial Industries, Inc., 248 A.2d 625 (Del. 1968) (there may be a cause of action for breach of contract where the LOI expressly stated that the parties "shall make every reasonable effort to agree upon and have prepared" a contract setting forth the terms and conditions of a merger to be agreed upon, and that subsequently, the selling party, in order to permit its stockholders to accept a higher offer, willfully breached this obligation).

4. The fact that some terms may be left open does not mean that an LOI with binding terms necessarily would be rendered unenforceable.

   See Teachers Insurance and Annuity Association of America v. Tribune Company, 670 F. Supp 491, 502 (S.D.N.Y. 1987) (two-page term sheet, along with commitment letter which referred to it, "described the important economic terms of the proposed . . . mortgage. Notwithstanding its silence as to countless pages of secondary conventional mortgage clauses which remained to be negotiated, it sufficiently specified the important terms to make the commitment letter agreement meaningful and enforceable.").

5. Courts also have held an LOI to have no binding effect whatsoever.

See Space Imaging Europe, Ltd. v. Space Imaging L.P., 38 F.Supp.2d 326 (S.D.N.Y. 1999) (where the language of a letter of intent, read as a whole, as well as history of the negotiations and other extrinsic evidence, demonstrated that the parties did not intend to be bound, there is no binding agreement).

6. *But*, even if the LOI did not bind the parties even to negotiate in good faith, a court may find such a duty based on the conduct of the parties after executing the LOI.

   See Budget Marketing, Inc. v. Centronics Corp., 927 F.2d 421 (8th cir. 1991) (even though the letter of intent between two parties to a proposed merger created no binding commitment to negotiate in good faith, expressly or impliedly, evidence of oral assurances by the one party, as well as reliance by the other party and the party's awareness of this reliance, "is substantial enough to establish a triable claim under . . . promissory estoppel doctrine.").

B. Factors most courts consider in determining the binding nature of a letter of intent:

1. the terms of the LOI

   a. statement of the binding or non-binding nature of the LOI

   b. whether the LOI contains most of the material terms of the transaction

   c. how definite and specific these terms are

   d. reference to further negotiations and a "definitive agreement" that is to supersede the LOI

   e. whether the LOI expires by a certain date or time

   f. whether the LOI contains conditions precedent to binding obligations

2. Surrounding circumstances

   a. the parties' course of conduct

   b. industry custom

   c. performance and detrimental reliance

C. Drafting suggestions to avoid unintended consequences:

1. Be explicit and precise in the LOI as to intent to be bound or not, in order to avoid courts looking to extrinsic evidence to determine intent.

2. Language should be clear and precise where you want to show intent to be bound. For instance, use "shall," "will" or "agree." Likewise, use of more tenuous or ambiguous language, such as "proposed" reinforces the parties' intent not to be bound.

3. Include a provision which states that each party bears its own costs and expenses incurred in connection with the LOI and negotiation of the definitive agreement, whether or not entered into.

4. Conditions before any binding commitments would be made should be specifically expressed. For example, state that the transaction is subject to satisfactory due diligence by each party's boards, required government approvals and the execution of a definitive agreement.

5. If further negotiations are contemplated, a court may find a duty to continue to negotiate in good faith until further agreement is reached. To avoid uncertainty, parties may choose to affirm this duty or to expressly reject it.

6. In addition, specifying a period for future negotiation after which the LOI expires, helps to reinforce the parties' intent not to be bound by the terms of the LOI and also establishes the parties' expectations of the negotiation period.

7. Make sure the provisions that you want to survive, regardless of the outcome of the transaction, are specified as binding. These typically include, for instance, confidentiality, costs and expenses, and governing law.

8. Parties may wish to specify the precise remedy for breach of any binding obligations.

IV. Confidentiality and standstill agreements

A. Confidentiality and standstill agreements are often included as provisions in an LOI. Alternatively, confidentiality and standstill agreements may be executed as separate ancillary agreements to the LOI or term sheet. These provisions (or separate agreements) impose obligations on the parties during the negotiation period.

B. Confidentiality agreements

1. A confidentiality agreement is a contract to permit one party to provide confidential information to another while protecting itself from the risks of misuse of that information by the other party.

2. This agreement is of primary concern to the *seller* in an acquisition transaction. The seller has confidentiality concerns about both the

transaction itself as well as the disclosure of detailed information about its business. A seller should insist that confidentiality provisions be binding and enforceable, notwithstanding the nature of other provisions in the letter of intent.

3. The confidentiality agreement should state the limited purpose with which the seller's confidential information may be used – namely, for a "possible negotiated acquisition" or, more generally, a "possible negotiated transaction." The term "possible" is included to avoid any implication that the company is actually obligating itself to following through with the transaction, and the term "negotiated" is included to indicate that the information is intended for use with transactions that are conducted with the company's consent, not for hostile bids.

4. The information covered by the confidentiality obligations is usually defined broadly to mean "non-public proprietary information, including confidential technical and scientific information and confidential internal projections and other financial data about the company, as well as any material prepared by [recipient] and its representatives that contains or reflects such information."

5. Typical exclusions to this definition would be materials that (a) become generally publicly available other than through the fault of the recipient; or (b) were within the recipient's possession without obligation of confidentiality prior to disclosure by the disclosing party. Also, there is typically an exclusion for disclosures required by court order or pursuant to law, rule or regulation of a government agency or body having jurisdiction over the recipient, provided that the recipient must notify the disclosing party promptly in writing of this order or request for disclosure so that the disclosing party may seek a protective order.

6. The time period for maintaining in confidence and the limited use of the confidential information varies. The disclosing party may not want a particular time period, especially for confidential information that are its trade secrets. However, the recipient may seek some time limitation, and a typical compromise (depending on the information, industry of the seller, etc.) could be anywhere from three to ten years from the date of disclosure.

7. The seller will usually require the right to demand return of all confidential information if the deal falls through. The buyer may want to provide that it may keep one copy of the confidential information for its records (usually by its attorneys), subject to continuing confidentiality obligations.

8. The seller may also include a provision prohibiting the buyer from soliciting seller's employees.

C. Standstill agreements

1. A standstill agreement is a covenant by one party not to enter into negotiations with any other parties regarding the proposed transaction, during a specified time, while the parties continue negotiations toward a definitive agreement.

2. There are two different types used in an acquisition context: (1) one that is imposed on the seller, restricting the seller from negotiating with third parties for the sale of the company during the negotiation period (also known as the "no shop" agreement), and (2) one that is imposed on the buyer, restricting the buyer from attempting a merger or business combination with the target company other than by negotiating with the target's management.

3. The "no shop" agreement

a. The use of a standstill provision or agreement in an acquisition context is of primary concern to the acquiring party who wishes to prevent the seller from negotiating with other prospective purchasers while it is conducting the expense of investigation, due diligence and negotiations. A buyer should insist that the standstill provision be binding notwithstanding the binding nature of any other provision in the letter of intent.

b. A seller should seek a less restrictive standstill provision or negotiate for as many specific material terms as it can upfront, in exchange for the standstill agreement, at the outset when its leverage is greatest.

c. The buyer may require that the seller notify buyer of any unsolicited offers from third parties during the exclusive negotiation period. The seller may prefer simply to be required that it notify the third parties that the seller is not able to consider the offer at that time and not be required to notify the buyer.

4. The second form of a "standstill" provision or agreement is usually used in the public company acquisition context.

a. There, target company will want to restrict buyer from (a) acquiring securities of the target company (usually no more than 5% of the target company's stock); (b) soliciting proxies or taking other actions seeking control or influence the management of the target company; (c) making proposals for merger, tender offer or other business combination with the target company without the target company's consent, (d) participating in the restructuring, liquidation or similar proceeding with respect to the target company, and (e) taking any action that might require the

target company to make a public announcement (including a request for waiver from these obligations).

b. In large part, these restrictions are intended to give the target company control over the auctioning of the company, by not allowing prospective buyers to do an end run around target company management, and also to avoid public disclosure requirements regarding change-in-control transactions which may reduce the likelihood of a negotiated transaction.

c. Such a provision may be used to obtain an injunction against an unsolicited tender offer in violation of the standstill agreement.

V. Conclusion

A. A letter of intent may not be appropriate for every transaction but can provide important benefits in the negotiation of many complex corporate transactions.

B. Parties can draft LOIs to protect their interests and reduce uncertainty, but care must be taken in doing so to avoid unintended consequences.

C. Confidentiality obligations should be binding and survive the termination of the LOI.

D. Standstill provisions are usually used to avoid disruption in the negotiation process.

[Letterhead of Buyer]

January 29, 2003

CONFIDENTIAL

Any Corporation
100 My Street
San Francisco, CA 00000

Ladies and Gentlemen:

This letter agreement sets forth the terms upon which Buyer, Inc., a Delaware corporation ("Buyer"), agrees to enter into discussions regarding a potential business combination with Any Corporation, a Delaware corporation ("Target"), (the "Transaction"), and certain related matters.

In consideration of the substantial amount of resources Buyer will expend in evaluating and negotiating the terms of the Transaction and of the mutual covenants set forth below, Buyer and Target agree as follows:

1. Other Negotiations. Between the date of this letter agreement and 12:00 midnight (California time) on May 1, 2003, or such earlier time and date as Buyer and Target mutually agree to discontinue discussions of the Transaction (the "Expiration Date"), neither Target nor its officers or directors will take, nor will they authorize the Target's employees, agents and affiliates to take, any action to solicit, initiate, seek, encourage or support any inquiry, proposal or offer from, or furnish any information to, or participate in any negotiations with, any corporation, partnership, person or other entity or group (other than discussions with Buyer) regarding any acquisition of Target, any merger or consolidation with or involving Target, or any acquisition of any material portion of the stock or assets of Target. Target agrees that any such negotiations in progress as of the date hereof will be terminated or suspended during such period. Target will promptly, and in any event within 24 hours, notify any third party that makes any offer, proposal or inquiry regarding any such acquisition or financing of Target, that Target is not able to consider such offer, proposal, or inquiry at that time. In no event will Target accept or enter into an agreement concerning any such third party transaction prior to the Expiration Date. Target represents and warrants that it has the legal right to terminate or suspend any such pending negotiations and agrees to indemnify Buyer, its representatives and agents from and against any claims by any party to such negotiations based upon or arising out of the discussion or any consummation of the Acquisition as contemplated by this letter agreement.

2. Governing Law. This letter agreement shall be governed by the internal laws of the State of Delaware applicable to contracts wholly executed and performed therein.

3. General. The parties shall have no obligation to consummate the Transaction, unless and until a definitive agreement is reached, and in such case shall be subject in all respects to the satisfaction of the conditions contained therein, and neither party hereto shall have any liability to the other if the parties fail for any reason to execute such a definitive agreement.

Please contact me if you have any questions regarding this letter agreement. Otherwise, please indicate the concurrence of Target with this letter agreement by executing two copies of it in the space provided below and returning one such copy to me at your earliest convenience. I look forward to the successful completion of the discussions contemplated by this letter agreement.

Very truly yours,

BUYER, INC.

By: ______________________________

Title: ____________________________

AGREED TO AND ACCEPTED:

ANY CORPORATION

By: ______________________________

Title: ____________________________

[Date]

CONFIDENTIAL

[Name of Recipient]
[Address]

Attention:

Ladies and Gentlemen:

In connection with your interest in a possible transaction presently being discussed (a "Transaction") with ______________ (the "Company"), you may have received and you will be given non-public proprietary information (including confidential technical and scientific information and confidential internal projections and other financial data about the Company). Such information, together with any material prepared by you and your Representatives that contains or reflects such information, is referred to as "Confidential Information." For purposes of this letter, the term "Representatives" includes directors, officers, partners, affiliates, agents, employees, financial, legal, accounting and other advisers, and other representatives.

Unauthorized disclosure of Confidential Information may cause substantial and irreparable damage to the Company. Accordingly, Confidential Information has been and will be provided to you only on the following conditions:

1. Confidential Information is to be used solely to enable you to evaluate a Transaction (the "Permitted Use").

2. Without the Company's prior written consent, you will not (a) disclose to any third party that the Company has provided Confidential Information to you, that the Company is considering a Transaction with you, or the terms, conditions or other facts with respect thereto (including the status thereof) (such information set forth in this clause (a) being herein included as Confidential Information) or (b) disclose Confidential Information to any third party, except as provided in Paragraph 3. You will only disclose Confidential Information to those of your Representatives who reasonably need to know such information, who agree to keep such information confidential under the terms of this letter, and who have been provided with a copy of this letter and agree to be bound by the terms hereof to the same extent as if they were parties hereto. Moreover, such disclosure will be made only to the extent necessary in connection with the Permitted Use. You will be responsible for any breach of this letter by any of your Representatives and you agree, at your sole expense, to take all reasonable measures (including

but not limited to court proceedings) to restrain your Representatives from prohibited or unauthorized disclosure or use of the Confidential Information.

3. Your obligations concerning Confidential Information (except as contained in clause (a) of paragraph 2) do not apply to any such information that you can demonstrate falls within either of the following: (a) Confidential Information that has entered the public domain through no fault of or action by you or (b) Confidential Information that is in your possession prior to being furnished to you by or on behalf of the Company or is obtained, after the date hereof, by you from any third party, provided that such Confidential Information was obtained by or provided to you lawfully and not in violation of any contractual or legal obligation of any person to the Company or any third party. This letter does not prevent you from disclosing Confidential Information to the extent that you are required to disclose by order of a court or pursuant to the published rules or regulations of a government agency or body, in each case having jurisdiction over you. Before any such disclosure you (i) must notify the Company promptly in writing of the order or request for disclosure so that the Company may seek a protective order and (ii) cooperate with the Company to obtain a protective order.

4. You agree to use efforts at least equal to those that you use for the protection of your own non-public, proprietary information to keep Confidential Information confidential. You will promptly notify the Company of any actual or threatened breach of the terms of this letter or unauthorized disclosure of Confidential Information.

5. You understand and acknowledge that neither the Company nor any of its Representatives shall be deemed to have made any representation or warranty as to the accuracy or completeness of the Confidential Information. You agree that neither the Company nor its Representatives will be liable as a result of your use of Confidential Information or any errors therein or omissions therefrom. Only those representations or warranties that are made in a definitive agreement regarding any transaction contemplated hereby, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect.

6. All Confidential Information (including all copies), except for Confidential Information prepared by you or Representatives, will upon the Company's request be returned to the Company immediately. Confidential Information prepared by you or your Representatives shall be destroyed at the request of the Company, such destruction to be confirmed in writing if the Company requests.

7. You agree that, for a period of three years after the date hereof, unless specifically invited in writing to do so by the Company, you and each of your Affiliates (as that term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) will not in any manner, directly or indirectly,

(a) effect, or seek, offer or propose to effect (whether publicly or otherwise), or cause or participate in, (i) any acquisition of (A) any securities (or beneficial ownership

thereof) entitled to, or that may be entitled to, vote in the election of the Company's Board of Directors (collectively, "Voting Securities"), (B) any direct or indirect rights or options to acquire any Voting Securities, or (C) any assets or securities of the Company or any of its subsidiaries, (ii) any merger, consolidation, tender or exchange offer, or other business combination involving the Company or any Affiliate thereof, (iii) any restructuring, recapitalization, liquidation, dissolution or similar transaction with respect to the Company or any Affiliate thereof, (iv) any "solicitation" of "proxies" (as such terms are defined or used in Regulation 14A of the Exchange Act) or consents with respect to any Voting Securities, any "election contest" (as such term is defined or used in Rule 14a-11 of the Exchange Act) with respect to the Company, or any demand for a copy of the Company's stock ledger, list of its stockholders, or other books and records, or (v) any action inconsistent with the terms of this letter;

(b) form, join, participate in or encourage the formation of any group (within the meaning of Section 13(d)(3) of the Exchange Act);

(c) otherwise act, alone or in concert with others (including by providing financing for another party), to seek or offer to control or influence, in any manner, the management, Board of Directors or policies of the Company;

(d) take any action that might force the Company to make a public announcement regarding any of the types of matters set forth in (a) above;

(e) make (publicly or to the Company, its Representatives or securityholders, directly or indirectly) any request or proposal to amend, waive or terminate any provision of this letter or any inquiry or statement relating thereto; or

(f) instigate, encourage or assist any third party to do any of the foregoing.

8. Paragraph 7 of this letter shall survive for the period specified therein even if some or all of the Confidential Information becomes publicly disclosed or outdated. No failure or delay by the Company in exercising any right under this letter shall operate as a waiver thereof.

9. In consideration of Confidential Information being furnished to you, you agree that, for a period of two years from the date hereof, neither you nor any of your affiliates will solicit to employ, entice or offer employment to any of the current officers or employees of the Company with whom you have had contact or who was specifically identified to you during the period of your investigation of the Company, so long as they are employed by the Company, without obtaining the prior written consent of the Company.

10. You agree that if you breach the terms of this letter, it would be extremely impracticable and difficult to measure damages. Accordingly, in addition to any other rights and remedies the Company may have, you agree that the Company may sue for specific performance, and you expressly waive (i) the defense that a remedy in damages will be adequate and (ii) any requirement, in an action for specific performance, for the posting of a bond.

11. You agree to notify the Company promptly if you receive any proposal, offer, contact or inquiry with respect to any transaction involving the Company.

12. This letter does not obligate either party to enter into any further agreement.

13. This letter will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to principles of conflicts of laws.

14. This letter shall inure to the benefit of and be binding upon the undersigned parties and to their respective successors and assigns. If any provision of this letter is deemed void by law, the remaining provisions shall continue in full force and effect. You agree that no failure or delay by the Company to enforce any right, power or privilege under this letter shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

If the foregoing is acceptable to you, please so indicate by signing and returning to the Company as soon as possible a copy of this letter.

Very truly yours,

[COMPANY NAME]

By: ______________________________
Name: ____________________________
Title: _____________________________

Agreed to and accepted:

[NAME OF RECIPIENT]

By: ______________________________
Name: ____________________________
Title: _____________________________

SAMPLE NON-BINDING LOI WITH SOME BINDING PROVISIONS

(Acquisition of private target company by public company)
[Target Company Letterhead]

[Date]

[Buyer Company Address]

Dear ____________:

This letter of intent sets forth the principal terms for the proposed acquisition of Target Company, Inc., a California corporation ("Target"), by Buyer Company, a __________ corporation ("Buyer"), by merger of a wholly-owned subsidiary of Buyer ("Merger Sub") into Target (the "Merger"). The Merger will be subject to the execution of a definitive agreement and plan of merger (the "Merger Agreement") among Buyer, Merger Sub and Target, covering the terms below and other customary provisions for transactions of this kind.

This letter is merely an expression of interest and creates no liability or obligation on the part of either Target or Buyer except as set forth in paragraphs 13 – 15, which shall bind the parties, whether or not the parties reach a definitive agreement regarding the Merger. Neither Target or Buyer shall be obligated to consummate the proposed acquisition unless and until both parties have executed a definitive Merger Agreement as to all essential terms of the acquisition, and both parties have satisfied the conditions set forth therein.

1. Merger. Merger Sub will merge with and into Target, which will be the surviving corporation and will become a wholly-owned subsidiary of Buyer.

2. Consideration. Each outstanding share of capital stock of any class of Target (counted on an as-converted basis) will convert upon the merger into [X] shares of Buyer common stock (the "Exchange Ratio"), subject to equitable adjustment for any stock split, stock dividend, recapitalization or similar transaction involving the capital stock of either Buyer or Target after the date hereof.

3. Stock Options. At the effective time of the Merger, Buyer will assume all outstanding Target stock options, with the number of option shares [*currently* ________] and the respective option exercise prices adjusted proportionally according to the Exchange Ratio. The term, exercisability, vesting schedule and all other terms of the options will remain otherwise unchanged, other than acceleration of options triggered by the Merger heretofore approved by the Board of Directors of Target. Buyer will cause the shares issuable upon exercise of assumed options to be registered with the Securities and Exchange Commission ("SEC") on Form S-8 within 15 days following the closing of the Merger.

4. Tax and Accounting Consequences. The Merger will be structured with the intent to qualify as a tax-free reorganization for federal income tax purposes and to be accounted for under the purchase method of accounting.

5. Due Diligence. Each party will afford the other and its respective agents and representatives reasonable opportunity and access during normal business hours to investigate its business, including its books, records, technology and operations. Such investigations are governed in part by a Mutual Confidentiality Agreement between the parties dated ____________ (the "Mutual Confidentiality Agreement"). The parties intend to complete the investigations in time to execute the definitive Merger Agreement by [date].

6. Representations and Warranties; Indemnity. In the definitive Merger Agreement, Buyer, Merger Sub and Target will provide one another the customary representations and warranties for transactions of this nature. Upon the closing of the Merger, [X] percent ([X]%) of the shares of Buyer issuable in the Merger to shareholders of Target (the "Escrow Shares") will be reserved in escrow, as the sole and exclusive remedy and source of indemnity to Buyer against losses, damages or expenses arising from or related to any breach of representations, warranties or covenants by Target. On the first anniversary of the closing, the Escrow Shares remaining after allowed or pending claims of Buyer will be distributed to the Target shareholders and all indemnity obligations of the Target shareholders shall otherwise terminate. Disputed claims against the Escrow Shares shall be resolved by means of an expedited arbitration procedure.

7. Securities Compliance. The shares issued by Buyer to Target shareholders in the Merger will be issued either (i) in a private placement under Section 4(2) of the Securities Act of 1933, as amended (the "Act"), in which case Buyer shall provide the Target shareholders piggyback and Form S-3 registration rights; or (ii) a permit issued by the California Department of Corporations pursuant to a fairness hearing under Section 25142 of the California Corporate Securities Law of 1968, as amended, and corresponding exemption from registration under Section 3(a)(10) of the Act; or (iii) an effective registration statement filed with the SEC on Form S-4.

8. Board and Shareholder Approvals. The Merger will be subject to approval by the board of directors of Buyer and Target, and by the shareholders of Target, including any necessary equity class votes. No Buyer shareholder approval is required for the Merger.

9. Employee Benefits. Each Target employee who remains employed following the Merger will become eligible to participate in all existing employee benefit plans applicable to Buyer and its subsidiaries on the same terms and conditions as similarly-situated employees of Buyer and its other subsidiaries.

10. Conditions to Closing. The closing of the Merger will be subject to customary conditions for a transaction similar to the Merger, including:

(a) The absence of any material breach of any representations and warranties or covenants by Buyer or Target;

(b) Customary legal conditions, including appropriate officers' certificates and the absence of material adverse change in the financial or business conditions or liabilities, assets or prospects of Buyer or Target as applicable (excluding extension of its current financial circumstances and factors affecting the relevant economic sector in general);

(c) Customary opinions from legal counsel for Buyer and Target; and

(d) Any requisite governmental approval, including antitrust and securities law compliance.

11. Continuation of Business. From the date of this letter of intent until the expiration of the Exclusive Period (as defined in Section 13), Target will continue to operate its business in the ordinary course and will not enter into any transaction or agreement or take any action out of the ordinary course, including any single transaction or commitment greater than $_______ or any declaration of dividends without first obtaining the approval of Buyer, which shall not be unreasonably withheld.

12. Timing. The closing of the Merger is expected to occur on or before [date], subject to compliance with applicable requirements of shareholder notification and approval and securities registration or qualification (if the Buyer shares are registered on Form S-4 or qualified pursuant to a California fairness hearing).

13. Exclusive Period of Negotiation. From the date of this letter until the earlier to occur of the parties' mutual execution of the Merger Agreement or [date] (the "Exclusive Period"), other than as contemplated by this letter, Target will not, directly or indirectly, through any officer, director, employee, agent or otherwise, (i) solicit, initiate, or encourage submission of any proposals or offers from any corporation, partnership, persons or group relating to any acquisition, purchase or option to purchase any of the business, assets or stock of Target, or any merger, consolidation, recapitalization or other business combination of any kind involving Target, or any other transaction that is incompatible with the transaction described in this letter, or (ii) furnish to any person (other than its own professional advisors) any information with respect to any such transaction.

14. Disclosure. Buyer may issue a press release upon signing the definitive Merger Agreement if its legal counsel advises that it is required to do so. To the extent legally allowed under SEC rules and regulations concerning fair disclosure, Buyer will permit Target prior review and approval of the release and will coordinate it with Target's announcement of the Merger Agreement to its employees and selected customers. Until issuance of the press release, neither party will disclose the fact that these negotiations are taking place, except on a confidential basis to employees and professionals working on behalf of the respective parties on a need-to-know basis and except as required by law. The parties acknowledge that this letter of

intent, and the negotiations conducted and information exchanged pursuant hereto, are subject to the Mutual Confidentiality Agreement.

15. Professional Fees. Each party will pay the fees of its own accountants, attorneys, investment advisors and other professionals, provided that upon the closing of the Merger, Buyer will provide for the payment of such fees incurred by Target.

16. Termination. Subject to the provisions of this letter, either party may terminate this letter of intent at any time by sending written notice thereof to the other party. In addition, either party may terminate this letter of intent upon the breach by the other party of the covenants contained in paragraphs ____ . The written notice must state the grounds upon which the party relies to terminate the letter.

17. Governing Law. All agreements shall be governed by the laws of the State of ______________.

Please indicate your acknowledgement of the foregoing principal terms of the proposed acquisition and your acceptance and approval of paragraphs 13-15 above by signing below and returning this letter. If we do not receive an executed copy of this letter on or before __________________, we will assume you have no further interest in pursuing this transaction. Upon receipt of an executed copy, we will proceed with our plans for consummating the transaction in a timely manner.

Very truly yours,

TARGET COMPANY, INC.

By ________________________________
[Authorized Officer]

Accepted, approved and agreed as of the date first written above:

BUYER COMPANY

By ________________________________
[Authorized Officer]

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